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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION**

**WRIT PETITION NO.3854 OF 2023
WITH
INTERIM APPLICATION NO.14132 OF 2023
IN
WRIT PETITION NO.3854 OF 2023**

Samajik Vikas Prabhodini	]	
having its office at House No.6/256,	]	
Ainshet Road, Gayatri Nagar, At. Post. Wada	]	
Dist. Palghar, through its Authorized signatory	]	
Mr. Bhalchandra Thakre	]..	Petitioner.
v/s.		
1 State of Maharashtra	]	
through (i) its Additional Chief Secretary	]	
General Administration Department,	]	
Mantralaya, Mumbai 400 032.	]	
(ii) Through its Secretary, Tribal	]	
Development Department, Mantralaya	]	
Mumbai 400 032.	]	
2 The Additional Commissioner	]	
Tribal Welfare, Thane, having his office	]	
at Karban Sankul, 9 th Floor, Opposite	]	
MIDC Office, Wagle Estate, Road No.16,	]	
Thane (West).	] ..	Respondents.

**AND
INTERIM APPLICATION NO.14596 OF 2023
IN
WRIT PETITION NO.3854 OF 2023**

1 Kailas Damu Valvi	]
Age-33 years, Occu:- Unemployed	]
Residing at – Village Deodongari, Tehsil	]
Tribakeshwar, Dist. -Nashik 422 204.	]
2 Laxman Ramchandra Waraghada	]

- | | | | |
|---|--|---|-------------|
| | Age – 31 years, Occu:- Unemployed |] | |
| | Residing at – Rampur, Dhasai, Tehsil |] | |
| | Murbad, Dist. - Thane 421 402 . |] | |
| 3 | Gurunath Somnath Sahare |] | |
| | Age – 32 years, Occu:- Unemployed |] | |
| | Residing at – Potkhalpada, Post – Utavali |] | |
| | Tehsil – Vikramgad, Dist- Palghar 421 303. |] | |
| 4 | Damu Bhau Maule |] | |
| | Age – 32 years, Occu:- Unemployed |] | |
| | Residing at – Bramhangaon, Post – Ase, |] | |
| | Tehsil – Mokhada, Dist – Palghar 401 604. |] | |
| 5 | Balu Kanhu Hindola |] | |
| | Age – 35 years, Occ:- Unemployed |] | |
| | Residing at – Waghachiwadi, Post - |] | |
| | Vaisakhare, Tehsil – Murbad, Dist - |] | |
| | Thane 421 401. |] | |
| 6 | Rupali Laxman Megha |] | |
| | @ Rupali Premnath Bhusara |] | |
| | Age – 33 years, Occu:- Unemployed |] | |
| | Residing at – Kawale, Post, Utavali |] | |
| | Tehsil – Vikramgad, Dist. Palghar 421 303. |] | |
| 7 | Varsha Balkrushna Gaikar |] | |
| | Age – 28 years, Occu:- Unemployed |] | |
| | Residing at/post – Kanchad |] | |
| | Tehsil – Wada, Dist. Palghar 421 303. |] | Applicants. |

In the matter between

- | | | | |
|---|--|---|-------------|
| | Samajik Vikas Prabodhini |] | |
| | Through its Authorized Signatory |] | |
| | Mr. Bhalchandra Thakre |] | |
| | having its Office at House No.6/256, Anishet |] | |
| | Road, Gayatri Nagar, At Post Wada, |] | |
| | Dist. Palghar, Maharashtra. |] | Petitioner. |
| | v/s. | | |
| 1 | State of Maharashtra |] | |
| | through |] | |
| | i) Additional Chief Secretary |] | |
| | General Administration Department |] | |
| | Mantralaya, Mumbai 400 032. |] | |
| | Maharashtra. |] | |

- ii) Secretary]
Tribal Development Department]
Mantralaya, Mumbai 400 032.]
Maharashtra.]
- 2 Additional Commissioner, Tribal Welfare]
Thane, having office at : Karban Sankul]
9th Floor, Opp: MIDC Office, Wagle Estate]
Road No.16, At Post Tahsil & District]
Thane (West), Maharashtra.].. Respondents

**WITH
WRIT PETITION NO. 7075 Of 2023
WITH
CIVIL APPLICATION NO.14133 OF 2023**

National Centre for Rural Development]
(NCRD), Nagpur, having its Registered office]
at Plot No.110, 1st Floor, Nirmal Ganga]
Apartment, Opp: Dagdi Park, Ramdaspath]
Nagpur, through its Executive Director]
Mr. Shekhar Tongo.].. Petitioner /
Applicant.

v/s.

- 1 The Secretary to the Governor of]
Maharashtra, Rajbhavan, Malabar Hill]
Mumbai 400 034.]
- 2 The State of Maharashtra]
through its Principal Secretary, General]
Administration Department, Madam]
Kama Road, Hutatma Rajguru Chowk]
Mantralaya, Mumbai 400 032.]
- 3 The State of Maharashtra]
through its Principal Secretary, Tribal]
Development Department, Mantralaya]
Mumbai 400 032.]
- 4 The Commissioner, Tribal Development]
Department, Nashik]
- 5 The Additional Tribal Commissioner,]
Tribal Development Department,]
Nagpur.].. Respondents.

**WITH
INTERIM APPLICATION NO.14595 OF 2023
IN
WRIT PETITION NO.2548 OF 2023**

- | | | | |
|---|--|-----|-------------|
| 1 | Kailas Damu Valvi |] | |
| | Age-33 years, Occu:- Unemployed |] | |
| | Residing at – Village Deodongari, Tehsil |] | |
| | Tribakeshwar, Dist. -Nashik 422 204. |] | |
| 2 | Laxman Ramchandra Waraghada |] | |
| | Age – 31 years, Occu:- Unemployed |] | |
| | Residing at – Rampur, Dhasai, Tehsil |] | |
| | Murbad, Dist. - Thane 421 402. |] | |
| 3 | Gurunath Somnath Sahare |] | |
| | Age – 32 years, Occu:- Unemployed |] | |
| | Residing at – Potkhalpada, Post – Utavali |] | |
| | Tehsil – Vikramgad, Dist- Palghar 421 303. |] | |
| 4 | Damu Bhau Maule |] | |
| | Age – 32 years, Occu:- Unemployed |] | |
| | Residing at – Bramhangaon, Post – Ase, |] | |
| | Tehsil – Mokhada, Dist – Palghar 401 604. |] | |
| 5 | Balu Kanhu Hindola |] | |
| | Age – 35 years, Occ:- Unemployed |] | |
| | Residing at – Waghachiwadi, Post - |] | |
| | Vaisakhare, Tehsil – Murbad, Dist - |] | |
| | Thane 421 401. |] | |
| 6 | Rupali Laxman Megha |] | |
| | @ Rupali Premnath Bhusara |] | |
| | Age – 33 years, Occu:- Unemployed |] | |
| | Residing at – Kawale, Post, Utavali |] | |
| | Tehsil – Vikramgad, Dist. Palghar 421 303. |] | |
| 7 | Varsha Balkrushna Gaikar |] | |
| | Age – 28 years, Occu:- Unemployed |] | |
| | Residing at/post – Kanchad |] | |
| | Tehsil – Wada, Dist. Palghar 421 303. |].. | Applicants. |

In the matter between

Bigar Adivasi Samiti [Arakshan Hakka Bachav]	]
Through its General Secretary	]
Shri Rahul Dinesh Thakare	]

r/o. A-104, Garden Court, Adarsh Nagar,	]	
Behind Sai Service, Dist- Palghar (West)	]	
401 404, Maharashtra	]	
having office at:- C/o. Vilas Akare	]	
MIRF Showroom, Khandeshwari Naka, At Post	]	
& Taluka Wada, Dist – Palghar, Maharashtra	]	Petitioner.
v/s.		
1 State of Maharashtra	]	
through its	]	
i) Additional Chief Secretary	]	
General Administration Department	]	
Mantralaya, Mumbai 400 032.	]	
Maharashtra.	]	
ii) Principal Secretary	]	
Tribal Development Department	]	
Government of Maharashtra	]	
Mantralaya, Mumbai 400 032.	]	
Maharashtra.	]	Respondents

**WITH
WRIT PETITION NO. 2548 OF 2023**

Bigar Adivasi Samiti	]	
(Arakshan Hakka Bavhav) Dist- Palghar	]	
(Protection of Right of Non-Tribal persons	]	
Committee Palghar District), Office at C/o.	]	
Vilas Akare, MIRF Showroom, Khandeshwari	]	
Naka, Wada, Post Taluka Wada, Dist. Palghar	]	
through its General Secretary	]	
Shri Rahul Dinesh Thakare	]	
R/o. A-104, Garden Court, Adarsh Nagar,	]	
Behind Sai Service, Palghar (W), 401 404.	]	Petitioner.
v/s.		
1 State of Maharashtra	]	
through its	]	
i) Additional Chief Secretary	]	
General Administration Department	]	
Mantralaya, Mumbai 400 032.	]	
Maharashtra.	]	
ii) Principal Secretary	]	

Tribal Development Department]
 Mantralaya, Mumbai 400 032.]
 Maharashtra.].. Respondents

**WITH
 WRIT PETITION NO. 10469 OF 2023**

Adivasi Koli Jamat Samajik Sanstha, Solapur]
 through its Secretary, Registered Office]
 Plot No.303, MHADA Colony, Vaman Nagar,]
 Jule Solapur, Solapur.].. Petitioner.

v/s.

1 The State of Maharashtra]
 through its]
 i) Principal Secretary]
 Tribal Development Department]
 Maharashtra.]
 Office – First Floor, Annex Building]
 Mantralaya, Gen. Bhosale Marg,]
 Mumbai 400 032.]
 ii) Additional Chief Secretary]
 Tribal Development Department]
 Maharashtra.]
 Office – Hutatma Rajguru Chowk]
 Madam Kama Road, Ministry of]
 Development, Mantralaya]
 Mumbai.]
 iii) The Governor of Maharashtra]
 Office – Raj Bhavan, Walkeshwar]
 Road, Malabar Hill, Mumbai 400035.]
 iv) Deputy Secretary]
 Revenue and Forest Department,]
 Maharashtra, Mantralaya]
 Mumbai.].. Respondents.

