

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2069 OF 2015

1. Sales Tax Tribunal Bar Association
Having its library and office at
Room No.713, 7th Floor,
Vikrikar Bhavan, Nesbeit Road,
Mazgaon, 400 010.
2. Shri Deepak Krishnaji Bapat,
President of the Petitioner No.1
having his office at B-2/10,
Laxmi Niwas, J.K.Sawant Road,
Matunga (West), Mumbai- 400 016. ... Petitioners.

V/s.

1. The State of Maharashtra
Through Government Pleader,
Original Side, High Court Mumbai.
2. The Chief Minister,
State of Maharashtra,
Having his office at Mantralaya,
Madam Cama Road, Mumbai- 400 032.
3. Principal Secretary, Finance Dept.
Having his office at Mantralaya,
Madam Cama Road, Mumbai- 400 032.
4. Principal Secretary, Law and Judiciary,
Having his office at Mantralaya,
Madam Cama Road, Mumbai- 400 032. ... Respondents.

Mr.R.V.Desai, Senior Advocate with Mr.Ratan Samal, Mr.Deepak Bapat, Mr.Pardesi, Ms.Nikita Badeka, Mr.V.PPathkar and Ms.Manjiri Sharad Parasnis for the petitioner.

Mr.VA.Sonpal, Special Counsel with Ms.Geeta Shastri, Addl.GP for the respondents.

CORAM : A.S.OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 28th and 29th September 2017.

ORAL JUDGMENT : (Per A.S.Oka, J.)

The submissions of the learned counsel appearing for the parties were heard on the earlier date and today the petition is kept for dictation of judgment. This petition is filed by the first petitioner- the Sales Tax Tribunal Bar Association through second petitioner who was at the relevant time its President. The first petitioner is the association of the persons regularly practising before the Maharashtra Sales Tax Tribunal (for short “the Tribunal”). The grievance in this petition can be divided into two parts. The first part is as regards challenge to the statutory provisions. The second part is as regards issues of infrastructure provided to the said Tribunal. Though there are no specific prayers made in the petition as far as the infrastructure is concerned, the orders passed by this Court from time to time show that the parties were put to notice that various issues concerning infrastructure provided to the said Tribunal are subject matter of the controversy and the said issues have been dealt with by this Court.

2. The learned counsel appearing for the petitioners has pointed out that almost all issues concerning infrastructure have been taken care of. Most of the issues concerning infrastructure of the Courts and Tribunals have been settled by the judgment and order dated 5th May 2017 of this Court in PIL No.156/2011 (*Mumbai Grahak Panchayat v. State of Maharashtra and others*) and other connected matters. However, we propose to issue certain directions while disposing of the petitions in terms of the said judgment dated 5th May 2017.

3. Now, we turn to the first part of the controversy. Under the Bombay Sales Tax Act, 1989 (for short “the said Act”), Section 21 of the said Act provided for constitution of the said Tribunal. Section 21 reads thus:

“S.21. Tribunal.- (1) There shall be a Tribunal to be called "the Maharashtra Sales Tax Tribunal". Subject to the provisions of this section, the Tribunal shall consist of such number of members appointed by the State Government as that Government may from time to time consider necessary for the proper discharge of the functions conferred on the Tribunal by or under this Act.

(2) The State Government shall appoint one of the members of the Tribunal to be the President thereof .

(3) The qualifications and the term of office of the members of the Tribunal shall be such as may be prescribed, and a member shall hold office for such period as prescribed or as the State Government may fix in his case.

(4) Any vacancy in the membership of the Tribunal shall be filled up by the State Government as soon as practicable.

(5) The functions of the Tribunal may be discharged

by any of the members sitting either singly, or in Benches of two or more members, as may be determined by the President.

(6) If the members of a Bench are divided, the decision shall be the decision of the majority, if there be a majority; but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President of the Tribunal for hearing on such point or points to one or more of the other members of the Tribunal; and such point or points shall be decided according to the majority of the members of the Tribunal who heard the case including those who first heard it.

(6A) Subject to such conditions and limitations as may be prescribed, the Tribunal shall have power to award costs, and the amount of such costs shall be recoverable from the person ordered to pay the same as an arrears of land revenue.

(6AA) [*****]

(7) Subject to the previous sanction of the State Government, the Tribunal shall for the purpose of regulating its procedure (including the place or places at which the Tribunal, the Benches or the members thereof shall sit and disposal of its business, make regulations consistent with the provisions of this Act and the rules.

(8) The regulations made under sub-section (7) shall be published in the Official Gazette.”

Rule 6 of the Bombay Sales Tax Rules, 1989 (for short “Sales Tax Rules”) lays down qualifications of the Members of the Tribunal. Rule 6 reads thus:

“R.6. Qualifications of members of Tribunal and term of office.- (1) Every member of the Tribunal shall be a person who-

(a) is or has been a Judge of the High Court, or

(a-1) is or has been a District Judge, or

(b) is qualified for appointment as a District Judge, and has held judicial office for not less than ten years, or

(c) is a Chartered Accountant and has practised as such for not less than six years, or

(d) not being a person described in clause (c), has in the opinion of the State Government, adequate knowledge and experience in Accounting, or

(e) has, in the opinion of the State Government, special knowledge of, or experience in commerce or industry, or

(f) has for a continuous period of not less than three years held an office, not below the rank of Deputy Commissioner of Sales Tax, in the Sales Tax Department of the State Government:

Provided that, a person appointed as a member of the Tribunal under clause (f) shall not be eligible for further employment in the Sales Tax Department, after he ceases to hold office as a member of the Tribunal.

(2) The appointment of a member of the Tribunal may be terminated before the expiry of his term of office, if the member-

(a) is adjudged an insolvent, or

(b) engages during his term of office in any paid employment outside the duties of his office, or

(c) is, in the opinion of the State Government unfit to continue in office by reason of infirmity of mind or of body, or any other reason.

(3) A member of the Tribunal shall, on the expiry of his term of office, be eligible for re-appointment.

(4) A member of the Tribunal may, at any time by writing under his hand addressed to the State Government, resign his office, and his resignation shall take effect from the date on which it is accepted.”

Thereafter, by Maharashtra Act No.IX of 2005, the Maharashtra Value Added Tax Act, 2002 (“for short “VAT Act”) was enacted which was brought into force with effect from 1st April 2005. Under Section 95 of the VAT Act, the Sales Tax Act was repealed. Section 11 of the VAT Act provides for constitution of Tribunal. Section 11 of the VAT Act reads thus:

Section 11 – Tribunal

(1) There shall be a Tribunal to be called “the Maharashtra Sales Tax Tribunal”. The Tribunal shall consist of such number of members appointed by the State Government as the Government may, from time to time, consider necessary for the proper discharge of the functions conferred on the Tribunal by or under this Act.

(2) The State Government shall appoint one of the members of the Tribunal to be the President thereof on the basis of his seniority in the Judicial Service.

