



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.02.2020

CORAM:

**THE HONOURABLE MR.JUSTICE AMRESWAR PRATAP SAHI, CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD**

W.P. [MD]No.8306 of 2018

and

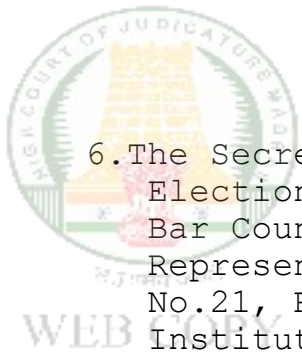
W.M.P. [MD]Nos.7860 and 7861 of 2018

Anantha Murugan

: Petitioner

Vs.

- 1.The Union of India,
Represented by its Secretary,
Ministry of Law and Justice,
New Delhi.
- 2.The Bar Council of India,
Represented by its Secretary,
No.21, Rouse Avenue,
Institutional Area,
New Delhi - 110 002.
- 3.The Bar Council of Tamilnadu and Puducherry,
Represented by its Secretary,
No.19, NSC Bose Road,
High Court Campus,
George Town, Chennai - 600 104.
- 4.The Chairman,
Special Committee,
Bar Council of Tamilnadu and Puducherry,
No.19, NSC Bose Road,
High Court Campus,
George Town, Chennai - 600 104.
- 5.The Returning Officers,
(Bar Council Election 2018)
Bar Council of Tamilnadu and Puducherry,
No.19, NSC Bose Road,
High Court Campus,
George Town, Chennai - 600 104.



6.The Secretary,
Election Tribunal No.1,
Bar Council of India,
Represented by its Secretary,
No.21, Rouse Avenue,
Institutional Area,
New Delhi - 110 002.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Declaration declaring Section 15(2)(d) of the Advocates Act, 1961, and the Rules 35 to 44 of the Bar Council of Tamil Nadu and Puducherry Election Rules, 1975 and the establishment of Election Tribunal No.1, Bar Council of India, No.21, Rouse Avenue, Institutional Area, New Delhi - 110 002, communicated vide Notice in R.O.C.No.320 of 2018, dated 06.02.2018 as null and void, ultra vires and against the basic structure of the Constitution of India.

For Petitioner	: Mr.A.Kannan
For R-1	: Mr.D.Saravanan
For R-2	: Mr.M.Subash Babu
For R-3	: Mrs.J.Anandhavalli
For R-4 and R-5	: Mr.Niranjan S.Kumar

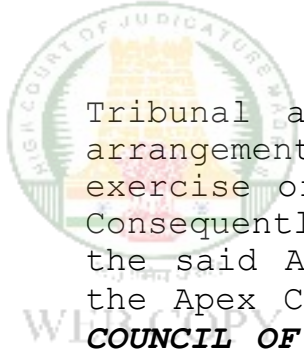
O R D E R

[Judgment of the Court was delivered by
THE HONOURABLE CHIEF JUSTICE]

The present writ petition challenges the validity of Section 15(2)(d) of the Advocates Act, 1961 and Rules 35 to 44 of the Bar Council of Tamil Nadu and Puducherry Election Rules, 1975 as well as the establishment of Election Tribunal No.1, Bar Council of India, New Delhi, as communicated vide order dated 06.02.2018 being null and void.

2.The learned counsel for the petitioner, at the outset, informs that so far as the third relief of quashing the communication, dated 06.02.2018 is concerned, the same has been rendered infructuous in as much as elections have already been held in terms of the directions issued by the Apex Court vide order dated 5th February, 2018. Having perused the same, the contention raised by the learned counsel, therefore, appears to be correct and accordingly, the aforesaid relief has become infructuous.

3.The contention further of the establishment of the Election



Tribunal also cannot be gone into by us, inasmuch as the said arrangement was made by the Apex Court under its own order in exercise of powers under Article 142 of the Constitution of India. Consequently, this Court cannot enter into the aforesaid issue as the said Adjudicatory Forum is an outcome of the orders passed by the Apex Court in the case of **AJAYINDER SANGWAN AND OTHERS v. BAR COUNCIL OF DELHI AND OTHERS** in the orders issued from time to time in Transferred case (Civil) No.126 of 2015.