**WITH
 WRIT PETITION NO. 7074 OF 2023**

- 1 Bhushan Prakash Kshirsagar]
Age: 32 Yrs, Occ:- Nil]
R/o. At Post Ghodade, Tq. Sakri]
Dist- Dhule.]
- 2 Tushar Ramesh Shinde]
Age: 29 Yrs. Occ:- Nil]
R/o. At Post Wadane, Tq. And District]
Dhule.]
- 3 Vipul Ramesh Panpatil]
Age: 27 Yrs. Occ:- Nil]
R/o. Lane No.6, Janata Park, At Post]
Navapur, Tq. Navapur, Dist. Nandurbar]
- 4 Anil Chunilal Khedkar]
Age: 36 Yrs. Occ: Nil]
R/o. At and Post Nandurbar, Tq. And]
District Nandurbar.]
- 5 Gaurav Ramdas Patil]
Age: 22 Yrs. Occ:- Nil]
R/o. Old Mohide, Tq. And District]
Nandurbar.]
- 6 Narendra Macchindra Bacchav]
Age: 22 Yrs. Occ:- Nil]
R/o. as above.]
- 7 Digvijay Dattatraya Shinde]
Age: 23 Yrs. Occ:- Nil]
R/o. Gurudatta Colony, Shirpur]
Tq. Shirpur, District – Dhule]
- 8 Sandeep Lotan Shinde]
Age: 37 Yrs. Occ:- Nil]
R/o. Gandhinagar, Nandurbar]
Tq. and Dist – Nandurbar]
- 9 Pankaj Ravindra Thakare]
Age: 24 Yrs. Occ:- Nil]
R/o. At Rahud, Post Chirai, Tq. Satana]
District Nashik.]
- 10 Premsing Dhansing Mahale]
Age: 37 Yrs. Occ:- Nil,]
R/o. At Kadhare, Post Walsane,]
Tq. Sakri, District Dhule]
- 11 Sachin Trimbak Patil]
Age: 32 Yrs. Occ:- Nil]

	R/o. Pandane, Tq. Dindori, District Nasik	]	
12	Harshan Prakash Jadhav	]	
	Age: 24 Yrs. Occ:- Nil	]	
	R/o. Khatwad, Tq. Dindori,	]	
	District Nashik.	]	
	v/s.		
1	Hon'ble Governor of Maharashtra	]	
	Raj Bhawan, Malbar Hill, Mumbai 400 035	]	
	Through its Secretary	]	
2	The State of Maharashtra	]	
	Through its Chief Secretary	]	
	Maharashtra State, Mumbai.	]	
3	The Principal Secretary,	]	
	General Administration Department,	]	
	Maharashtra State, Mantralaya	]	
	Mumbai 400 032.	]	Respondents.

Mr. A. A. Kumbhakoni, Sr. Advocate with Mr. Jagdish G. Aradwad (Reddy) with Mr. Akshay Shinde with Ms. Ashwini B. Jadhav for the Petitioner in Writ Petition No.3854 of 2023.

Mr. Anshu R. Deshpande i/b. Mr. Rajeev K. Deshpande, for the Petitioners in Writ Petition No.7075 of 2023.

Mr. Sachin Rajepandhare with Mr. Mayuresh Shinde, for the Petitioner in Writ Petition No.10469 of 2023.

Mr. Yashodeep Deshmukh with Mr. Rahul Thakare, Ms. Vaidehi Pradip i/b. Mr. Vinod Sangvikar for the Petitioners in Writ Petition Nos. 2548 of 2023 and 7074 of 2023.

Mr. Sidheshwar Biradar for the Intervener in Interim Application No.14595 of 2023 in Writ Petition No.2548 of 2023 and Interim Application No.14596 of 2023 in Writ Petition No.3854 of 2023.

Dr. Birendra Saraf, Advocate General with Mr. P. P. Kakade, Government Pleader with Mr. M.M. Pabale, Assistant Government Pleader with Mr. V. M. Mali, Assistant Government Pleader & Mr. Jay Sanklecha, for the Respondent-State in all the Petitions.

**CORAM: SUNIL B. SHUKRE &
FIRDOSH P. POONIWALLA, JJ.**

**RESERVED ON: 14th SEPTEMBER, 2023
PRONOUNCED ON: 27th SEPTEMBER, 2023**

JUDGMENT (Per FIRDOSH P. POONIWALLA,J.):-

WRIT PETITION NO.3854 OF 2023

1. In this Writ Petition, the Petitioner describes itself as a non-profit committee/ organization set up to protect the rights of non-tribals of other category in the vicinity of District Palghar. The members of the Petitioner are non-tribal members residing at Palghar. According to the Petitioner, the Petitioner has about nine members and it is registered under the provisions of the Indian Registration Act, 1860. The Certificate of Registration of the Petitioner has been issued on 15th March,2022.

2. By this Petition, the Petitioner is challenging the legality, validity and propriety of the Notification dated 29th August, 2019 issued by the Hon'ble Governor of Maharashtra (the "said Notification dated 29th August, 2019").

3. The Petitioner is also challenging the Government Resolutions dated 1st February, 2023 and 28th February, 2023, which have been issued for the implementation of the said Notification dated 29th August, 2019, on the ground that they are ex-facie arbitrary, unreasonable and violative of the fundamental rights of the members of the Petitioner, who are non-tribals, under Articles 14 to 16 of the Constitution of India. Prayers (a)

and (b) of the Petition, which seek final reliefs, read as under:-

“(a) This Hon’ble Court be pleased to declare that the Notifications dated 9th June 2014 (Exhibit D hereto) and 29th August 2019 (Exhibit-N hereto) and consequential Government Resolutions dated 01.02.2023 (Exhibit O hereto) and 28.02.2023 (Exhibit P hereto) issued by the Governor of Maharashtra are arbitrary, unreasonable, discriminatory, unconstitutional and violative of Articles 14 to 16 of Constitution of India and be further pleased to strike down the same in the interest of equity and justice;

(b) This Honb’le Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India directing Respondents not to make any appointments in pursuant to the Notifications dated 9th June 2014 (Exhibit-D hereto) and 29th August 2019 (Exhibit-N hereto) and consequential Government Resolutions dated 01.02.2023 (Exhibit O hereto) and 28.02.2023 (Exhibit P hereto) issued by the Governor of Maharashtra.”

4. The State of Maharashtra (Respondent No.1) filed an Affidavit-in-Reply dated 9th August, 2023 of Sumant N. Bhange. In the said Affidavit-in-Reply, Respondent No.1 did not raise any issue of maintainability of the Writ Petitions.

5. However, the learned Advocate General raised the issue of maintainability of the Writ Petition orally. On maintainability, it is the case of Respondent No.1 that, in view of the statutory remedy available under the provisions of the Administrative Tribunals Act, 1985 (the “Tribunals Act”), and in view of the law laid down in that regard by the Hon’ble Supreme Court, the Petitioners are prevented from directly approaching

this Court under Article 226 of the Constitution of India by overlooking the jurisdiction of the Administrative Tribunal.

6. Since the issue of maintainability raised by the learned Advocate General, on behalf of Respondent No.1, is a pure issue of law, this Court allowed Respondent No.1 to raise the said issue orally.

7. We have heard the parties only on the issue of maintainability of these Writ Petitions.

8. On behalf of Respondent No.1, the learned Advocate General referred to the said Notification dated 29th August, 2019, which reads as under:-

NOTIFICATION

“ In exercise of the powers conferred by sub-paragraph (1) of Paragraph 5 of the Fifth Schedule to the Constitution of India and in supersession of earlier notifications issued in this regard, the Governor of Maharashtra hereby directs that, section 4 of the Maharashtra State public Services (Reservation for Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes) Act, 2001 (Mah. VIII of 2004), section 4(1)(b) of Maharashtra State Reservation (of seats for admission in educational institutions in the State and for appointments in the public services and posts under the State) for Socially and Educationally Backward Classes (SEBC) Act, 2018 (Mah. LXII of 2018) and any other Rules or Orders or Instruments issued in this regard, shall apply to the appointment to the posts specified in the APPENDIX appended to this notification (hereinafter referred to as “the said notified cadres”), subject to the modification that, all such posts which are to be filled in by direct recruitment, in the villages of the Scheduled Areas, in the State of

Maharashtra specified by the Tribal Development Department, shall be filled in by the local Scheduled Tribe candidates having requisite qualification, notwithstanding anything contained in any other law or rule or order for the time being in force in this regard, in the following ratio,—

(1) villages in Scheduled Areas where tribal population is more than 50 per cent of the total population of the villages, 100 per cent of the posts in the said notified cadres shall be filled by local Scheduled Tribe candidates;

(2) villages in Scheduled Areas where tribal population is between 25 per cent to 50 per cent of the total population of the villages, 50 per cent of the posts in the said notified cadres shall be filled by local Scheduled Tribe candidates;

(3) villages in Scheduled Areas where tribal population is less than 25 per cent of the total population of the villages, 25 per cent of the posts in the said notified cadres (except Kotwal and Police Patil) shall be filled by local Scheduled Tribe candidates; whereas in such villages having tribal population less than 25 per cent of the total population, the posts of Kotwal and Police Patil shall be filled according to the Merit, and as per the existing policy of reservation in the district :

Provided that, one-third of the posts mentioned in the said APPENDIX shall be filled in by the women candidates of the local Scheduled Tribes.

Explanation.— For the purpose of this notification, the ‘local Scheduled Tribe candidate’ means, those Scheduled Tribe candidates who have themselves or spouses or whose parents or grandparents have been continuously residing in the Scheduled Areas of the respective districts since 26th January 1950 till date.

*CH. VIDYASAGAR RAO,
Governor of Maharashtra.*

*By order and in the name of the Governor of
Maharashtra,*

*B. VENUGOPAL REDDY,
Principal Secretary to Governor.”*

9. The learned Advocate General submitted that, as it can be seen from the said Notification, the same was issued by the Hon’ble

Governor of Maharashtra by virtue of the power vested in him under Article 244 (1) of the Constitution of India, read with sub-paragraph (1) of paragraph 5 of the Fifth Schedule to the Constitution of India. The learned Advocate General referred to the judgment of the Hon'ble Federal Court in *Chatturam & Others v/s. Commissioner of Income Tax, Bihar*¹ and the judgment of the Hon'ble Supreme Court in *Chebrolu Leela Prasad Rao & Others v/s. State of Andhra Pradesh & Others*² to submit that the power exercised by the Governor under Article 244 of the Constitution of India is a legislative power. This position is not disputed by the Petitioner and, therefore, need not detain us any further.

10. Further, the learned Advocate General referred to Article 323-A of the Constitution of India which states that Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or any State or of any local or other authority within the territory of India or under the control of the Government of India or of any other corporation owned or controlled by the Government. The learned Advocate General made specific reference to Clause 2 (d) of

1 [1947] Federal Court Reports 116

2 (2021) 11 SCC 401

Article 323-A which provides that a law made under Clause (1) thereof may exclude the jurisdiction of all Courts, except the jurisdiction of the Hon'ble Supreme Court under Article 136 of the Constitution of India, with respect to the disputes or complaints referred to in Clause (1).