(3) The qualifications and the terms of office of the members of the Tribunal shall be such as may be prescribed, and a member shall hold office for such period as may be prescribed or as the State Government may, by special order in his case, specify.

(4) Any vacancy of the member of the Tribunal shall be filled up by the State Government as soon as practicable.

(5) The functions of the Tribunal may be discharged by any of the members sitting either singly, or in Benches of two or more members, as may be determined by the President.

(6) If the members of a Bench are divided, the decision shall be the decision of the majority if there be

a majority; but if the members are equally divided, they shall State the point or points on which they differ, and the case shall be referred by the President of the Tribunal for hearing on such point or points to one or more of the other members of the Tribunal, including himself and such point or points shall be decided according to the majority of the members of the Tribunal who heard the case including those who first heard it.

(7) During the course of any proceedings, if a Bench is of the opinion that any earlier decision of any Bench on any point or issue requires reconsideration, or where such Bench is inclined to take a decision on any point or issue different than the decision earlier taken by any Bench, then such Bench shall refer the point or the issue to the President for formation of a larger Bench. The president shall thereupon form a larger Bench of such members of the Tribunal as he may determine. Such larger Bench shall, as far as practicable, be presided over by the President. The point or the issue shall be decided according to the decision of the majority of the members constituting such larger Bench. Where any member including the President is sitting singly he may in similar circumstances refer the matter to the President for formation of a larger Bench.

(8) The Tribunal shall have power to award costs after giving the dealer or person, as the case may be, a reasonable opportunity of being heard, and the amount of such costs shall be recoverable from the dealer or person ordered to pay the same in the manner provided in this Act for recovery of arrears of tax.

(9) The Tribunal shall, with the previous sanction of the State Government, for the purpose of regulating its procedure including the place or places at which the Tribunal, the Benches or the members

thereof shall sit and dispose of its business, make regulations consistent with the provisions of this Act rules and notifications.

(10) The regulations made under sub-section (9) shall be published in the *Official Gazette*.

The Maharashtra Value Added Tax Rules, 2005 (for short “VAT Rules”) were framed in exercise of rule making powers under the provisions of the VAT Act. Rule 6 lays down the qualifications of the Members of the Tribunal, which reads thus:

6. Qualifications of members of tribunal and term of office.—(1) Every member of the Tribunal shall be a person who,-

- (a) is or has been a Judge of the High Court, or
- (b) is or has been a District Judge, or
- (c) is qualified for appointment as a District Judge, and has held judicial office for not less than ten years, or
- (d) has, for a continuous period of not less than two years held an office, not below the rank of Joint Commissioner of Sales Tax, in the Sales Tax Department of the State Government, or
- (e) is a Chartered Accountant and has practised as such for not less than seven years, or
- (f) not being a person described in clause (e), has in the opinion of the State Government, adequate knowledge, or experience in accounting, or has, in the opinion of the State Government, special knowledge or experience in commerce or industry.

Explanation:- For the purpose of clause (b), the service as a Deputy Commissioner before the appointed day shall be considered for determining the period of three years.

(2) A person appointed as a member of the Tribunal under clause (d) shall not be eligible for further employment in the Sales Tax Department, after he ceases to hold office as a member of the Tribunal.

(3) The appointment of a member of the Tribunal may be terminated before the expiry of his term of office, if the member--

(a) is adjudged an insolvent, or

(b) engages during his term of office in any paid employment outside the duties of his office, or

(c) is, in the opinion of the State Government unfit to continue in office by reason of infirmity of mind or of body, or any other reason.

(4) A Member of the Tribunal shall, on the expiry of his term of office be eligible for re-appointment.

(5) A Member of the Tribunal may, at any time, by writing under his hand addressed to the State Government, resign his office, and his resignation shall take effect from the date on which it is accepted.

4. The first challenge in this petition is to the constitutional validity of Section 11 of the VAT Act and Rule 6 of the VAT Rules. Another challenge incorporated in the petition by way of amendment is to the Government Resolution dated 2nd June 1973 issued by the Finance Department, Government of Maharashtra. The said Government Resolution deals with the appointment of Deputy Commissioners of Sales Tax as Members of the Tribunal. The said Government Resolution provides that retired Deputy Commissioner of Sales Tax should not be considered for appointment on the Tribunal. It provides that the selection of the Members of the Tribunal should be entrusted to a High Power

Selection Board with the Chief Secretary as Chairman and the Secretary of Law and Judiciary Department and the Secretary of Finance Department as its members.

5. As far as challenges to Section 11 of the VAT Act and Rule 6 the VAT Rules are concerned, the basic attack is on the basis of concept of independence of judiciary which is a part of basic structure of the Constitution of India. The challenge is also on the ground that the provisions are violative of the basic structure of the Constitution of India.

6. The learned senior counsel appearing for the petitioners has made detailed submissions. He heavily relied upon various decisions of the Apex Court. He placed reliance on the decisions of the Apex Court in the cases of *Madras Bar Association v. Union of India and another*¹; *State of Gujarat v. Gujarat Revenue Tribunal Bar Association*²; *Satya Pal Anand v. State of Madhya Pradesh*³; and *Supreme Court Advocates on record Association and another v. Union of India*⁴. He also relied upon the decision of the Apex Court in the case of *Union of India v. R.Gandhi, President, Madras Bar Association*⁵. He also invited our attention to the decision of the Apex Court in *Namit Sharma v. Union of India*⁶. He also invited our attention to the decision of the Apex Court in the case of *State of Maharashtra v. Labour Law Practitioners' Association and others*⁷.

1 (2014) 10 SCC 1

2 (2012) 10 SCC 353

3 (2014) 7 SCC 244

4 (2016) 5 SCC 1

5 (2010) 11 SCC 1

6 (2013) 1 SCC 745

7 (1998) 2 SCC 688

7. He invited our attention to Section 11 of the VAT Act. He pointed out that the power of appointing Members of the Tribunal including the President thereof has been conferred on the Government. The submission is that neither the VAT Act nor the VAT Rules provide for consultation with this Court, especially in the light of the fact that the Tribunal has all the trappings of a Civil Court. He invited our attention to Rule 6 of the VAT Rules and submitted that a Joint Commissioner of Sales Tax, who has no judicial or legal background, can be appointed as a Member of the Tribunal. He submitted that considering the nature of powers exercised by the Tribunal, there is no necessity of having a non-judicial members as a part of the Tribunal. He pointed out that there is obvious inconsistency between the explanation to sub-rule (1) of Rule 6 and clause (d) thereof. He pointed out that clause (d) of sub-rule (1) of Rule 6 provides that a person who has held the office not below the rank of Joint Commissioner of Sales Tax for a continuous period of not less than two years is eligible for being appointed as a Member of the Tribunal. However, explanation of to sub-rule (1) lays down that even the service as a Deputy Commissioner for three years before the appointed date shall be considered.