4.The main argument on behalf of the petitioner as advanced by the learned counsel is that the provisions of Section 15(2)(d) and Rules 35 to 44 are impeding the powers of the High Court under Article 226 of the Constitution of India to deal with such issues and since the power of judicial review is also part of the basic structure of the Constitution of India, the said provisions should be declared as ultra virus. For this, reliance has been placed at paragraph No.105 of the Judgment in **Madras Bar Association v. Union of India** reported in **2014 (10) SCC 1**. The said paragraph is reproduced hereunder:-

"105. Having recorded the determination rendered by this Court to the effect that "separation of powers", "rule of law" and "judicial review" at the hands of an independent judiciary, constitute the "basic structure" of the Constitution, we are in a position now to determine, how the aforesaid concepts came to be adopted by this Court, while adjudicating upon the validity of provisions similar to the ones, which are subject of consideration, in the case on hand. The first controversy arose with reference to the Administrative Tribunals Act, 1985, which was enacted under Article 323 A of the Constitution. In S.P. Sampath Kumar case (supra), it was sought to be concluded, that the power of "judicial review" had been negated by the aforementioned enactment, inasmuch as, the avenue of redress under Articles 226 and 227 of the Constitution before the High Court, was no longer available. It was also sought to be asserted, that the tribunal constituted under the enactment, being a substitute of the High Court, ought to have been constituted in a manner, that it would be able to function in the same manner as the High Court itself. Since insulation of the judiciary from all forms of interference, even from the coordinate branches of the Government, was by now being perceived as a basic essential feature of the Constitution, it was felt that the same independence from possibility of executive pressure or influence, needed to be ensured for the Chairman, Vice Chairman and Members of the administrative tribunal. In recording its conclusions, even though it was



maintained, that "judicial review" was an integral part of the "basic structure" of the Constitution, yet it was held, that Parliament was competent to amend the Constitution, and substitute in place of the High Court, another alternative institutional mechanism or arrangement. This Court, however cautioned, that it was imperative to ensure, that the alternative arrangement, was no less independent, and no less judicious, than the High Court (which was sought to be replaced) itself. This was conveyed by observing: (SCC p. 130, para 3)

"3.if any constitutional amendment made by the Parliament takes away from the High Court the power of "judicial review" in any particular area, and vests it in any other institutional mechanism or authority, it would not be violative of the basic structure doctrine so long as the essential condition is fulfilled, namely, that the alternative institutional mechanism or authority set up by the Parliament by amendment is no less effective than the High Court".

The exclusion of the High Courts' jurisdiction under Articles 226 and 227 of the Constitution, it was held, would render the Administrative Tribunals Act, 1985 unconstitutional, unless the amendments to the provisions of Sections 4, 6 and 8 thereof, as suggested by this Court, were carried out. Insofar as Section 4 is concerned, it was suggested that it must be amended so as not to confer absolute and unfettered discretion on the executive in matters of appointment of the Chairman, Vice Chairman and Members of the administrative tribunals. Section 6 was considered to be invalid, and as such, needed to be deleted. It was also indicated, that appointment of Chairman, Vice Chairman and Administrative Members should be made by the executive, only in consultation with the Chief Justice of India, and that, such consultation had to be meaningful and effective, inasmuch as, ordinarily the recommendation of the Chief Justice of India ought to be accepted, unless there were cogent reasons not to. If there were any reasons, for not accepting the recommendation, they needed to be disclosed to the Chief Justice. Alternatively, it was commended, that a high powered Selection Committee headed by the Chief Justice or a sitting Judge of the Supreme Court, or of the concerned High Court (nominated by the Chief Justice of India), could be set up for such selection. If either of these two modes of appointment was adopted, it was believed, that the impugned Act would be saved



from invalidation. It was mentioned, that Section 6 (2) also needed to be amended, so as to make a District Judge or an Advocate, who fulfilled the qualifications for appointment as a judge of the High Court, eligible for appointment as Vice Chairman. With reference to Section 8 it was felt, that a term of five years of office, would be too short and ought to be suitably extended. It was so felt, because the presently prescribed tenure would neither be convenient to the persons selected for the job, nor expedient to the scheme of adjudication contemplated under the Administrative Tribunals Act. It was also opined, that the Government ought to set up a permanent bench wherever there was a seat of the High Court. And if that was not feasible, at least a circuit bench of the administrative tribunal, wherever there is a seat of the High Court. That would alleviate the hardship, which would have to be faced by persons, who were not residing close to the places at which the benches of the tribunal were set up. In this behalf, it may only be stated that all the suggestions made by this Court were adopted."