11. Further, the learned Advocate General referred to Section 15 of the Tribunals Act which provides that the Administrative Tribunal for a State shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all Courts (except the Supreme Court) in relation to recruitment, and matters concerning recruitment, to any civil service of the State or to any civil post under the State, and all service matters, as referred to in sub-sections 1(a),(b) and (c) of Section 15.

12. The learned Advocate General submitted that, in the light of these provisions, in view of the statutory remedy available under the provisions of the Tribunals Act and on the basis of the law laid down by the Hon'ble Supreme Court, the Petitioner is precluded from directly approaching this Court under Article 226 of the Constitution of India by overlooking the jurisdiction of the Administrative Tribunal. In support of his submission, the learned Advocate General relied upon the following

judgments of the Hon'ble Supreme Court and this Court:-

- (a) **L. Chandra Kumar v/s. Union of India**³
- (b) **Vijay Ghogare & Others v/s. State of Maharashtra & Others**⁴
- (c) **Gaurav Ganesh Das Daga & Others v/s. Maharashtra Public Service Commission & Another**⁵ and
- (d) **Chaitali Jitendra Katariya & Another v/s. State of Maharashtra & Others**⁶

13. The learned Advocate General submitted that, under the provisions of Section 15 of the Tribunals Act, the State Administrative Tribunal has exclusive jurisdiction to consider matters relating to recruitment and service matters as provided in sub-sections 1(a), (b) and (c) of Section 15 thereof. He further submitted that the Administrative Tribunal was also competent to entertain any challenge regarding the Constitutional validity of any statutory provision and rule, including those involving interpretation of Articles 14 to 16 of the Constitution of India, other than those provisions by which the Tribunal is itself constituted. Accordingly, as per the law laid down by the Hon'ble Supreme Court and this Court, it was not open to the Petitioner to directly approach this Court even in a case like the present one, where Constitutional questions are raised, by overlooking the jurisdiction of the State Administrative

3 (1997) 3 SCC 261

4 (2013) SCC Online Bom 1764

5 (2022) SCC Online, Bom 476

6 (2022) SCC Online Bom 1755.

Tribunal. He further submitted that, although, the jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India cannot be altogether excluded since the same is a part of the basic structure of the Constitution of India, the Hon'ble Supreme Court has clearly held that the Tribunal would continue to act as the Court of first instance in respect of areas of law for which it has been constituted and that it would not be open for litigants to directly approach this Court even in cases where they questioned the vires of statutory legislations, except the legislation which creates that particular Tribunal, by overlooking the jurisdiction of the concerned Tribunal.

14. In conclusion, the learned Advocate General submitted that, in the light of the law laid down in the aforesaid judgments, this Court should not entertain the present Writ Petition and relegate the Petitioner to the State Administrative Tribunal under the provisions of Section 15 of the Tribunals Act.

15. In response, Mr. Kumbhakoni, learned Senior Counsel appearing on behalf of the Petitioner, submitted that, considering the entire matter as a whole, the present Writ Petition is clearly maintainable and entertainable by this Court. Mr. Kumbhakoni submitted that the issue

of maintainability and entertainability of any proceedings before any court or authority is required to be answered considering the entirety of the matter, including the nature of the proceedings, the nature of the action impugned in the proceedings, who is the Petitioner, the legal framework within which such challenge is required to be examined etc. Mr. Kumbhakoni submitted that it would be incorrect to state that both the issues of maintainability and/or entertainability could be considered as and by way of a strait-jacket formula, as a pure question of law, instead of a mixed question of law and facts, much less on the basis of just the judgments delivered by the Hon'ble Courts and by examining only the contents of the Petition.

16. Mr. Kumbhakoni referred to the Statement of Objects and Reasons appended to the Constitution (Forty fourth Amendment) Bill 1976 (Bill No.91 of 1976), which was enacted as the Constitution (Forty-second Amendment) Act, 1976, and, in particular, paragraph 5 thereof, which reads as under:-

“5. To reduce the mounting arrears in High Courts and to secure the speedy disposal of service matters, revenue matters and certain other matters of special importance in the context of the socio-economic development and progress, it is considered expedient to provide for administrative and other tribunals for dealing with such matters while preserving the jurisdiction of the Supreme Court in regard to such matters under article 136 of the Constitution. It is also necessary to make certain modifications in

the writ jurisdiction of the High Courts under article 226.”

17. Mr. Kumbhakoni also referred to paragraph 3 of the Statement of Objects and Reasons of the Tribunals Act, which reads as under:-

“3:- The establishment of Administrative Tribunal under the aforesaid provision of the Constitution has become necessary since a large number of cases relating to service matters are pending before the various courts. It is expected that the setting up of such Administrative Tribunals to deal exclusively with service matters would go a long way in not only reducing the burden of the various courts and thereby giving them more time to deal with other cases expeditiously but would also provide to the persons covered by the Administrative Tribunals speedy relief in respect of their grievances.”

18. Mr. Kumbhakoni further submitted that, if both these Statements of Objects and Reasons are seen together, it becomes clear that the Maharashtra Administrative Tribunal has been constituted only for the purpose of deciding ‘service matters’ of the persons covered by the Tribunal and in respect of their grievances. He submitted that the term ‘service matters’ defined by Section 3 (q) of the Tribunals Act specifically demonstrates that it is only Government employees who can approach the Tribunal.

19. Mr. Kumbhakoni further submitted that the provisions of

Sections 15 and 19 of the Tribunals Act would have to be considered conjunctively, along with other provisions of the Tribunals Act, including the definition clause. Whilst Section 15 provides for jurisdiction, powers and authority of State Administrative Tribunals, Section 19 contemplates that a '*person aggrieved*' by any order (as defined by the Explanation to Section 19(1)) may make an application to the Tribunal for redressal of his grievances. He submitted that the words '*person aggrieved*' within the meaning of Sections 15 and 19 have been interpreted by the Hon'ble Supreme Court in the case of ***Dr. Duryodhan Sahu & Others v/s. Jitendra Kumar Mishra & Others***⁷. He submitted that taking a holistic view of the Tribunals Act, and the exposition of law by the Hon'ble Supreme Court in the case of Dr. Duryodhan Sahu (supra), it becomes clear that it is only a serving Government employee or an aspiring Government employee who can approach the Tribunal for ventilating their personal grievances relating to service matters. He further submitted that even a retired Government employee may also be entitled to approach the Tribunals but only in respect of his personal service matters as defined by Section 3 (q) of the Tribunals Act. He submitted that such persons, who do not fall in the aforesaid categories, cannot approach the Tribunal and/or cannot institute any proceedings before the Tribunal, being strangers to the

⁷ (1998) 7SCC 273

Tribunal i.e. in the context of the jurisdiction of the Tribunal to entertain, try and decide the various issues relating to either '*recruitment*' or the '*matters concerning recruitment*' or '*service matters*'.

20. Further, Mr. Kumbhakoni submitted that sub-section 1 (a) of Section 15 of the Tribunals Act, which refers to '*recruitment*' and '*matters concerning recruitment*', even if interpreted in the widest possible manner, cannot include a challenge at the instance of persons who do not fall in the aforesaid category of persons.

21. Mr. Kumbhakoni further submitted that all the judgments relied upon by Respondent No.1 do not apply to the facts of the present case in view of the fact that, in all the said matters, either a person who was in public employment, i.e. a Government servant or candidates aspiring for Government Service/ employment, had approached the Court of law for ventilating their grievances qua their '*service matters*' '*recruitment*' or '*matters concerning recruitment*'. He submitted that, in the present case, the Petitioner is an association formed by persons who are neither Government employees nor aspiring for Government employment and they do not have any grievance as regards their employment when they were in public employment. They are citizens who

are submitting to this Court that appointment to public offices, listed in the Appendix to the said Notification dated 29th August, 2019, ought to be made strictly in accordance with the Constitution of India. Therefore, in regard to the said Notification dated 29th August, 2019, it is the contention of the Petitioner that the said Notification provides for making appointments to these public offices in a manner which is wholly and completely unconstitutional and contrary to the law laid down by the Hon'ble Supreme Court. He submitted that the list of posts to which the said Notification dated 29th August, 2019 is to apply shows that the said posts are public offices, which not only the public at large but also the individual members of the Petitioner have to deal with almost on a day-to-day basis as also person-to-person basis. The appointees of these posts will be working at the grass root level and these posts are not supervisory posts with which the members of the Petitioner will not be required to deal directly. It is, therefore, the constitutional right of the members of the Petitioner to assert that these public offices be manned by such persons who are appointed strictly in accordance with the Constitution of India.

22. Mr. Kumbhakoni submitted that, in light of the aforesaid, it cannot be said that the members of the Petitioner do not have any personal interest in the matter and/or that they have not suffered any

legal injury and/or they do not have any personal interest in respect of the challenge levelled by the present Petitioner. He submitted that, therefore, the members of the Petitioner are very much '*persons aggrieved*' by the said Notification dated 29th August, 20219 before this Court, though not before the Administrative Tribunal. In other words, the members of the Petitioner are not '*strangers*' before this Hon'ble Court, though they are '*strangers*' before the Administrative Tribunal.

23. Mr. Kumbhakoni further submitted that although there was no doubt that, in addition to the personal interest of the members of the Petitioner, public interest would also be served by the present Petition, the same would be only incidental / constitutional. Therefore, it could not be said that the present Petition is a Public Interest Litigation (PIL). Further, Mr. Kumbhakoni submitted that, although there was no doubt that the judgment in the case of Dr. Duryodhan Sahu (*supra*) held that a PIL is not maintainable before the Administrative Tribunal, the ratio of the said judgment was that '*strangers*' cannot maintain proceedings before the Tribunal. He further submitted that, considering who is the Petitioner, and what is challenged by the present Petition, it is crystal clear that the Petitioner or the members of the Petitioner are '*strangers to the Tribunal*'. However, the Petitioner or its members are not strangers to the challenge

levelled by the present Petition or the cause of action that has arisen for filing the present Petition under Article 226 of the Constitution of India.

24. Mr. Kumbhakoni further submitted that it is a settled position in law, as per the judgment of the Hon'ble Supreme Court in *Godrej Sara Lee Ltd. v/s. Excise and Taxation Office-cum-Assessing Authority & Others*,⁸ that a Writ Court would be justified in entertaining a Writ Petition despite the party approaching it not having availed of the alternate remedy provided by the statute. He further submitted that it is not correct that, where a statutory remedy is available, a writ petition in every case is not maintainable. He submitted that in this case a statutory remedy is not at all available to the Petitioner and its members and, therefore, the present Writ Petition, which dealt with legal and constitutional issues, was clearly maintainable.

25. In conclusion, Mr. Kumbhakoni submitted that the present Petition was maintainable before this Court and ought to be entertained by this Court.