8. Inviting our attention to the provisions of sub-section (5) of Section 11 of the VAT Act, he pointed out that the functions of the Tribunal are required to be discharged by the Members sitting either singly or in Benches of two or more Members, as may be determined by the President. He submitted that neither in the VAT Act nor in the VAT

Rules there is a provision that whenever a Bench of two or more is constituted, the same shall be headed by a judicial Member possessing qualification laid down in clauses (a) or (b) or (c) of sub-rule (1) of Rule 6. He submitted that in absence of any such provision, even a person who is holding the office as a Joint Commissioner of Sales Tax can be allowed to head the Bench though the other Member may be a former Judge of the High Court or a former District Judge. There is no provision which ensures that only a judicial Member sits singly and not an Administrative Member. He submitted that the act of making a provision for appointing the Joint Commissioner of Sales Tax as a Member of the Tribunal infringes the principles of separation of powers incorporated in the Constitution of India.

9. He submitted that if this Court is not inclined to accept the challenge to the Constitutional validity of the provisions of the VAT Act and the VAT Rules, the same can be suitably read down and interpreted. He also invited our attention to the Government Resolution dated 2nd June 1973 which confers powers of selecting retired Deputy Commissioners of Sales Tax as Members of the Tribunal, on a Committee headed by the Chief Secretary as the Chairman. The other two members are Secretary, Law and Judiciary Department and Secretary, Finance Department as members. He, would, submit that such a Government Resolution is arbitrary and irrational and cannot stand to the scrutiny of reasonableness.

10. The learned AGP submitted that there is nothing wrong if a Technical Member, who has been a Joint Commissioner, becomes a

Member of the Tribunal as such appointments are constitutionally accepted in case of several Tribunals. The Technical Members can effectively assist the Judicial Members considering their expertise. He pointed out that in case of several Tribunals, there is a provision for appointing technical or non-judicial Members and there is no illegality associated with inclusion of Technical Members as a part of the Tribunal. He has placed on record a compilation containing VAT Rules of various other States for pointing out that the Administrative Members are a part of such Tribunals in all the States. He invited our attention to the affidavit of Shri Rajendra D. Bhagat, Deputy Secretary (Finance Department), Government of Maharashtra. He pointed out that whenever the Benches are constituted, the same are always headed by the Judicial Members and the same are never headed by the Technical or Administrative Members. He pointed out that the record shows that consistent practice is that the Administrative Member never sits singly. He pointed out a statement to that effect in the said affidavit. He invited our attention to various decisions relied upon by the learned senior counsel appearing for the petitioners and submitted that there is no legal infirmity in the provisions of either the VAT Act or the VAT Rules. He submitted that all the apprehensions of the petitioners have been addressed. He urged that in view of the statements made in the affidavit of Shri Rajendra D. Bhagat, no interference is called for.

11. We have considered the submissions. Before we deal with the decisions. Section 11 of the VAT Act provides that the power to appoint all the Members of the Tribunal is vested in the State Government. Sub-section (2) of Section 11 provides that the State Government shall appoint

one of the Members of the Tribunal to be the President thereof on the basis of seniority in judicial service. Though Section 11 does not specifically provide for appointment of Judicial or Administrative/Technical Members, the very fact that sub-section (2) refers to seniority of Members in judicial service shows that appointment of judicial officers is contemplated as Members of the said Tribunal. Sub-section (3) of Section 11 provides that the qualifications and terms of office of the Members of the Tribunal shall be as prescribed. In view of the definition in sub-section (19) of Section 2, the word “prescribed” means prescribed by the rules or by any notification. Though sub-section (5) of Section 11 of the VAT Act provides that the functions of the Tribunal may be discharged by any of the Members sitting either singly, or in Benches of two or more Members as may be determined by the President of the Tribunal, there is no provision which says that only the Judicial Members should head Benches of two or more Members and in no circumstances, the Administrative or Technical Member can become the head of the Tribunal.

12. In view of sub-section (6) of Section 11, if the Members of a Bench of more than two Members are divided, the decision shall be the decision of the majority, if there is a majority. If the Bench consists of two Members, the Administrative or Technical Member can differ and in such case, the matter will be referred by the President to another Member.

13. We have already quoted Rule 6 of the VAT Rules. There is an apparent inconsistency between clause (d) of sub-rule (1) of Rule 6 and the explanation to sub-rule (1) of Rule 6. One of the qualifications for

appointment as a Member of the Tribunal is of a continuous period of service of not less than two years holding an office not below the rank of Joint Commissioner of Sales Tax in the Sales Tax Department of the State. Thus, a person belonging to the rank of Joint Commissioner of Sales Tax can be appointed as a Member provided he has held the said office for at least two years. Initially, the period of three years was provided in clause (d). Explanation to sub-section (1) of Section 6 explains that for the purposes of clause (d), the service as a Deputy Commissioner of Sales Tax before the appointed day shall be considered for determining the period of three years. Firstly, clause (d) of sub-section (1) provides that the person who is to be appointed as a Member of the Tribunal should hold the office as a Joint Commissioner of Sale Tax for a continuous period not less than two years. In the explanation, it is strangely provided that for considering the period provided in clause (d), the service as a Deputy Commissioner before the appointed day shall be considered for determining the period of three years.

14. Clause (d) requires an officer not below the rank of Joint Commissioner of Sales Tax to hold the office for not less than two years. Explanation provides that service of a candidate as Deputy Commissioner before the appointed day shall be considered for determining the period of three years. On plain reading of clause (d) of sub-rule (1) of Rule 6, a Deputy Commissioner is not at all qualified to hold the post of a Member. Apart from this discrepancy, when clause (d) of sub-rule (1) of Rule 6 does not recognize the service as a Deputy Commissioner as the qualifying service, the explanation purports to override clause (d) and makes a provision to that effect.

15. It is well settled that violation of Article 14 is also one of the grounds on which there can be a challenge to the constitutional validity of a statute. According to us, the explanation is completely arbitrary. If the explanation is allowed to remain, a person who has been appointed as Joint Commissioner of Sales Tax, who does not have experience of two years in the said office will be appointed on the basis of his service as a Deputy Commissioner. Therefore, it is very difficult for us to save the explanation from unconstitutionality. Therefore, we hold that notwithstanding the explanation, a Joint Commissioner who is appointed as a Member should have experience of working in the said post for minimum two years.

16. For dealing with the main challenge, it will be necessary to make a reference to the affidavit-in-reply of Shri Rajendra D. Bhagat, Deputy Secretary (Finance Department). Clauses (c) , (d) and (e) of paragraph- 11 of the said affidavit read thus:

“(c) So far as Judicial Members are concerned, they are appointed only with the consultation of this Hon'ble Court. It is only upon this Hon'ble Court sending names of the Judicial Officer, that the same are appointed by the State Government. The State Government, apart from playing the role of issuing the notification for appointment of the Judicial Officer, does not in any manner make any operational participation in the appointment of Judicial Members. The President appointed is also from amongst the appointed Judicial Members. Thus, the allegations of bias, separation of power, independence of judiciary etc are without any basis

and are based on any unfortunate lack of knowledge of the correct factual position in regard to the appointment of Judicial Officers.

