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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 4th March, 2021
+ **W.P.(C) 2864/2021 & CM APPL. 8636/2021**
R SUBRAMANIAN Petitioner
Through: Mr. R. Subramanian, Petitioner in
person.
versus

UNION OF INDIA REPRESENTED THROUGH: THE
SECRETARY MINISTRY OF CORPORATE AFFAIRS
AND ORS Respondents
Through: Mr. Chetan Sharma, ASG with Mr.
Harish Vaidyanathan Shankar,
Advocates.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh (Oral)

1. This hearing has been done through video conferencing.
2. The present petition has been filed by the Petitioner, who is a practising advocate, seeking various reliefs in respect of the functioning of the NCLT and for constitution/appointment of various benches of the NCLT.
3. The submission of the Petitioner is that NCLT benches are to be constituted and set up in all States and at this point there are only 19 judicial members and 22 technical members. Despite the heavy load of cases, the appointments to the NCLT and NCLAT are considerably delayed.
4. Mr. Harish Vaidyanathan, Id. Counsel appearing for the Respondents takes a preliminary objection that issues raised in this petition are fully covered by the judgment of the Supreme Court in *Madras Bar Association v. Union of India & Anr, 2020 SCC Online SC 962*. He specifically refers

to paragraphs 13, 20, 26 and the concluding paragraphs where the Supreme Court has directed the formation of a '*National Tribunals Commission*' to take care of the administrative and infrastructural needs of tribunals. While the said Commission is formed, as an interregnum measure, the Court has also provided for the setting up of a separate '*Tribunals wing*' in the Ministry of Finance. Ld. counsel submits that the said directions having already been passed in respect of all tribunals, with specific reference to the NCLT and NCLAT, the judgment covers the issues raised by the Petitioner.

5. The reliefs sought for in this Petition are as under:

“(a) issue a writ of mandamus or any other appropriate writ or order or direction in the nature of Writ directing the 1st and 2nd Respondents to forthwith assess the requirement of the number of tribunals of the 2nd Respondent based on analysis of the relevant variables including the case filing load and the planned disposal times and the estimated hearing times required

(b) issue a writ of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India directing the 1st and 2nd Respondents formulate a rolling recruitment plan to ensure that the recruitments are made in advance of the vacancies arising from retirements

(c) Issue rule nisi in terms of prayers (a) and (b) above;

(d) pass such other and further order / orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

A perusal of the reliefs shows that the Petitioner prays for a direction to be

issued to the Ministry of Corporate Affairs and the NCLT to assess the requirement of the number of tribunals of the NCLT and for this Court to formulate a rolling recruitment plan for the NCLT.

6. This Court has perused the judgment of the Supreme Court in ***Madras Bar Association (supra)***. Clearly, the judgment covers the issues which have been raised by the Petitioner, including in respect of appointments to Tribunals, enquiries against members, monitoring of the functioning and the filling up of vacancies in Tribunals, as well as assessment of the workload and providing all adequate infrastructure. The relevant findings of the Supreme Court read as under:

“13. Mr. Datar also referred to the Reports of the Franks and Leggatt Committees which describe the role of Tribunals in the United Kingdom in a detailed manner. Mr. Datar brought to our notice that the recommendations of the Leggatt Committee were cited with approval in the judgment of this Court in Union of India v. Madras Bar Association (2010) (supra). According to the learned Amicus Curiae, the administrative support is provided by a Department of the Government of India, the Secretary of which is a Member of the Search-cum-Selection Committee. He cited the judgment of this Court in L. Chandra Kumar (supra) to argue that there should be a wholly independent agency for the administration of all the Tribunals. The learned Amicus Curiae also brought to our notice a statement made by Mr. Arun Jaitley, the then Minister of Law and Justice on the floor of the Parliament on 02.08.2001 that there was a proposal to set up a Central Tribunals Division. According to the learned Amicus Curiae, setting up a National Tribunals Commission as a supervisory body over the Tribunals would go a long way in improving the effective functioning of the Tribunals and enhancing

the public image of the Tribunals. The mounting arrears in the Tribunals is mainly due to the delay in filling up the vacancies of the Presiding Officers and members of the Tribunals. The learned Amicus Curiae suggested that there should be a National Tribunals Commission manned by retired Judges of the Supreme Court, Chief Justices of the High Courts and Members from the Executive which will have a full-time Secretary performing the following functions:

- a) Selection of candidates;*
- b) Re-appointment of candidates;*
- c) Conducting of inquiry against Members;*
- d) Sanction leave of Members wherever necessary;*
- e) Monitor the functioning of the Tribunals, in particular, the arrears and disposal of cases and filling up of vacancies and ensuring adequate infrastructure; and*
- f) Ensure adequate infrastructure and IT support.*

...

20. In view of the preceding discussion, we direct the Union of India to set up a National Tribunals Commission as suggested by this Court by its order dated 07.05.2018 at the earliest. Setting up of such Commission would enhance the image of the Tribunals and instill confidence in the minds of the litigants. Dependence of the Tribunals for all their requirements on the parent Department will not extricate them from the control of the executive. Judicial independence of the Tribunals can be achieved only when the Tribunals are provided the necessary infrastructure and other facilities without having to lean on the shoulders of the executive. This can be achieved by establishment of an independent National Tribunals Commission as suggested above. To stop the dependence of the Tribunals on their parent Departments for routing

their requirements and to ensure speedy administrative decision making, as an interregnum measure, we direct that there should be a separate “tribunals wing” established in the Ministry of Finance, Government of India to take up, deal with and finalize requirements of all the Tribunals till the National Tribunals Commission is established.”

7. Directions have been issued for setting up of the ‘National Tribunals Commission’ and, in the interregnum, for the setting up of a separate ‘tribunals wing’ in the Ministry of Finance. Thus, the reliefs sought herein are completely covered by the said judgment.

8. Considering that it has been more than three months since the judgement has been rendered, it only needs to be emphasised that the directions given by the Supreme Court ought to be implemented expeditiously by the Respondent – Authorities.

9. With these observations, the present petition, along with all pending applications, is disposed of.

**PRATHIBA M. SINGH
JUDGE**

MARCH 4, 2021
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