26. In rejoinder, the learned Advocate General submitted that it

⁸ 2023 SCC Online SC 95

was necessary to appreciate that Section 15 of the Tribunals Act conferred exclusive jurisdiction on the Administrative Tribunal in relation to the matters stated in sub-sections 1(a), (b) and (c) thereof. The definition of '*service matters*' in Section 3 (q) of the Tribunals Act, relied upon by the Petitioner, was relevant only for matters referred to in Sections 15(1) (b) and (c) and not in respect of the matters referred to in Section 15 (1)(a). He submitted that the Administrative Tribunal had jurisdiction over matters falling under Section 15(1)(a) of the Tribunals Act, namely '*recruitment*' and '*matters concerning recruitment*' to any civil service or civil post under the State. Such matters were not in any manner confined to the definition of '*service matters*'. He submitted that the present Petition falls entirely within the scope of Section 15(1)(a) of the Tribunals Act in so far as it challenges matters concerning recruitment to civil posts that have been reserved under the said Notification dated 29th August, 2019. He further submitted that the reliance placed by the Petitioner on the decision of the Hon'ble Supreme Court in Godrej Sara Lee Ltd. (supra) was misplaced and misconceived. He submitted that, as is evident from para 2 of the said judgment, the question that fell for the consideration of the Hon'ble Supreme Court in that case was precisely concerned with the availability of an alternate remedy under Section 33 of the Value Added Tax, 2003. He submitted that, therefore, the observations of the Hon'ble

Supreme Court in paragraphs 4 to 8 thereof ought to be restricted to cases of alternate remedy and cannot be applied to the facts of the present case which concerns a statutory remedy making resort to the Administrative Tribunal in the first instance mandatory.

27. He further submitted that, in the present Petition, the Petitioner is admittedly a non-profit committee / organization set up only in March, 2022, to purportedly protect the rights of non-tribals residing in Scheduled Areas. He further submitted that it was argued that the members of the Petitioner were all ex-government servants and were not aspiring to selection in the posts which were the subject matter of the said Notification dated 29th August, 2019. He submitted that, in that event, the Petition was more in public interest.

28. The learned Advocate General further submitted that it is the Petitioner's case that the said Notification dated 29th August, 2019 and the consequent Government Resolutions are violative of fundamental rights guaranteed under Articles 14 to 16 of the Constitution of India. Article 16 expressly dealt with reservations in employment. Further, apart from seeking the relief of quashing the Notification and the consequent Government Resolutions, the Petitioner has also sought to restrain the

State from making appointments to the public posts which form the subject matter of the Notification. He further submitted that the Petitioner was seeking to protect the rights of aspiring non-tribal candidates for selection to the public posts that formed the subject matter of the Notification. He submitted that, in these circumstances, the present Writ Petition is filed for espousing the cause of aspiring employees to public posts, and, therefore, in the first instance, must be filed before the Administrative Tribunal and not before this Court. He submitted that, therefore, the Petition is not maintainable before this Court.

29. In order to consider whether the present Writ Petition is maintainable or not, first it will have to be considered as to what is the challenge in the present Writ Petition. As set out hereinabove, the Petitioner has sought a declaration that the Notifications dated 9th June, 2014 and 29th August 2019 and consequential Government Resolutions are arbitrary, unreasonable, discriminatory, unconstitutional and violative of Articles 14 to 16 of the Constitution of India.

30. The main challenge is to the said Notification dated 29th August 2019. The same has been issued by the Governor of Maharashtra in exercise of powers under Article 244 (1), read with paragraph 5(1) of

the Fifth Schedule, of the Constitution of India which read as under:-

“244 (1):- The provisions of Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram.”

*“5(1) Law applicable to Scheduled Areas.—(1) Notwithstanding anything in this Constitution, the Governor [***] may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.”*

31. It is not in dispute that the said Notification dated 29th August, 2019 has been issued by the Governor of Maharashtra in exercise of his legislative powers under Article 244(1) of the Constitution of India.

32. The said Notification directs that Section 4 of the Maharashtra State Public Services (Reservation for Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes) Act, 2001 (“2001 Act”), Section 4(1)(b) of the Maharashtra State Reservation (of seats for admission in educational institutions in the State and for appointments in the public services and posts under the State) for Socially and Educationally Backward Classes (SEBC) Act, 2018 (“2018 Act”) and any other Rules or Orders or Instruments issued in this regard, shall apply

to appointment to the posts specified in the Appendix to the said Notification, subject to the modification that, all such posts which are to be filled in by direct recruitment in the villages of the Scheduled Areas, in the State of Maharashtra, specified by the Tribunal Development Department, shall be filled in by the local Scheduled Tribe candidates having requisite qualification, notwithstanding anything contained in any other law or rule or order for the time being in force in that regard, in the ratio mentioned in the said Notification. The Appendix to the said Notification sets out 17 posts and reads as under:

APPENDIX

Sr.No.	Name of the Posts	Department
1	Talathi	Revenue and Forest Department
2	Surveyor	Revenue and Forest Department
3	Gram Sevak	Rural Development Department
4	Anganwadi supervisor	Women & Child Development Department
5	Teacher	(i) Rural Development Department (ii) Tribal Development Department
6	Adivasi Vikas Nirikshak	Tribal Development Department
7	Agriculture Assistant	Agriculture, Dairy Development, Animal Husbandry and Fisheries Department
8	Livestock Supervisor	Rural Development Department
9	Auxiliary Nurse and Midwife (APW)	Rural Development Department
10	Multi-Purpose Health Worker (MPW)	(i) Rural Development Department (ii) Public Health Department
11	Forest Guard	Revenue and Forest Department
12	Kotwal	Revenue and Forest Department
13	Forest Watcher	Revenue and Forest Department
14	Cook (Swayampak)	Tribal Development Department
15	Laboratory Attendant	Tribal Development Department
16	Kamathi	Tribal Development Department
17	Police Patil	Home Department

33. From the contents of the said Notification, and the Appendix

thereto, it is clear that said Notification dated 29th August, 2019 is issued in respect of recruitment of posts to the State Government. In the present Petition, the Petitioners have challenged the constitutional validity of the said Notification which provides for recruitment to posts of the State Government.

34. Article 323A of the Constitution of India reads as under:

“323-A. Administrative tribunals. -

(1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government.

(2) A law made under clause (1) may-

(a) provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States;

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;

(d) exclude the jurisdiction of all Courts, except the jurisdiction of the Supreme Court under article 136, with respect to the disputes or complaints referred to in clause (1);

(e) provide for the transfer to each such administrative tribunal of any cases pending before any Court or other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or

proceedings are based had arisen after such establishment;

(f) repeal or amend any order made by the President under clause (3) of article 371D;

(g) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as Parliament may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

(3) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.”

35. From the provisions of Article 323-A it is clear that it permits Parliament, by law, to set up administrative tribunals for adjudication of disputes and complaints with respect to the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Central Government or of any State Government or of any local or other authority within the territory of India or under the Control of the Government of India or of any corporation owned or controlled by the Government.

36. Further, sub-clause 2(d) of Article 323-A provides that such a law made by Parliament may exclude the jurisdiction of all Courts, except the jurisdiction of the Supreme Court under Article 136, with respect to the disputes or complaints referred to in clause (1).

37. Pursuant to the provisions of Article 323-A of the

Constitution of India, the Administrative Tribunals Act, 1985, has been enacted. Section 15 of the Tribunals Act provides for the jurisdiction, powers and authority of State Administrative Tribunals and reads as under:

“15. Jurisdiction, powers and authority of State Administrative Tribunals.—

*(1) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all Courts (except the Supreme Court [***] in relation to—*
(a) recruitment, and matters concerning recruitment, to any civil service of the State or to any civil post under the State;

(b) all service matters concerning a person [not being a person referred to in clause (c) of this sub-section or a member, person or civilian referred to in clause (b) of sub-section (1) of section 14] appointed to any civil service of the State or any civil post under the State and pertaining to the service of such person in connection with the affairs of the State or of any local or other authority under the control of the State Government or of any corporation [or society] owned or controlled by the State Government;

(c) all service matters pertaining to service in connection with the affairs of the State concerning a person appointed to any service or post referred to in clause (b), being a person whose service have been placed by any such local or other authority or corporation [or society] or other body as is controlled or owned by the State Government, at the disposal of the State Government for such appointment.

(2) The State Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities and corporations [or societies] controlled or owned by the State Government:

Provided that if the State Government considers it expedient so to do for the purpose of facilitating

transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations [or societies].

*(3) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation [or society], all the jurisdiction, powers and authority exercisable immediately before that date by all Courts (except the Supreme Court [***]) in relation to—*

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation [or society]; and

(b) all service matters concerning a person [other than a person referred to in clause (b) of sub-section (1) of this section or a member, person or civilian referred to in clause (b) of sub-section (1) of section 14] appointed to any service or post in connection with the affairs of such local or other authority or corporation [or society] and pertaining to the service of such person in connection with such affairs.

(4) For the removal of doubts, it is hereby declared that the jurisdiction, powers and authority of the Administrative Tribunal for a State shall not extend to, or be exercisable in relation to, any matter in relation to which the jurisdiction, powers and authority of the Central Administrative Tribunal extends or is exercisable.”

38. From the provisions of Section 15 of the Tribunals Act, it is very clear that the State Administrative Tribunal shall have jurisdiction, powers and authority in relation to recruitment and matters concerning recruitment to any civil services of the State or to any civil post under the State, as provided in Section 15(1)(a) thereof, and in respect of service

matters as provided in Sections 15(1)(b) and (c) thereof.

39. Hence, under Section 15 of the Tribunals Act, matters in relation to recruitment and matters concerning recruitment to any Civil Services of the State or to any civil post under the State will be within the jurisdiction of the State Administrative Tribunal.

40. In the case of **L. Chandra Kumar** (Supra), the following questions of law were considered by a Seven Judge Bench of the Hon'ble Supreme Court.

“(1) Whether the power conferred upon Parliament or the State Legislatures, as the case may be, by sub-clause (d) of clause (2) of Article 323A or by sub-clause (d) of clause (3) of Article 323-B of the Constitution, to totally exclude the jurisdiction of 'all Courts', except that of the Supreme Court under Article 136, in respect of disputes and complaints referred to in clause (1) of Article 323-A or with regard to all or any of the matters specified in clause (2) of Article 323-B, runs counter to the power of judicial review conferred on the High Courts under Articles 226/227 and on the Supreme Court under Article 32 of the Constitution?”

(2) Whether the Tribunals, constituted either under Article 323-A or under Article 323-B of the Constitution, possess the competence to test the constitutional validity of a statutory provision/rule?