(d) So far as the administrative members are concerned, the Petitioners are again factually incorrect. The appointment of administrative members is made by a High Powered Committee consisting of the (a) Chief Secretary, (b) Secretary (L&JD) and (c) Secretary, Finance. It is pertinent to note that the Secretary (L& JD) is in his/her own right, an independent and impartial officer, him/her being a member of the Judicial Services of the State of Maharashtra, which is under the direct control, supervision, and superintendence of this Hon'ble Court. It therefore cannot be said that the High Powered Committee is in any manner constituted of only the officers of the State Government.

(e) The appointment of the Administrative Members is made by the said High Powered Committee, from amongst those persons who have served as a Joint Commissioner of Sales Tax or above and have more than 20 years experience. As noted above, the Administrative Members cannot and do not sit singly. The role of the Administrative Members is therefore quiet clear to require further elaboration. The manner of their selection has withstood the test of time and the same is evident from the fact that there is not a single instance mentioned in the Petition by the Petitioners which would give any credence whatsoever to the abstract apprehension expressed by them in the paragraphs where these issues are raised."

(emphasis added)

We accept the statement made in clause (c) of the affidavit as the statement made on behalf of the State Government. Therefore, for each

and every appointment of Judicial Members, the consultation with this Court shall be mandatory.

17. Even the statement made in clause (e) is very material. We accept the statement made in clause (e) of paragraph-11 that the Administrative/ Technical Members cannot and do not sit singly which means that only the Judicial Members can sit singly. As the statement made in paragraph- 11(e) is accepted as the statement of the State Government, no Administrative Member can sit singly. In view of this categorical statement on oath, we need to detain ourselves any further on this aspect. As far as clause (d) of paragraph-11 is concerned, constitution of selection committee for appointment of Members is sought to be justified. We are dealing with the said aspect separately. .

18. Now, we make a reference to the decision of the Apex Court in the case of *Union of India v. R.Gandhi, President, Madras Bar Association* (supra). In the said decision, various issues concerning Tribunal were considered. Paragraph- 106 of the said decision is relevant, which reads thus:

“106. We may summarize the position as follows:

(a) **A legislature can enact a law transferring the jurisdiction exercised by courts in regard to any specified subject (other than those which are vested in courts by express provisions of the Constitution) to any tribunal.**

(b) **All courts are tribunals. Any tribunal to which any existing jurisdiction of courts is transferred should also be a Judicial Tribunal. This means that such Tribunal should have as members,**

persons of a rank, capacity and status as nearly as possible equal to the rank, status and capacity of the court which was till then dealing with such matters and the members of the Tribunal should have the independence and security of tenure associated with Judicial Tribunals.

(c) Whenever there is need for 'Tribunals', there is no presumption that there should be technical members in the Tribunals. When any jurisdiction is shifted from courts to Tribunals, on the ground of pendency and delay in courts, and the jurisdiction so transferred does not involve any technical aspects requiring the assistance of experts, the Tribunals should normally have only judicial members. **Only where the exercise of jurisdiction involves inquiry and decisions into technical or special aspects, where presence of technical members will be useful and necessary, Tribunals should have technical members. Indiscriminate appointment of technical members in all Tribunals will dilute and adversely affect the independence of the Judiciary.**

(d) The Legislature can re-organize the jurisdictions of Judicial Tribunals. For example, it can provide that a specified category of cases tried by a higher court can be tried by a lower court or vice versa (A standard example is the variation of pecuniary limits of courts). Similarly while constituting Tribunals, the Legislature can prescribe the qualifications/ eligibility criteria. The same is however subject to Judicial Review. If the court in exercise of judicial review is of the view that such tribunalisation would adversely affect the independence of judiciary or the standards of judiciary, the court may interfere to preserve the independence and standards of judiciary. Such an exercise will be part of the checks and balances measures to maintain the separation of powers and to prevent any encroachment, intentional or unintentional, by either the legislature or by the executive."

(emphasis added)

19. What is material is clauses (c) and (d) of the above paragraph. Clause (c) holds that whenever there is a need for Tribunals, there is no presumption that there should be Technical Members of the Tribunals. It was held that only where exercise of jurisdiction involves inquiry and decisions on technical or special aspects, the presence of Technical Members will be useful. Thus, the law laid down by the Supreme Court is that it is permissible in law to appoint Technical/Administrative Members. In the present case, considering the nature of the jurisdiction exercised by the Tribunal, for dealing with the taxing statutes imposing Sales Tax and Value Added Tax, experience of Joint Commissioners of Sales Tax is very useful. In fact, in the case of Tribunals dealing with matters of Excise, Customs, Service Tax and Income-Tax, there is a provision for appointment of technical/administrative members who are having experience of making adjudication in Tax matters. Such members usually have a long experience in making adjudication on the the tax disputes. There is no illegality associated with it, especially in the light of the statement made in the affidavit of Shri Rajendra D. Bhagat, Deputy Secretary, Finance Department, Government of Maharashtra.

20. The other issue canvassed is as regards the provision permitting appointment of the Joint Commissioners of Sales Tax as the Members of the Tribunal. Before we go back to the qualification laid down, it will be necessary to consider the decision of the Apex Court in the case of *Namit Sharma v. Union of India* (supra). The issue before the Apex Court was of constitutional validity of sub-section (5) of Section 12 and sub-section (5) of Section 15 of the Right to Information Act,

2005. What is material for our purposes are the conclusions drawn in paragraph-108.2, which reads thus:

“108.2 The provisions of Sections 12(5) and 15(5) of the Act of 2005 are held to be constitutionally valid, but with the rider that, to give it a meaningful and purposive interpretation, it is necessary for the Court to 'read into' these provisions some aspects without which these provisions are bound to offend the doctrine of equality. Thus, we hold and declare that the expression 'knowledge and experience' appearing in these provisions would mean and include a basic degree in the respective field and the experience gained thereafter. Further, without any peradventure and veritably, we state that appointments of legally qualified, judicially trained and experienced persons would certainly manifest in more effective serving of the ends of justice as well as ensuring better administration of justice by the Commission. It would render the adjudicatory process which involves critical legal questions and nuances of law, more adherent to justice and shall enhance the public confidence in the working of the Commission. This is the obvious interpretation of the language of these provisions and, in fact, is the essence thereof.”

(emphasis added)

21. Thus, in case of the Commissioners appointed under the Right to Information Act, the Apex Court held that the appointments of legally qualified, judicially trained and experienced persons would certainly manifest in more effective serving of the ends of justice as well as ensuring better administration of justice by the Commission. Thus, while

reading down the provisions of the Right to Information Act, the Apex Court has read into the provisions that the appointment of Commissioners must be of legally qualified, judicially trained and experienced persons. Thus, as held by the Apex Court, even in a case of a non-judicial Member (Technical or Administrative Member), he has to be legally qualified, judicially trained and experienced in the field.