Paragraph 123 of the aforesaid Judgment has also been relied on by the learned counsel, which is extracted hereunder:-

"123. We shall first examine the validity of Section 5 of the NTT Act. The basis of challenge to the above provision, has already been narrated by us while dealing with the submissions advanced on behalf of the petitioners, with reference to the fourth contention. According to the learned counsel for the petitioners, Section 5(2) of the NTT Act mandates, that the NTT would ordinarily have its sittings in the National Capital Territory of Delhi. According to the petitioners, the aforesaid mandate would deprive the litigating assessee, the convenience of approaching the jurisdictional High Court in the State, to which he belongs. An assessee may belong to a distant/remote State, in which eventuality, he would not merely have to suffer the hardship of traveling a long distance, but such travel would also entail uncalled for financial expense. Likewise, a litigant assessee from a far-flung State may find it extremely difficult and inconvenient to identify an Advocate who would represent him before the NTT, since the same is mandated to be ordinarily located in the National Capital Territory of Delhi. Even though we have expressed the view, that it is open to the Parliament to substitute the appellate jurisdiction vested in the jurisdictional High Courts and constitute courts/tribunals to exercise the said jurisdiction, we are of the view, that while vesting

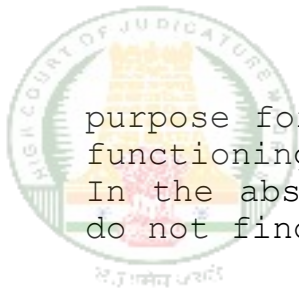


jurisdiction in an alternative court/tribunal, it is imperative for the legislature to ensure, that redress should be available, with the same convenience and expediency, as it was prior to the introduction of the newly created court/tribunal. Thus viewed, the mandate incorporated in Section 5(2) of the NTT Act to the effect that the sittings of the NTT would ordinarily be conducted in the National Capital Territory of Delhi, would render the remedy inefficacious, and thus unacceptable in law. The instant aspect of the matter was considered by this Court with reference to the Administrative Tribunals Act, 1985, in S.P. Sampath Kumar case (supra) and L. Chandra Kumar case (supra), wherein it was held, that permanent benches needed to be established at the seat of every jurisdictional High Court. And if that was not possible, at least a circuit bench required to be established at every place where an aggrieved party could avail of his remedy. The position on the above issue, is no different in the present controversy. For the above reason, Section 5(2) of the NTT Act is in clear breach of the law declared by this Court."

5. The contention raised by the learned counsel is that the said provisions virtually impinge upon the power of Superintendence of the High Court as also the rights of the members of the Bar Council and the advocates by impeding their rights to get any claim arising out of the election disputes adjudicated, inasmuch as, the said provisions of the Act and Rules give overreaching powers to the Bar Council of India thereby causing inconvenience to any Lawyer or Advocate practising in the State of Tamil Nadu to travel to Delhi for the adjudication of any such dispute.

6. We have framed the argument as advanced by the learned counsel for the petitioner, but we fail to comprehend as to how the aforesaid submissions in any way raise a possible challenge to the validity of Rule 15(2)(d) of the Advocates Act, 1961, which only confers delegated powers on the Bar Council of India to frame Rules. No material has been placed before us that would impel us to construe that the Bar Council of India has been conferred with any arbitrary power of framing Rules or otherwise encouraging any excessive legislation. In the absence of any such material or any such legal principle so as to raise a challenge to the validity of a Rule, we do not find any ground so as to question the validity of Section 15(2)(d) of the Advocates Act, 1961.

7. For the same reasons, we find that Rules 35 to 44 of the Bar Council of Tamil Nadu and Puducherry Election Rules, 1975, do not in any way impinge over the rights of an individual or any



purpose for which they have been framed in order to ensure that the functioning of the Bar Council is conducted in an appropriate way. In the absence of any illegality much less a patent illegality, we do not find any ground to strike down the Rules as well.

8. There is yet another argument that has been advanced viz., with regard to the power of superintendence to be exercised by the High Court either by way of a Writ under Article 226 of the Constitution of India or by way of an order in terms of the Article 227 of the Constitution of India. Even this argument cannot be comprehended on any ground inasmuch as the learned counsel sought to infer a logic with the aid of Article 323 (A) and 323 (B) of the Constitution of India, the subject matter whereof nowhere covers the functioning of the Bar Council of India or a Tribunal constituted by the Honourable Supreme Court for the purpose of deciding an election dispute.

9. Consequently, for all the aforesaid reasons, the challenge raised to the Act and Rules fails and the writ petition is hereby dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

rj2

To
The Secretary,
Ministry of Law and Justice,
New Delhi.

+1 CC to M/s.D.SARAVANAN, Advocate (SR-8184[F] dated 25/02/2020)
+2 CC to M/s.A.KANNAN, Advocate (SR-8961[F] dated 27/02/2020)
+1 CC to M/s.J.ANANDHAVALLI, Advocate (SR-9035[F] dated 27/02/2020)

JUDGMENT MADE IN
W.P. [MD]No.8306 of 2018
and

W.M.P. [MD]Nos.7860 and 7861 of 2018
25.02.2020