(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? “

41. Paragraphs 78 to 82, 90, 91, 93 and 99 of the said judgment read as under:

“78. The legitimacy of the power of courts within constitutional democracies to review legislative action has been questioned since the time it was first conceived. The Constitution of India, being alive to such criticism, has, while conferring such power upon the higher judiciary, incorporated important safeguards. An analysis of the manner in which the framers of our Constitution incorporated provisions relating to the judiciary would indicate that they were very greatly concerned with securing the independence of the judiciary. These attempts were directed at ensuring that the judiciary would be capable of effectively discharging its wide powers of judicial review. While the Constitution confers the power to strike down laws upon the High Courts and the Supreme Court, it also contains elaborate provisions dealing with the tenure, salaries, allowances, retirement age of Judges as well as the mechanism for selecting Judges to the superior courts. The inclusion of such elaborate provisions appears to have been occasioned by the belief that, armed by such provisions, the superior Courts would be insulated from any executive or legislative attempts to interfere with the making of their decisions. The Judges of the superior courts have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations. It is equally their duty to oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of strict standards of legal correctness and judicial independence. The constitutional safeguards which ensure the independence of the Judges of the superior judiciary, are not available to the Judges of the subordinate judiciary or to those who man tribunals created by ordinary legislations. Consequently, Judges of the latter category can never be considered full and effective substitutes for the superior judiciary in discharging the function of constitutional interpretation. We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Articles 226 and in this court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

79. We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided.

80. However, it is important to emphasise that though the subordinate judiciary or Tribunals created under ordinary legislations cannot exercise the power of judicial review of legislative action to the exclusion of the High Courts and the Supreme Court, there is no constitutional prohibition against their performing a supplemental-as opposed to a substitution - role in this respect. That such a situation is contemplated within the constitutional scheme becomes evident when one analyses clause (3) of Article 32 of the Constitution which reads as under:

32. Remedies for enforcement of rights conferred by this Part.--

(1) ..

(2) ..

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under Clause (2).

(emphasis supplied)

81. If the power under Article 32 of the Constitution, which has been described as the "heart" and "soul" of the Constitution, can be additionally conferred upon "any other court", there is no reason why the same situation cannot subsist in respect of the jurisdiction conferred upon the High Courts under Article 226 of the Constitution. So long as the jurisdiction of the High Courts under Articles 226/227 and that of this court under Article 32 is retained, there is no reason why the power to test the validity of legislations against the provisions of the Constitution cannot be conferred upon Administrative Tribunals created under the Act or upon Tribunals created under Article 323-B of the Constitution. It is to be remembered that, apart from the authorisation that flows from Articles 323-A and 323B, both Parliament and the State Legislatures possess legislative competence to effect changes in the original jurisdiction of the

Supreme Court and the High Courts. This power is available to Parliament under Entries 77, 78, 79 and 95 of List I and to the State Legislatures under Entry 65 of List II; Entry 46 of List III can also be availed of both by Parliament and the State Legislatures for this purpose.

82. There are pressing reasons why we are anxious to preserve the conferment of such a power on these Tribunals. When the Framers of our Constitution bestowed the powers of judicial review of legislative action upon the High Courts and the Supreme Court, they ensured that other constitutional safeguards were created to assist them in effectively discharging this onerous burden. The expectation was that this power would be required to be used only occasionally. However, in the five decades that have ensued since Independence, the quantity of litigation before the High Courts has exploded in an unprecedented manner. The decision in Sampath Kumar's case was rendered against such a backdrop. We are conscious of the fact that when a Constitution Bench of this Court in Sampath Kumar's case adopted the theory of alternative institutional mechanisms, it was attempting to remedy an alarming practical situation and the approach selected by it appeared to be most appropriate to meet the exigencies of the time. Nearly a decade later, we are now in a position to review the theoretical and practical results that have arisen as a consequence of the adoption of such an approach.

90. We may first address the issue of exclusion of the power of judicial review of the High Courts. We have already held that in respect of the power of judicial review, the jurisdiction of the High Courts under Article 226/227 cannot wholly be excluded. It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters

involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Articles 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter.

91. *It has also been contended before us that even in dealing with cases which are properly before the Tribunals, the manner in which justice is dispensed by them leaves much to be desired. Moreover, the remedy provided in the parent statutes, by way of an appeal by special leave under Article 136 of the Constitution, is too costly and inaccessible for it to be real and effective. Furthermore, the result of providing such a remedy is that the docket of the Supreme Court is crowded with decisions of Tribunals that are challenged on relatively trivial grounds and it is forced to perform the role of a first appellate court. We have already emphasised the necessity for ensuring that the High Courts are able to exercise judicial superintendence over the decisions of Tribunals under Article 227 of the Constitution. In R.K. Jain's case, after taking note of these facts, it was suggested that the possibility of an appeal from the Tribunals on questions of law to a Division Bench of a High Court within whose territorial jurisdiction the Tribunal falls, be pursued. It appears that no follow-up action has been taken pursuant to the suggestion. Such a measure would have improved matters considerably. Having regard to both the aforesaid contentions, we hold that all decisions of Tribunals, whether created pursuant to Article 323-A or Article 323-B of the Constitution, will be subject to the High Court's writ jurisdiction under Articles 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls.*

93. *Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their*

function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the High Court concerned may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.

99. *In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323-A and Clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of*

statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.”

42. In **L. Chandra Kumar** (Supra), the Hon’ble Supreme Court, whilst holding that the jurisdiction of the High Courts under Article 226 and 227 of the Constitution of India cannot be altogether excluded, being a part of the basic structure of the Constitution of India held that the Tribunals created under Article 323-A of the Constitution of India are competent to test the constitutional validity of statutory provisions and rules, including those involving interpretation of Articles 14 to 16 of the Constitution of India, except the constitutional validity of the statute under which the Tribunal is created. In paragraphs 93 and 99 of the said judgment the Hon’ble Supreme Court makes it abundantly clear that, in matters over which the Administrative Tribunals have jurisdiction, it would not be open for litigants to directly approach the High Courts even in cases where the vires of the statutory legislations is challenged by overlooking the jurisdiction of the Tribunal concerned, except where the legislation which created that particular Tribunal is challenged.

43. The said judgment of a Seven Judge Bench of the Hon’ble Supreme Court makes it abundantly clear that, in matters in which the

Tribunal has jurisdiction, the parties would have to approach the Tribunal first and not the High Court.

44. In **Vijay Ghogare & Ors.** (Supra), the Petitioners challenged the constitutional validity of the 2001 Act, which is in issue in the present Writ Petition, and consequent Government Resolutions. The maintainability of the Petition was contested by the State on the ground that the Petitioners would be precluded from, even in cases where challenge is made to the vires of the legislation, directly approaching this Court, overlooking the jurisdiction of the Administrative Tribunal. Following the decision in **L. Chandra Kumar** (Supra) and two subsequent decisions of the Hon'ble Supreme Court, this Court upheld the objection of the State on the maintainability of the Petitions. Paragraphs 1 to 6 and 8 to 16 of the said judgment read as under:-

“1. This Writ Petition challenges the constitutional validity of the Maharashtra State Public Services [Reservation for Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes] Act, 2001 (Maharashtra Act No.VIII of 2004) and the Government Resolution No.BCC-2001/ 1887/PR. KR.640/01/16-B dated 25 May 2004.

2. When this Writ Petition was called out, Mr. Khambatta, learned Advocate General, appearing for the State of Maharashtra raised a preliminary objection about maintainability of these Writ Petitions. This was on the ground that as per the law laid down by a Bench of Seven Judges of the

Supreme Court in L. Chandra Kumar vs Union of India and others, 1997 (3) BOM.C.R. 449 (S.C.) (C.B.): (1997) 3 SCC 261, only the Maharashtra Administrative Tribunal established under the Administrative Tribunals Act, 1985 enacted by the Parliament in exercise of the powers under Article 323-A of the Constitution of India is to function as the court of first instance in respect of the areas of law for which it has been constituted. Further the court held that even where any challenge is made to the vires of legislation (excepting the legislation under which the Tribunal has been constituted), the litigants will not be able to directly approach the High Court overlooking the jurisdiction of the Tribunal. The learned Advocate General has also relied on the decisions of the Supreme Court in Kendriya Vidyalaya Sangathan and another vs Subhas Sharma, (2002) 4 SCC 145 and (Rajeev Kumar vs Hemraj Singh Chauhan), (2010) 4 SCC 554.

3. On the other hand, Mr. Rajeev Dhawan and Mr. Aney, learned Senior Counsel for the Petitioners, have vehemently opposed the above submissions and made the following submissions:

(a) This petition was filed in the year 2004 and at that time no such preliminary objection was raised on behalf of the State Government. In fact, when this Petition being Writ Petition No.8542 of 2004 was admitted by the Division Bench of this Court on 6 December 2004, the State Government was represented by the then Advocate General and Rule was issued. This was after hearing the learned Advocates for the parties and no such objection was taken at that time would be clear on perusal of the order, which reads as under :

“PC :

- 1. Heard Advocates.*
- 2. Rule. Respondents waive notice.*
- 3. Rule on interim relief returnable on 17th January 2005. State Government is directed to file reply on or before 10th January 2005. Rejoinder, if any, to be filed within one week thereafter.”*

(b) It is further submitted that after hearing the learned Counsel for the parties, the Division Bench of this court by an order dated 22 February 2005 took the view that this was not an ordinary service matter and observed as under:-

'5. We have considered the submission and what is required to be referred to the Tribunal is the dispute

regarding service matter. In our prima facie opinion, what arises when implementation of impugned resolution takes place is not a service matter. It is therefore not correct in our opinion, again prima facie that the dispute is likely to or should go before the tribunal. There is yet another aspect which we would like to emphasis and that is what is the extent to which the contentions in this petition would be affecting the entire service class in the State of Maharashtra. Even if it is assumed that such jurisdiction may be with Tribunal to avoid multiplicity of litigation, to avoid further writ petition flowing out of the order of the Tribunal, relying on the judgment of Chandra Kumar's case on which reliance is placed by Shri Anturkar for holding and canvassing that the Tribunal has jurisdiction, keeping this submission open for further argument and adjudication, we feel that we must address ourselves to grant of interim relief.'

(c) It is further submitted that after hearing the learned Counsel for the parties extensively, this Court by the above order dated 22 February 2005 granted interim relief staying the implementation of the Government Resolution dated 25 May 2004 which was issued for implementation of the provisions of the above Act. By an order dated 20 April 2005 this Court refused to modify the interim order dated 22 February 2005. The respondent carried the matter in appeal to the Supreme Court which by its order dated 5 August 2005 refused to interfere with the order of this court dated 20 April 2005.