22. On the aspect of allowing the Administrative Member to be appointed on the Tribunal, there is some discussion in the said judgment. It was observed in paragraph-105 that requirement of a judicial mind for manning the judicial Tribunal is a well accepted discipline in all the major international jurisdictions with hardly any exceptions. Thus, the Apex Court recognized the need of the Administrative Member having judicial mind.

23. We must note here that an argument was canvassed by the learned senior counsel appearing for the petitioners at the outset that the said Tribunal is a Court and, therefore, it will be under the administrative control of the High Court in accordance with Article 234 and 235 of the Constitution of India. At this stage, we must note here that on plain reading of the provisions of Article 323B of the Constitution of India, the Tribunal will not be a Tribunal within the meaning of Article 323B of the Constitution of India. Once it is held that the said Tribunal is not a Tribunal under Article 323B, then the argument that the High Court should have administrative control over the said Tribunal by treating the said Tribunal as Court cannot be accepted.

24. There are various submissions made by the learned senior counsel appearing for the petitioners on the issue of the Administrative or Technical Members being conferred drastic powers. In fact, one of the submissions was that prior to the constitution of the Tribunal, the matters which are being dealt with by the Tribunal were dealt with by the civil Courts. On this aspect, various decisions of the Apex Court will have to be considered including the well known decision of the Apex Court in the case of *L.Chandra Kumar v. Union of India and others*⁸. We may note that the said decision of the Apex Court deals with the provisions of the Administrative Tribunals Act, 1985. We may also note that there was an earlier decision of the Apex Court in the case of *S.P.Sampath Kumar v. Union of India*⁹.

25. As the learned Senior Counsel appearing for the Petitioners had placed reliance on the decision of the Constitution Bench of the Apex Court in the case of *Madras Bar Association v. Union of India*¹⁰ and another, it will be necessary to make a brief reference to the said decision. We must note here that in the said decision, the Constitution Bench has quoted with approval its earlier decision in the case of *Union of India v. R.Gandhi, President, Madras Bar Association*¹¹ and in particular what is held in paragraph-106. We may note here that the decision of the Apex Court in the case of *Madras Bar Association v. Union of India* (supra) is in a different context in the sense that the challenge was to the provisions of the National Tax Tribunal Act, 2005. One of the grounds of challenge

8 (1997) 3 SCC 261

9 (1987) 1 SCC 124

10 (2010)11 SCC 1

11 (2010)11 SCC 1

was based on the fact that the jurisdiction vested in the High Court was sought to be transferred to the Tribunal created under the said enactment. Therefore, the law laid down in the context of the provisions of the National Tax Tribunal Act may not have any relevance as far as the controversy in our hands is concerned. What is relevant is that the Apex Court has reiterated that while constituting a Tribunal, there could be Administrative or technical Members.

26. Another decision relied upon by the learned Counsel appearing for the Petitioner was in the case of *State of Gujarat v. Gujarat Revenue Tribunal Bar Association*¹². This was a case where Rule 3(1)(iii)(a) of the Gujarat Revenue Tribunal Rules 1982, which conferred power upon the State Government to appoint the Secretary to the Government of Gujarat as the President of the Revenue Tribunal, was struck down. In an appeal preferred by the State of Gujarat, the Apex Court upheld the decision of the Gujarat High Court. What is relevant for our consideration is what is held by the Apex Court in paragraphs- 16 and 17, which read thus:-

“16 Although the term “court” has not been defined under the Act, it is indisputable that courts belong to the judicial hierarchy and constitute the country's judiciary as distinct from the executive or legislative branches of the State. Judicial functions involve the decision of rights and liabilities of the parties. An enquiry and investigation into facts is a material part of judicial function. **The legislature, in its wisdom has created tribunals and transferred the work which was regularly done by the civil courts to them, as it was found necessary to do so in order to provide efficacious remedy and also to reduce**

12 (2012) 10 SCC 353

the burden on the civil courts and further, also to save the aggrieved person from bearing the burden of heavy Court fees, etc. Thus, the system of tribunals was created as a machinery for the speedy disposal of claims arising under a particular statute/Act. Most of the tribunals have been given the power to lay down their own procedure. In some cases, the procedure may be adopted by the tribunal and the same may require the approval of the competent authority/Government. However, in each case, the principles of natural justice are required to be observed. Such tribunals therefore, basically perform quasi-judicial functions. The system of tribunals is hence, unlike that of the regularly constituted courts under the hierarchy of judicial system which are not authorised to devise their own procedure for exercise certain powers conferred under some provisions of the Code of Civil Procedure (hereinafter referred to as “CPC”) or the Code of Criminal Procedure (hereinafter referred to as “CrPC”), but not under the whole Code, be it Civil or Criminal. However, in a regular Court, the said Codes, in their entirety, Civil as well as Criminal, must be strictly adhered to. Therefore, from the above, it is evident that the terms “court” and “tribunal” are not interchangeable.

17. A tribunal may not necessarily be a Court, in spite of the fact that it may be presided over by a judicial officer, as other qualified persons may also possibly be appointed to perform such duty. One of the tests to determine whether a tribunal is a Court or not, is to check whether the High Court has revisional jurisdiction so far as the judgments and orders passed by the Tribunal are concerned. Supervisory or revisional jurisdiction is considered to be a power vesting in any superior court or Tribunal, enabling it to satisfy itself as regards the correctness of the orders of the inferior Tribunal. This is the basic difference between appellate and supervisory jurisdiction. Appellate jurisdiction confers a right upon the

aggrieved person to complain in the prescribed manner, to a higher forum whereas, supervisory/revisional power has a different object and purpose altogether as it confers the right and responsibility upon the higher forum to keep the subordinate Tribunals within the limits of the law. It is for this reason that revisional power can be exercised by the competent authority/court suo motu, in order to see that subordinate Tribunals do not transgress the rules of law and are kept within the framework of powers conferred upon them. Such revisional powers have to be exercised sparingly, only as a discretion in order to prevent gross injustice and the same cannot be claimed, as a matter of right by any party. Even if the person heading the Tribunal is otherwise a “judicial officer”, he may merely be persona designata, but not a court, despite the fact that he is expected to act in a quasi-judicial manner. In the generic sense, a court is also a Tribunal, however, courts are only such Tribunals as have been created by the concerned statute and belong to the judicial department of the State as opposed to the executive branch of the said State. The expression ‘court’ is understood in the context of its normally accepted connotation, as an adjudicating body, which performs judicial functions of rendering definitive judgments having a sense of finality and authoritativeness to bind the parties litigating before it. Secondly, it should be in the course of exercise of the sovereign judicial power transferred to it by the State. Any Tribunal or authority therefore, that possesses these attributes, may be categorized as a court.”