(d) Thereafter, by order dated 9 March 2007 this court permitted the promotions to be made to the promotional posts in accordance with the impugned Act except to the extent of 13% reserved for denotified tribes except backward classes. However, the State Government carried the matter before the Supreme Court. Even the Supreme Court vide order dated 28 March 2008 in Petition(s) for Special Leave to Appeal (Civil) No(s) 18534-18537/ 2007, while modifying the High Court's order and permitting promotions to be made from amongst the reserved candidates observed, "... subject to the final decision of the pending writ petition before the High Court". It is, therefore, submitted that the matter was entertained and because of its importance, interim relief was granted and even the Supreme Court expected this Court to hear this Writ Petition on merits.

(e) Reliance is also placed on decisions of the Supreme Court taking the view that once Writ Petition is admitted, the preliminary objection about maintainability or alternative remedy should not be allowed to be raised.

(f) As far as the decision of the Supreme Court in *L. Chandra Kumar's (supra)* case is concerned, the learned Senior Counsel for the petitioners have placed strong reliance on the decision of the Supreme Court in *T.K. Rangarajan vs Government of (TN) and others*, (2003) B.C.I. (soft) 232 (S.C.) : (2003) 6 SCC 581, and particularly the observations made in paragraph 10 of the said decision, which read as under:

“10. There cannot be any doubt that the aforesaid judgment of larger Bench is binding on this court and we respectfully agree with the same. However, in a case like this, if thousands of employees are directed to approach the Administrative Tribunal, the Tribunal would not be in a position to render justice to the cause. Hence, as stated earlier, because of very very exceptional circumstance that arose in the present case, there was no justifiable reason for the High Court not to entertain the petitions on the ground of alternative remedy provided under the statute.”

(g) Learned Counsel also submitted that in this case also large number of employees in the State Government service have been denied their legitimate rights to be promoted to the higher posts only because of the reservations provided under the impugned Act. This is in itself an extraordinary situation which would warrant this court taking up this Writ Petition for final hearing and redress the injustice meted out to the thousands of employees without relegating them to the remedy of approaching the Administrative Tribunal.

4. We have given anxious consideration to the rival submissions on the question of preliminary objection.

5. The Maharashtra Administrative Tribunal has been constituted by notification issued by the State Government under the provisions of the Administrative Tribunals Act, 1985. The said Act has been enacted in exercise of the powers under Article 323-A of the Constitution of India. As per the provisions of the Administrative Tribunals Act, 1985, as originally enacted, Appeal against the decision of the Tribunal would lie before the Supreme Court and the jurisdiction of the High Court was completely ousted. The Supreme Court upheld the constitutional validity of Article 323-A of the Constitution and the aforesaid provisions of the Administrative Tribunals Act, 1985 in *(S.P. Sampath Kumar vs Union of India)*, (1985) 4 SCC 458. However, the question again came to be reexamined by the Supreme Court in *L. Chandra Kumar (supra)*. After considering the reasons which had appealed to the Supreme Court for upholding the

constitutional validity of the Act in Sampath Kumar's case (supra), and after considering functioning of the Tribunal, the Supreme Court laid down the principles in respect of the power of the Tribunal to examine the challenge to the constitutional validity of a legislation in the context of the power of judicial review vested in the High Courts under Article 226/227 of the Constitution of India as being part of the basic structure of the Constitution. The Supreme Court held in terms that the power of judicial review vested in the High Courts under Article 226 and in the Supreme Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

6. The Supreme Court further held that the power of the Supreme Court under Article 32 of the Constitution and of the High Courts under Articles 226/227 of the Constitution to test the validity of legislations against the provisions of the Constitution can also be entrusted to the Administrative Tribunals constituted under legislations framed in exercise of the power under Articles 323-A and 323-B of the Constitution. However, having examined the functioning of the Tribunals, the Supreme Court in Chandra Kumar's case (supra) held that to hold that the Tribunals have no power regarding matters involving constitutional matters would not serve the purpose for which they were constituted. Moreover, all such decisions of the Tribunal will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution will serve two purposes – while saving the power of judicial review of legislative action vested in the High Courts under Articles 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal and the High Courts will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter. Proceeding on the basis of the above reasoning, the Supreme Court made it clear in paragraphs 93 and 99 in Chandra Kumar's case (supra) that, “the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for the litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.’

8. The aforesaid decision of the Supreme Court in L.Chandra

Kumar's case (supra) came to be explained by the Supreme Court in its two subsequent decisions in Kendriya Vidyalaya Sangathan (supra) and Rajeev Kumar (supra).

9. *In Rajeev Kumar's case (supra), the Supreme Court, after quoting the statements of law made in paragraphs 93 and 99 of the judgment in Chandra Kumar's case (supra), culled out the ratio of the decision in Chandra Kumar's case in the following words :*

'11. On a proper reading of the above-quoted two sentences, it is clear that :

(a) The tribunals will function as the only Court of first instance in respect of the areas of law for which they have been constituted.

(b) Even where any challenge is made to the vires of legislation, excepting the legislation under which tribunal has been set up, in such cases also, litigants will not be able to directly approach the High Court "overlooking the jurisdiction of the tribunal."

10. *After making aforesaid pronouncement, the Supreme Court made the following observations :*

"13. In view of such repeated and authoritative pronouncement by the Constitution Bench of this court, the approach made to the High Court for the first time by these appellants in respect of their service disputes over which CAT has jurisdiction, is not legally sustainable. The Division Bench of the High Court, with great respect, fell into an error by allowing the appellants to treat the High Court as a court of first instance in respect of their service disputes for adjudication of which CAT has been constituted.

....

15. As the appellants cannot approach the High Court by treating it as a court of first instance, their special leave petition before this Court is also incompetent and not maintainable.

16. The principles laid down in L. Chandra Kumar virtually embody a rule of law and in view of Article 141 of the Constitution the same is binding on the High Court. The High Court fell into an error by allowing the appellants to approach

it in clear violation of the Constitution Bench judgment of this Court in L. Chandra Kumar.”

11. Mr. Rajeev Dhawan, learned Senior Counsel for the Petitioners, however, vehemently submitted that even though the above principles would apply in ordinary cases, there may be exceptional cases where a litigant is not precluded from approaching this Court directly in the primary writ jurisdiction of this Court under Article 226 of the Constitution. It is submitted that in T.K. Rangarajan case (supra) where thousands of employees had gone on strike, the Supreme Court took the view that thousands of employees should not be directed to approach Administrative Tribunal as the Tribunal would not be in a position to render justice to the cause and that in very very exceptional circumstances, the High Court may and ought to entertain Writ Petitions and grant appropriate reliefs.

12. It is submitted that in the facts of the present case also the impugned legislation has been causing grave injustice to thousands of employees who are not able to get promotions to the higher posts only on account of reservations made in favour of employees belonging to certain categories and that this impugned legislation affects the entire services of the State Government. It is submitted that it was for this reason that even after the attention of this Court was invited to L.Chandra Kumar's case (supra) in the year 2004, this Court had decided to entertain the petition and even to grant interim relief. It is also submitted that no such preliminary objection was raised on behalf of the State Government when orders admitting and granting interim relief was passed and that it was only Mr. Anturkar appearing for Intervenor (private employees) who had raised the preliminary objection about jurisdiction. It is also submitted that far from not raising such a preliminary objection, the learned Counsel appearing for the State Government on 15 September 2008 requested this court that all petitions filed by the employees of the Municipal Corporation for Greater Mumbai including BEST officers be heard along with this Writ Petition filed by the employees of the State Government. It is, therefore, submitted that if this court were not to hear the Writ Petitions on merits and require the Petitioners to move the Maharashtra Administrative Tribunal, there would be further delay in the State Government employees getting justice.

13. It is true that, if the preliminary objection had been raised and upheld earlier, the writ Petitioner would have moved the Maharashtra Administrative Tribunal at the relevant time. However, the Division Bench while granting interim relief on 22

February 2005, did not give any final ruling on the preliminary objection, but kept the submissions open for further arguments and adjudication. For this reason, it cannot now be contended by the writ Petitioners that the preliminary objection ought not to have been raised or could not have been raised today when the matter is listed for final hearing.

14. *Having carefully gone through the decisions of the Supreme Court in L. Chandra Kumar (supra), Kendriya Vidyalaya Sangathan (supra), Rajeev Kumar (supra) as well as in T.K. Rangarajan (supra), we are of the view that this Court will not exercise the jurisdiction to entertain a writ petition as a court of first instance where Administrative Tribunal has been conferred such jurisdiction under the provisions of the Administrative Tribunals Act, 1985 enacted in exercise of the powers under Article 323-A of the Constitution. It is true that in T.K. Rangarajan's case (supra), the Supreme Court, in the facts of that particular case held that because of very very exceptional circumstances that arose in that case, there was no justifiable reason for the High Court not to entertain the petition on account of alternative remedy provided under the Administrative Tribunals Act, 1985.*

15. *It is, therefore, necessary to refer to those “very very exceptional circumstance” in that case. Paragraphs 2, 3 and 4 indicate those very exceptional facts, which read as under:*

“2. Unprecedented action of the Tamil Nadu Government terminating the services of all employees who have resorted to strike for their demands was challenged before the High Court of Madras by filing writ petitions under Articles 226/227 of the Constitution. Learned Single Judge by an interim order inter alia directed the State Government that suspension and dismissal of employees without conducting any enquiry be kept in abeyance until further orders and such employees be directed to resume duty. That interim order was challenged by the State Government by filing writ appeals. On behalf of the government employees, writ petitions were filed challenging the validity of the Tamil Nadu Essential Services Maintenance Act, 2002 and also Tamil Nadu Ordinance 3 of 2003.

3. The Division Bench of the High Court set aside the interim order and arrived at the conclusion that without exhausting the alternative remedy of approaching the Administrative Tribunal, writ petitions were not maintainable. It was pointed out to the court that the total detentions were

2211, out of which 74 were ladies and only 165 male and 7 female personnel have so far been enlarged on bail, which reveals the pathetic condition of the arrestees. The arrestees were mainly clerks and subordinate staff. The court, therefore, directed that those who were arrested and lodged in jails be released on bail.

4. That order is challenged by filing these appeals. For the same reliefs, writ petitions under Article 32 are also filed.'

16. As is indicated in paragraph 4, apart from appeals filed against the orders of the High Court, Writ Petitions under Article 32 of the Constitution were also filed before the Supreme Court and, therefore, the decision of the Supreme Court in T.K. Rangarajan case (supra) was rendered in the Appeals along with Writ Petitions under Article 32 of the Constitution. In the facts of the present case, it is true that a large number of employees may have a grievance against denial of or delay in their promotions to the higher posts on the basis of reservations in favour of candidates belonging to certain communities and may be awaiting the result of this petition. However, the very fact that 9 years have passed by since the provisions of the impugned Act were brought into force, it is not possible to hold that the present case is comparable with the facts in T.K. Rangarajan case (supra) and that there is an emergent situation calling for immediate relief."

45. Hence, in the case of **Vijay Ghogare & Ors.**(Supra), this Court, by following the judgment of the Hon'ble Supreme Court in the case of **L. Chandra Kumar** (Supra), held that, in matters where the Administrative Tribunals have jurisdiction, they would function as the Courts of first instance even in cases where there is any challenge to the vires of the legislation, except in cases where the legislation under which the Tribunal has been constituted is challenged.

46. In the case of **Gaurav Ganesh Das Daga & Others** (Supra), this view was reiterated by this Court. Paragraphs 3, 8, 10 and 15 of the said judgment are relevant for the present purpose and read as under:

“3. These writ petitions were moved some time in the middle of last year whereupon several orders have been passed over the past few months. Neither the advocate for the State nor the advocate for the MPSC objected to the maintainability of these writ petitions on the ground that the remedy of the Petitioners, at the first instance, lay before the Maharashtra Administrative Tribunal (hereafter “the MAT”, for short) constituted under the Administrative Tribunals Act, 1985 (hereafter “the Act”, for short). The writ petitions having been listed before us on 2nd March, 2022, we had expressed in no uncertain terms that the Petitioners ought to be relegated to the MAT for relief. An adjournment was prayed on behalf of the Petitioners to enable Mr. Rajendra Deshmukh, learned senior advocate, to address us through the virtual platform from Aurangabad. We had granted such prayer and directed listing of all the writ petitions today. It is recorded that on behalf of the Petitioners, other than Mr. Deshmukh none else has advanced arguments.

8. Having heard the parties and on consideration of the decisions cited at the Bar, we find no reason to take a view different from the one expressed by us orally on 2nd March, 2022. We completely concur with the reasons assigned by the coordinate Bench in Vijay Ghogare (supra) for holding the writ petition to be not maintainable before the Court at this stage. In view of such concurrence, we could have preferred to maintain reticence to assigning our reasons twice over on the same subject. However, we wish to furnish our opinion with a view to clear certain misconceptions in law while holding these writ petitions not to be maintainable before this Court. This, we feel, is required on noticing the emergence of judicial decisions by some Courts, based on misreading of the law laid down in L. Chandra Kumar (supra) as well as T. K. Rangarajan (supra), whereby grievances of State Government employees were entertained at the first instance upon holding that the remedy before the Tribunals constituted by the Act is an alternative to the writ remedy available under Article 226 of the Constitution.

10(a). T. K. Rangarajan (supra) being the sheet anchor of Mr. Deshmukh’s argument, we have read the decision in between the lines. At the very beginning of the judgment, their Lordships of the Supreme Court recorded that it was rendered in

circumstances which were ‘unprecedented’. Lakhs of lowly placed State Government employees had resorted to a strike for certain demands which, ultimately, led to drastic action being taken by the Government including arrests and dismissal from service without any enquiry. Those employees who had a right to post had their services terminated without compliance with natural justice. It is in such fact situation, the Supreme Court held in paragraph 5 that:

“5. At the outset, it is to be reiterated that under Article 226 of the Constitution, the High Court is empowered to exercise its extraordinary jurisdiction to meet unprecedented extraordinary situation having no parallel. It is equally true that extraordinary powers are required to be sparingly used. The facts of the present case reveal that this was most extraordinary case, which called for interference by the High Court, as the State Government had dismissed about two lakh employees for going on strike.”

10(b). While considering what L. Chandra Kumar (supra) had said about the functioning of the Administrative Tribunals all over the country at paragraph 9, the Court noted that:

“(It is to be stated that in Tamil Nadu, at present, the Administrative Tribunal is manned by only one man.)”

(brackets in original)

10(c). This was followed by further consideration of the decision in L. Chandra Kumar (supra) and the following observation, which makes the case distinct from any other case:

“10. There cannot be any doubt that the aforesaid judgment of larger Bench is binding on this Court and we respectfully agree with the same. However, in a case like this, if thousands of employees are directed to approach the Administrative Tribunal, the Tribunal would not be in a position to render justice to the cause. Hence, as stated earlier, because of very exceptional circumstance that arose in the present case, there was no justifiable reason for the High Court not to entertain the petitions on the ground of alternative remedy provided under the statute.”

(emphasis ours)

10(d). Once the Bench of two Judges felt bound by what was

declared as law in L. Chandra Kumar (supra), any observation on the exercise of right by an employee of the Union or the State, if any, to move the High Court directly under Article 226 of the Constitution could be urged to be followed if “very very exceptional circumstance” does arise for which such an employee may find it difficult, nay impossible, to pursue his remedy before the Tribunal constituted under the Act.

10(e). Next, the Court went on to discuss whether there is a Fundamental Right or legal/statutory authority of employees to resort to strike as well as moral or equitable justification to go on strike, and answered in the negative. The principles based on which these findings were returned would operate as ratio decidendi and be binding on us. However, the operative directions would seem to clearly show that the court exercised its power under Article 142 to do complete justice between the parties.

10(f). Even if we consider the decision in T. K. Rangarajan (supra) as one which binds us under Article 141 of the Constitution, still such decision is distinguishable on another count. While in T. K. Rangarajan (supra) most of the employees had lost their service and thereby means of livelihood, the Petitioners here have not even been appointed. Not only have they not acquired any right to post, they may not also have any right to claim appointment at this stage without the MPSC concludes the process of selection unless, of course, a grave illegality in conducting the selection process having occasioned is proved to exist. In the absence of the MPSC’s recommendation to the State Government, the stage is inchoate and, therefore, by no stretch of imagination the present fact situation is comparable with the fact situation in T. K. Rangarajan (supra) which the Court said was an extraordinary situation not having any parallel. The said decision is, therefore, clearly distinguishable on facts and inapplicable here.

15. To the less discerning and uninitiated, the High Courts can still be directly approached by Central/State Government employees and other notified employees, regard being had to the decision in L. Chandra Kumar (supra), if at all the proceedings initiated before the Court touching “service matters” includes a challenge being laid to any provision of the Act which, the Tribunal being a creature of the Act, would be unable to examine. That apart, notwithstanding what has been said in L. Chandra Kumar (supra), an employee could also approach the High Court directly in two other situations: first, in a situation like the one in T.K. Rangarajan (supra) and secondly, if the

Administrative Tribunals are nonfunctional for any reason whatsoever. However, that is not the case in this State where the benches of the MAT - at Mumbai, Nagpur and Aurangabad - are functional with retired Judges of this Court at the helm of such benches.”

47. Further, in the case of **Chaitali Jitendra Katariya & Another** (Supra), this Hon’ble Court once again reiterated the aforesaid view. Paragraphs 1, 14 to 17 and 26 of the said judgment are relevant and read as under:

“1. It has been 37 long years since enactment of the Administrative Tribunals Act, 1985 and establishment of Administrative Tribunals under Article 323A and 323B of the Constitution of India for adjudication of disputes in respect of recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of the State. However, despite availability of remedy of seeking adjudication in respect of service matters before the Administrative Tribunals, several writ petitions still continue to be directly filed before this Court under specious plea that mere existence of alternate remedy is not a bar for exercise of writ jurisdiction by us under Article 226 of the Constitution of India. We have before us two such petitions filed by the candidates / Petitioners, who are seeking recruitment to the post of Talathi in the Revenue and Forest Department of the Government of Maharashtra.

14. Thus, it now needs no reiteration that writ petitions directly filed before High Courts in respect of matters covered by Section 14 of the Act of 1985 are not maintainable and that the usual pretext of the High Courts exercising inherent jurisdiction under Article 226 of the Constitution ignoring availability of alternate remedy cannot be applied in respect of the remedy of filing application under Section 19 of the Act of 1985.

15. We would be failing in our duty if we do not refer to one decision of the Apex Court in T.K. Rangarajan Vs. Government of T.N. and Others, (2003) 6 SCC 581 where a

departure has been made by the Apex Court in upholding direct approach of litigants to the High Court under Article 226 in respect of a service matter. However, this exception is made by the Apex Court in the light of existence of exceptional circumstances in that case. The case involved termination of services of thousands of employees who had resorted to strike. It is on account of this unique circumstance that the Apex Court permitted direct filing of the writ petition before the High Court by observing in para 10 as under:

"10. There cannot be any doubt that the aforesaid judgment of larger Bench is binding on this Court and we respectfully agree with the same. However, in a case like this, if thousands of employees are directed to approach the Administrative Tribunal, the Tribunal would not be in a position to render justice to the cause. Hence, as stated earlier, because of very very exceptional circumstance that arose in the present case, there was no justifiable reason for the High Court not to entertain the petitions on the ground of alternative remedy provided under the statute."

16. Thus, in *T.K. Rangarajan (supra)* the Apex Court used the words "very very exceptional circumstances" while making possibly one time exception to the settled law that parties cannot directly approach High Court in respect of matters covered by Section 14 of the Act of 1985. In the present case, there exist no such exceptional circumstances. In fact, in the petition there is no averment about availability of alternate remedy and the reason why the same was not resorted.

17. We have, therefore, no hesitation in coming to the conclusion that the petitions directly filed before this Court in respect of recruitment to the post of Talathi in State service are not at all maintainable.

26. In the result, we are of the considered opinion that the petitions are not maintainable and are liable to be dismissed. The petitioners shall, however, have the liberty to approach the Maharashtra Administrative Tribunal with regard to their grievances raised in the present petitions. Considering the fact that the present petitions are pending before this Court since June 2021, the Tribunal is requested to expedite the hearing of the original applications after filing it by the petitioners. If such original applications are filed within two weeks from today, the time spent in prosecuting the present petitions be appropriately considered by the Tribunal while deciding the question of delay,

if any. With these directions, the petitions are dismissed.”

48. From the aforesaid judgments of the Hon’ble Supreme Court and this Court, the law on the subject is very clear. In matters where the Administrative Tribunals have jurisdiction, the litigant has to necessarily first approach the Administrative Tribunal. This applies even in cases where the constitutional validity of any legislation is challenged, subject to the exception where the constitutional validity of the legislation under which the Tribunal is constituted has been challenged. The challenge in the present Writ Petition is to the constitutional validity of the said Notification dated 29th August 2019 which provides for recruitment to posts of the State Government. Thus, in the present Writ Petition, the challenge is in relation to recruitment and matters concerning recruitment to civil posts under the State Government as provided by Section 15 of the Tribunals Act, over which the State Administrative Tribunal has jurisdiction. In these circumstances, in our view, as per the law laid down by the Hon’ble Supreme Court, and followed by this Court in various judgments, the said challenge, in the first instance, has to be made before the State Administrative Tribunal and not before this Court.