(emphasis added)

27. The Apex Court has clearly stated the distinction between the concept of a Tribunal and the concept of a Court. In paragraph-18, the Apex Court held that though certain powers under the Code of Civil Procedure, 1908 or the Code of Criminal Procedure, 1973 may have been

conferred on the Tribunal, it does not become a Court unless it is entrusted with the judicial powers of the State. Only when it is found that the State has transferred the sovereign judicial powers to the Tribunal, it can be categorised as a Court. The Apex Court, in the facts of the case, noted the powers vested in the Revenue Tribunal and held that the Revenue Tribunal is akin to a Court. We may note here that in paragraph-34, the Apex Court held that the object of consultation with the High Court is to render the consultation meaningful to serve the intended purpose. In paragraph 34 the Apex Court has laid down a law on the aspects, which reads thus:-

“The object of consultation is to render the consultation meaningful to serve the intended purpose. It requires the meeting of minds between the parties involved in the process of consultation on the basis of material facts and points, to evolve a correct or at least satisfactory solution. If the power can be exercised only after consultation, consultation must be conscious, effective, meaningful and purposeful. It means that the party must disclose all the facts to other party for due deliberation. The consultee must express his opinion after full consideration of the matter upon the relevant facts and quintessence. (Vide: UOI v. Sankalchand Himatlal Sheth, AIR 1977 SC 2328; Subhash Sharma & Ors. v. UOI, AIR 1991 SC 631; Justice K.P Mohapatra v. Sri Ram Chandra Nayak and Ors., (2002) 8 SCC 1; Gauhati High Court & Anr. v. Kuladhar Phukan & Anr., AIR 2002 SC 1589; High Court of Judicature for Rajasthan v. P.P Singh, AIR 2003 SC 1029; UOI v. Kali Dass Batish, AIR 2006 SC 789; and Andhra Bank v. Andhra Bank Officers, AIR 2008 SC 2936).”

(emphasis added)

In the case of *L.Chandra Kumar v. Union of India and others* (supra), the Constitution Bench of the Apex Court considered the issue of validity of certain clauses of Articles 323A and 323B of the Constitution of India.

Question 3 framed by the Apex Court reads thus:-

“(3) Whether these Tribunals, as they are functioning at present, can be said to be effective substitutes for the High Courts in discharging the power of judicial review? If not, what are the changes required to make them conform to their founding objectives?”

In the said decision, the Apex Court has extensively referred to its earlier decision in the case of *S.P. Sampath Kumar v. Union of India and others*. (supra). As far as the question 3 is concerned, in paragraph 95, the Apex Court dealt with the issue of the competence of those who man the Tribunals. Paragraph 95 reads thus:-

“We are also required to address the issue of the competence of those who man the Tribunals and the question of who is to exercise administrative supervision over them. It has been urged that only those who have had judicial experience should be appointed to such Tribunals. In the case of Administrative Tribunals, it has been pointed out that the administrative members who have been appointed have little or no experience in adjudicating such disputes; the Malimath Committee has noted that at times, IPS Officers have been appointed to these Tribunals. It is stated that in the short tenures that these Administrative Members are on the Tribunal, they are unable to attain enough experience in adjudication and in cases where they do acquire the ability, it is invariably on the eve of the expiry of their tenures. For these reasons, it has been urged that the appointment of Administrative Members to Administrative Tribunals be stopped. We find it

difficult to accept such a contention. **It must be remembered that the setting-up of these Tribunals is founded on the premise that specialist bodies comprising both trained administrators and those with judicial experience would, by virtue of their specialised knowledge, be better equipped to dispense speedy and efficient justice. It was expected that a judicious mix of judicial members and those with grass- roots experience would best serve this purpose. To hold that the Tribunal should consist only of judicial members would attack the primary basis of the theory pursuant to which they have been constituted. Since the Selection Committee is now headed by a Judge of the Supreme Court, nominated by the Chief Justice of India, we have reason to believe that the Committee would take care to ensure that administrative members are chosen from amongst those who have some background to deal with such cases.”**

(emphasis added)

Hence, in so many words, the Apex Court has held that setting up of the Tribunals is founded on the premise that specialist bodies comprising both trained administrators and those with judicial experience would, by virtue of their specialised knowledge, be better equipped to dispense speedy and efficient justice. This observation was made in the light of comments made by Malimath Committee while dealing with the functioning of the Administrative Tribunals established under the Administrative Tribunal Act. The Apex Court held that to hold that the Tribunals should consist only of Judicial Members would attack the primary basis of the theory pursuant to which they have been constituted. Thereafter, the Apex Court upheld the of appointment of administrative Members of the Administrative Tribunal.

28. Therefore, we do not find any illegality in the provisions of the VAT Act and VAT Rules relating to appointment of Administrative Members of the Tribunal. The other question is whether considering the nature of the provisions of VAT Act and VAT Rules, the provisions relating to appointment of Administrative Member infringe the doctrine of separation of powers which is a part of the basic structure of the Constitution of India. It is in that context we have referred to the decision of the Apex Court in the case of *Namit Sharma v. Union of India* (supra) wherein the Apex Court dealt with the issue of constitutional validity of sub-section (5) of section 12 and sub-section (5) of section 15 of the Right to Information Act, 2005 (for short “the said Act of 2005”). Sub-section (5) of section 12 of the said Act of 2005 provides that the Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance. The Argument was that enactment of the provisions of eligibility criteria for appointment to such high offices, without providing qualifications, definite criterion or even consultation with judiciary, is in complete violation of the fundamental rights guaranteed under Articles 14, 16 and 19(1)(g) of the Constitution of India. The provisions were attacked on the ground that the usage of extremely vague and general terminology like social service, mass media, etc. being indefinite and undefined, would lead to arbitrariness and are open to abuse. Before dealing with what is held by the Apex Court, we may go back to the provisions of the VAT Act and VAT

Rules. Rule 6 of the VAT Rules, which provides for qualifications, especially the qualifications of Administrative Members in clauses (d) and (e) of sub-rule (1) thereof. Clause (d) mentions that a person not below the rank of Joint Commissioner of Sales Tax in the Sales Tax Department, who has, for a continuous period of not less than three years held the said office is eligible. Clause (e) provides that a Chartered Accountant who has practised as such for not less than seven years is eligible. Clause (f) provides for an appointment of a person not being a person covered by clause (d), who is in the opinion of the State Government has adequate knowledge and experience in accounting or in the opinion of the State Government has special knowledge or experience in commerce or industries. Thus, even in the present case, the qualifications prescribed are very vague. If we look at the scheme of the VAT Act, the Tribunal is vested with the vast powers of adjudication. Vast appellate powers have been conferred on the Tribunal. Hence, there is some merit in the submissions made by the learned senior counsel appearing for the petitioner that in absence of proper qualifications being prescribed in the VAT Rules, the provisions of the VAT Rules will expose itself to vice of unconstitutionality.

29. It is in this context that the decision of the Apex Court in the case of *Namit Sharma* (supra) is relevant. The Apex Court referred to the decision of the Constitution Bench in the case of *L.Chandra Kumar* (supra) to which we have made extensive reference. The Apex Court has considered the nature of functions of the Tribunal under the said Act of 2005. In paragraph-88 onwards, the Apex Court dealt with the issue of requirement of legal mind. We have already quoted what is held by the Apex Court in paragraph 108.2. The reasons in support of the said

conclusion are mainly found in paragraph 105 of the said decision. The relevant part of which reads thus:-

“105. The requirement of a judicial mind for manning the judicial tribunal is a well accepted discipline in all the major international jurisdictions with hardly with any exceptions. Even if the intention is to not only appoint people with judicial background and expertise, then the most suitable and practical resolution would be that a ‘judicial member’ and an ‘expert member’ from other specified fields should constitute a Bench and perform the functions in accordance with the provisions of the Act of 2005. Such an approach would further the mandate of the statute by resolving the legal issues as well as other serious issues like an inbuilt conflict between the Right to Privacy and Right to Information while applying the balancing principle and other incidental controversies. We would clarify that participation by qualified persons from other specified fields would be a positive contribution in attainment of the proper administration of justice as well as the object of the Act of 2005. Such an approach would help to withstand the challenge to the constitutionality of Section 12(5).”

(emphasis added)

The Apex Court observed that the participation by persons from other specified fields would be a positive consideration for achievement of the object of the said Act of 2005. However, the Apex Court observed that the requirement of a judicial mind for manning the judicial Tribunal is a well accepted discipline with all major international jurisdictions which hardly has any exception. The Apex Court ultimately held the provisions of sub-section 5 of Section 12 and sub-section 5 of Section 15 to be constitutionally valid. By reading into these provisions, it was held that

the requirement of appointing legally qualified, judicially trained and experienced persons would certainly manifest in effective serving of the ends of justice as well as better administration of justice.

30. Unless we adopt the similar approach, in the facts of the present case, the relevant provisions of the VAT Rules will attract the vice of unconstitutionality. Therefore, when appointment of Administrative Member is made of the officer not below the rank of Joint Commissioner of Sales Tax or the one which is covered by clauses (e) and (f) of sub-rule 1 of Rule 6, it will be necessary that the persons concerned are legally qualified and judicially trained. In case of the Joint Commissioners of Sales Tax, it is necessary that they have a judicially trained mind in the sense that they have a long experience of dealing with the quasi judicial proceedings involving the adjudication of disputes. The Tribunal has to deal with the legal issues and therefore, these requirements will have to be read into the Rules. Apart from the fact that if the said requirements are not read into the Rules, the Rules will expose itself to the vice of unconstitutionality, such requirements are necessary for the effective functioning of the Tribunal and for achieving the object for which the Tribunal has been created by the law.

31. We may also note here that the challenge by the Petitioners to the resolution dated 2 June 1973 will have to be upheld. Basically the Government Resolution deals with the appointment of the Deputy Commissioner of Sales Tax as the members of the Tribunal. Now in view of the Rule 6 of VAT Rules, there is no occasion to appoint the Deputy Commissioner of Sales Tax as a Member of the Tribunal.

32. As far as clause (c) of the said Government Resolution is concerned, it was criticized by the learned senior counsel appearing for the petitioners on the ground that the members of selection committee may not be equipped to ascertain whether the officers are legally qualified and they have a legal mind or whether they are judicially trained. A submission was sought to be made by the State that the Secretary of the Law and Judiciary Department is a part of the Committee who is under the direct superintendence of this Court being a Judicial Officer. The said submission is factually incorrect. Once a serving District Judge is appointed as the Secretary of the Law and Judiciary Department, the only control which the High Court can exercise over the said officer is of recalling his services to the judiciary. As we have read the aforesaid qualifications into the rules, it is necessary that the Selection Committee must be of such persons who will be able to judge whether the candidates covered by the clauses (d), (e) and (f) of sub-rule (1) of Rule 6 possess the necessary qualifications. As far as the Chartered Accountant or any other person covered by clause (e) is concerned, though he may be an expert, he may not have judicial experience. But the requirement of possessing the legal qualifications or legally trained mind cannot be dispensed with. For example, a Chartered Accountant or other expert who has wide experience of working as arbitrator can be chosen. It is for this purpose, it is necessary that there should be a proper constitution of the Selection Committee to select the administrative Members. Therefore, it is desirable that the Selection Committee is headed by either a sitting Judge or a retired Judge of this Court. As we are proceeding to quash the Government Resolution dated 2nd June 1973, the State Government will

have to reconstitute the Committee for appointing the Members covered by clauses (d), (e) and (f).

33. Though title of Rule 6 is “Qualifications of members of Tribunal and term of office”, in fact, the said Rule is silent about the term of office. It will be advisable for the State Government to amend the Rules and to prescribe the term of office and/or age of retirement.

34. We have perused the earlier orders passed by various Division Benches from time to time which take care of various issues concerning the infrastructure. In addition to those directions, which are already issued, certain other directions will have to be issued.

35. We had called from the Registry the figures of filing of cases in the Tribunal during the years 2012 to 2016 and the present position of pendency. The Chart received by Registry is reproduced for ready reference:-

FILING OF CASES PER YEAR DURING 2012 TO 2016

	APP	S.A.	REVISION	RESTORATION	RECTIFICATION	MISCELLANEOUS	REFERENCE	VAT APP	VAT S.A.	ENTRY TAX	TOTAL
2012	252	537			131		139				1059
2013	75	538	22	92	186	204	103	763	276	40	2299
2014	51	342	13	24	88	314	87	1316	357	8	2600
2015	29	214	6	59	132	502	122	1297	562	0	2923
2016	29	376	15	48	152	653	82	648	115	4	2122
Total	436	2007	56	223	689	1673	533	4024	1310	52	11003

PRESENT PENDENCY BEFORE THE TRIBUNAL

	APP	S.A.	REVISION	RESTORATION	RECTIFICATION	MISCELLANEOUS	REFERENCE	VAT APP	VAT S.A.	ENTRY TAX	TOTAL
PENDENCY	169	1151	28	42	187	478	194	585	1249	16	4099

36. As far as the infrastructure to be provided to the Courts and Tribunals in the State is concerned, the same will be governed by the judgment and order dated 5th May 2017 of this Court in Public Interest Litigation No. 156 of 2011 (***Mumbai Grahak Panchayat and another v. State of Maharashtra and others***) and other connected matters. In paragraph-58 of the said decision this Court has made a reference to the judgment and order dated 2nd January 2017 passed by the Apex Court in the case of ***Imtiyaz Ahmad Vs. State of Uttar Pradesh and others***¹³. In the said order, based on interim recommendations of the National Court Management System Committee (NCMSC), the Apex Court directed that the appointment of adequate numbers of the Judges required in the Courts should be made by creating additional posts and accordingly necessary infrastructure be provided.

37. The State Government will have to undertake the scientific study of number of members required for the said Tribunal. While doing so, the State Government will be naturally guided by the law laid down in the case of ***Imtiyaz Ahmad Vs. State of Uttar Pradesh & Ors.*** (supra). By appointing a Committee, preferably headed by a retired Judge of this Court, the State Government will have to undertake the said exercise and after considering the recommendations of the Committee, the State Government will have to appoint such number of the additional members who are required to take care of pendency at present and the pendency in the future. Needless to add that the necessary infrastructure will have to be created to enable the additional members to function.

¹³ Criminal Appeal Nos.254-262 of 2012 decided on 2nd January 2017.

38. In the said decision of *Mumbai Grahak Panchayat* (supra), this Court has laid down that it is the constitutional obligation of the State to provide proper infrastructure to the Courts, Tribunals and Judicial Officers. This Court has categorically held that the financial constraints on the part of the Government is no ground to deny the adequate infrastructure to the Courts and Tribunal.

39. Therefore, whenever the President of the Tribunal submits requisitions/proposals to the State Government for providing infrastructure such as additional space, additional staff, furniture, computers, printers, servers, etc., the said proposals will have to be decided by the State Government in the light of the law laid down by this Court.

40. As directed in the said decision in the case of *Mumbai Grahak Panchayat* (supra), for bringing about a complete transparency, the Tribunal will have to ensure that its record is digitized and all orders, short or long, are uploaded on a dedicated web-site. It will be ideal if the President of Tribunal looks into the e-Court Project Phase I and II initiated by the e-Committee of the Apex Court which is being implemented in all civil and criminal Courts in the State. Needless to add that the State Government will provide necessary infrastructure to ensure that the record of the Tribunal is digitized and the aforesaid projects are implemented in substance. We make it clear that it will be open for the learned President of the Tribunal to seek assistance of the High Court team headed by the Central Project Coordinator for implementation of the

project of digitization. Till the larger project is implemented, the President will have to ensure that all orders passed by the Tribunal, small or big, are uploaded on the web-site.

41. Considering the aforesaid discussion, we pass the following order :-

O R D E R

(i) We accept the statements, made by Shri. Rajendra D. Bhagat, working as the Deputy Secretary (Finance Department) of the Government of Maharashtra, in his affidavit dated 21st August 2017 as the statements and undertakings on behalf of the State Government. In view of the statements made in clause (e) of paragraph 11 of the affidavit, we make it clear that no Member covered by clauses (a), (b) or (c) of sub-rule (1) of Rule 6 of the VAT Rules shall be appointed without making effective consultation with the High Court of Judicature at Bombay. Needless to add that the effective consultation shall be as per the law laid down in the case of ***State of Gujarat Vs. Gujarat Revenue Tribunal Bar Association*** (supra);

(ii) In view of the statements made in the aforesaid affidavit, we clarify that a Bench of two or more Members shall always be headed by a Judicial Member appointed under clauses (a), (b) or (c) of sub-rule 1 of Rule 6 of the VAT Rules;

(iii) The matters which are required to be decided by the Members sitting singly shall always be placed before a Judicial Member only. In case of emergency, when none of the

Judicial Members are available, the matters where an urgent *ad-interim* or interim relief is sought can be placed before the Administrative Member sitting singly;

(iv) As far as selection of the Members covered by clauses (d), (e) and (f) of sub-rule (1) of Rule 1 of Rule 6 is concerned, the State Government shall constitute a proper Selection Committee preferably headed by a retired Judge of this Court, in the light of observations made in this judgment and order;

(v) The Government Resolution dated 2nd June 1973 is hereby quashed and set aside;

(vi) As far as Members appointed under clauses (d), (e) and (f) of sub-rule (1) of Rule 6 are concerned, the said Members shall be legally qualified. In the case of Members covered by clause (d) of sub-rule (1) of Rule 6, in addition to the aforesaid requirement, the State shall also ensure that the Members shall be judicially trained in the sense that they have long experience of dealing with quasi-judicial proceedings and/or adjudication proceedings;

(vii) We recommended to the State Government to carry out suitable amendment to the Rules incorporating therein the provisions relating to the maximum tenure of the Members and/or age of retirement/superannuation within a period of six months from today;

(viii) At least six months before the date on which vacancy of President or Member is likely to occur, the State Government shall initiate steps for filling in the vacancy so that

the posts do not remain vacant. In case of vacancy arising due to any other reason, the State Government shall ensure that the vacancy is filled in as expeditiously as possible and in any event, within a period of four months from the date on which the vacancy occurs;

(ix) The State Government shall constitute a Committee of Experts to look into the question as to how many Members are required for the Tribunal at present and in future. As stated earlier, the Committee will take into consideration the law laid down by the Apex Court in the case of *Imtiyaz Ahmad Vs. State of Uttar Pradesh & Ors.* (supra). Such Committee shall be appointed within a period of three months from the date on which this judgment is uploaded. The Committee shall submit a report within a period of six months from the date of its constitution;

(x) Within a period of six months from the date on which the report is submitted, the State Government shall take steps for appointing such additional members as may be recommended by the Committee. Needless to add that the necessary infrastructure will be provided to the additional members appointed accordingly;

(xi) As far as issue of infrastructure to be provided to the Tribunal is concerned, all *ad-interim* and interim directions issued earlier shall continue to bind the respondents. Whenever any requisition is submitted by the President/Members of the Tribunal as regards the infrastructure to be provided to them and to the Tribunal, the State Government will be bound by the

law laid down by this Court in the case of ***Mumbai Grahak Panchayat & Anr.*** (supra);

(xii) The Tribunal shall take immediate steps to ensure that all the orders passed by the Tribunal are immediately uploaded on the dedicated web-site;

(xiii) The Tribunal shall consider of adopting project of computerisation and digitization on the lines of E-Court Phase I and E-Court Phase II devised by e-Committee of the Hon'ble Supreme Court of India. Needless to add that on requisition made by the President of the Tribunal, necessary assistance will be rendered by the team of the High Court of Judicature at Bombay, Central Project Co-ordinator. If a requisition is made by the President of Tribunal for creating posts of technical staff, the State Government shall take immediate steps for creating necessary technical posts.

(xiv) We must clarify here that what is held by this Court and what is directed by this Court will not affect the validity of appointment of the Members who are already appointed and who are functioning today;

(xv) Rule is partly made absolute in the above terms;

(xvi) The Writ Petition is disposed of in the above terms.

(xvii) However, the compliance with the directions issued by this Court will have to be monitored by this Court. We therefore, direct that notwithstanding the disposal of this petition, the petition shall be listed under the caption of "Directions" on 18th January 2018. The State Government shall file an affidavit of compliance on 15th January 2018;

(xviii) It will be appropriate if this petition is placed before the same Division Bench or before the Division Bench to which one of us is a party. We, therefore, direct the Prothonotary and Senior Master to seek appropriate directions from the Hon'ble the Chief Justice in this behalf.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)