49. We are not inclined to accept the submissions made on

behalf of the Petitioner to the contrary. Mr.Kumbhakoni referred to the Statement of Objects and Reasons appended to the Constitution (Fourth Amendment) Bill, 1976 (Bill No.91 of 1976), which was enacted as the Constitution (Forty-second Amendment) Act, 1976, and, in particular, to paragraph 5 thereof (which has already been set out above) and to paragraph 3 of the Statement of Objects and Reasons of the Tribunals Act (which has also been set out above) and submitted that, if both these Statements of Objects and Reasons are seen together, it becomes clear that the Maharashtra Administrative Tribunal has been constituted only for the purpose of deciding “service matters” of the persons covered by the Tribunal and in respect of their grievances. In this regard, Mr.Kumbhakoni referred to the definition of service matters in Section 3(q) of the Tribunals Act, which reads as under:

“3(q) “service matters”, in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation [or society] owned or controlled by the Government, as respects—

- (i) remuneration (including allowances), pension and other retirement benefits;*
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;*
- (iii) leave of any kind;*
- (iv) disciplinary matters; or*
- (v) any other matter whatsoever;”*

50. Mr.Kumbhakoni submitted that the term ‘service matters’, as defined by Section 3(q) of the Tribunals Act, demonstrates that it is only government employees who can approach the Administrative Tribunal and not persons who are not government employees. Mr.Kumbhakoni submitted that, since the members of the Petitioner are not government employees, they cannot therefore approach the State Administrative Tribunal and are required to approach this Court under its jurisdiction under Articles 226 and 227 of the Constitution of India. This submission of Mr.Kumbhakoni completely ignores the fact that, whilst Sections 15(1) (b) and (c) of the Tribunals Act give the State Administrative Tribunal jurisdiction in relation to service matters mentioned therein, in addition thereto, Section 15(1)(a) gives jurisdiction to the State Administrative Tribunal in relation to recruitment, and matters concerning recruitment, to any civil service of the State or to any civil post under the State.

51. On a reading of Section 15 of the Tribunals Act, it is very clear that the Tribunal has jurisdiction not only in respect of service matters but also in respect of any matter in relation to recruitment and matters concerning recruitment to any civil service of the State or to any civil post under the State. In these circumstances, any person having any dispute or complaint in relation to such recruitment can definitely

approach the State Tribunal by virtue of the provisions of Section 15 of the Tribunals Act and it is not only government employees who can approach the Tribunal.

52. Therefore, we are unable to accept the submission of Mr.Kumbhakoni that, since the members of the Petitioner are not government employees, they cannot approach the State Tribunal for challenging the constitutional validity of the said Notification dated 29th August 2019 and the consequential Government Resolutions.

53. Mr.Kumbhakoni further sought to rely upon the provisions of section 19 of the Tribunals Act, which reads as under:

“19. Applications to tribunals.—

(1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.

Explanation.—For the purposes of this sub-section, “order” means an order made—

(a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation [or society] owned or controlled by the Government; or

(b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation [or society] referred to in clause (a).

(2) Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee (if any, not exceeding one hundred rupees) [in respect of the filing of such application and by such other fees for the service or execution of processes, as may be prescribed by the Central Government].

[(3) On receipt of an application under sub-section (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the application is a fit case for adjudication or trial by it, admit such application; but where the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons.]

(4) Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules.”

54. Mr.Kumbhakoni submitted that, as per the provisions of Section 19 of the Tribunals Act, it is only a “person aggrieved” who can make an application to the State Administrative Tribunal. He submitted that, upon taking a holistic view of the Tribunals Act, it becomes clear that only either serving government employees or aspiring government employees can approach the Tribunal for ventilating personal grievances relating to their service matters. In support of this submission, Mr.Kumbhakoni relied upon the judgment of the Hon’ble Supreme Court in the case of ***Dr. Duryodhan Sahu & Others*** (Supra). He relied on paragraphs 11 to 18 and 21 of this judgment, which read as under:

“11.These S.L.P came up for hearing on 15-02-1996 before a

Bench of two Judges. The Bench passed the following order:-

"Whether a public interest litigation can be entertained by the Administrative Tribunal under Section 19 of the Administrative Tribunals Act, 1985 is the question raised by the appellant-State of Orissa & Ors. Section 19, inter alia, provides that a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for redressal of his grievance. Prima facie, it appears that a public interest litigant is not a person aggrieved in that sense. The appellant-State relies on certain observations made by K. Ramaswamy, J. in R.K. Jain v. Union of India - (1993) 4 SCC 119 which are to the following effect:

"Shri Harish Chander, admittedly was the Senior Vice-President at the relevant time. The contention of Shri Thakur of the need to evaluate the comparative merits of Mr. Harish Chander and Mr. Kalyasundaram a seniormost member for appointment as President would not be gone into in a public interest litigation. Only in a proceedings initiated by an aggrieved person it may be open to be considered. This writ petition is also not a writ of quo warranto. In service jurisprudence it is settled law that it is for the aggrieved person, i.e., non-appointee to assail the legality of the offending action. Third party has no locus standi to canvass the legality or correctness of the action. Only public law declaration would be made at the behest of the Petitioner, a public-spirited person."

These observations were not specifically concurred to by the other two Members of the Bench (one of us being one such member). The Administrative Service Tribunals have been recognised by this Court to be substitutes of the High Court and other Courts having had jurisdiction in the matter. The High Court under Article 226 of the Constitution has power to issue a writ of quo warranto and that can undeniably be sought by any person; not necessarily a person aggrieved. Would it be otherwise and locus standi being determined purely on the axis of Section 19, the purpose of creating the Service Tribunal would seemingly be frustrated. It may therefore crop up that the above observations of K. Ramaswamy, J may attract an exception. In any case, the matter is important in order to define jurisdiction of the tribunal and therefore in the fitness of things, should be placed before a three Member Bench. We therefore direct these special leave petitions to be heard by a three-Member Bench."

12. We have heard counsel on both sides at length. Several rulings have been relied on by them though in none of them, the questing arose directly for consideration. The question as to

maintainability of a public interest litigation before the Tribunal depends for its answer on the provisions of the Act. The Tribunal having been created by the Act, the scope and extent of its jurisdiction have to be determined by interpreting the provisions thereof. In S.P. Sampath Kumar versus Union of India (1987) 1 S.C.C. 124: (1987) 2 ATC 82 it was held that the Tribunal constituted under the Act were effective substitutes to the High Courts in the scheme of administration of justice and they were entitle to exercise powers thereof. It was observed that they were real substitutes not only in form and de jure but in content and de facto. On that premise the Court held that the power of judicial review exercised by High Courts in service matters under Articles 226 and 227 was completely excluded. It may be noticed that the order of reference dated 15-2-1996 extracted in the earlier paragraph makes a specific mention of this aspect of the matter. If that view had continued to prevail, the approach to the question might have been different.

13. But the law has now been declared differently in L. Chandra Kumar versus Union of India (1997) 3 S.C.C. 261 that the Tribunals have to perform only, a “supplemental as opposed to a substitutional – role” in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. This Court has held that the powers of the High Courts under Articles 226/227 are not taken away by the Act. It is only against such a backdrop that the jurisdiction of the Tribunal under the Act to entertain a public interest litigation has to be decided. No doubt, it is contended by learned counsel for the appellants that even from the inception of the Act public interest litigations could be entertained only by the High Courts in exercise of their extraordinary jurisdiction and plenary powers and as such powers were not available to the Tribunals, the latter could never have entertained such litigations. It is not necessary for us to consider that contention. As the status of the Tribunals has now been settled in L. Chandra Kumar (supra), we will discuss the question in the light of the said pronouncement.

14. Section 14 of the Act provides that the Central Administrative Tribunal shall exercise all the jurisdiction, powers and authority exercisable by all Courts except the Supreme Court immediately before the appointed day in relation to matters set out in the section. Similarly, section 15 provides for the jurisdiction, powers and authority of the State Administrative Tribunals in relation to matters set out therein. Sections 19 to 27 of the Act deal with the procedure. Section 19 strikes the keynote. Sub-sections (1) and (4) of section 19 are in the following terms:

S.19 (1) Subject to other provisions of this Act, a person

aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.

Explanation.- For the purposes of this sub-section, 'order' means an order made-

(a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation (or society) owned or controlled by the Government; or

(b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation (or society) referred to in clause (a)

** * **

S.19 (4) Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules.

15. Section 20 provides that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant rules. Section 21 provides for a period of limitation for approaching the Tribunal. A perusal of the above provisions shows that the Tribunal can be approached only by "persons aggrieved" by an order as defined. The crucial expression "persons aggrieved" has to be construed in the context of the Act and the facts of the case.

16. In Thammanna versus K. Veera Reddy and other (1980) 4 S.C.C. 62 it was held that although the meaning of the expression "person aggrieved" may vary according to the context of the statute and the facts of the case, nevertheless normally, a person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something.

17. In Jasbhai Motibhai Desai Versus Roshan Kumar (1976) 1.S.C.C. 671 the Court held that the expression "aggrieved person" denotes an elastic, and to an extent, an elusive concept.

The Court observed: (SCC p.677, para 13)

"...It cannot be confined within the bounds of a rigid, exact, and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the Petitioner's interest, and the nature and extent of the prejudice or injury suffered by him".

18.The constitution of Administrative Tribunals was necessitated because of large pendency of cases relating to service matters in various Courts in the country. It was expected that the setting up of Administrative Tribunals to deal exclusively in service matters would go a long way in not only reducing the burden of the Courts but also provide to the persons covered by the Tribunals speedy relief in respect of their grievances. The basic idea as evident from the various provisions of the Act is that the Tribunal should quickly redress the grievances in relation to service matters. The definition of "service matters" found in Section 3 (q) shows that in relation to a person the expression means all service matters relating to the conditions of his service. The significance of the word "his" cannot be ignored. Section 3 (b) defines the word "application" as an application made under Section 19. The latter Section refers to "person aggrieved". In order to bring a matter before the Tribunal, an application has to be made and the same can be made only by a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal. We have already seen that the word "order" has been defined in the explanation to sub-section (1) of Section 19 so that all matters referred to in Section 3 (q) as service matters could be brought before the Tribunal. If in that context, Sections 14 and 15 are read, there is no doubt that a total stranger to the concerned service cannot make an application before the Tribunal. If public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal the very object of speedy disposal of service matters would get defeated.

21.In the result, we answer the first question in the negative and hold that the Administrative Tribunal constituted under the Act cannot entertain a public interest litigation at the instance of a total stranger."

55. In our view, the judgment in *Dr. Duryodhan Sahu & Others* (Supra) does not carry the case of the Petitioner any further. The said judgment was dealing with a public interest litigation and was considering the question whether the Administrative Tribunal constituted under the Tribunals Act can entertain a public interest litigation and whether, on the facts of that case, the Tribunal had exceeded its jurisdiction in passing the impugned order. In that case the Petitioner was a qualified surgeon having special training / experience in Gastroenterology. The Orissa Public Service Commission invited applications for the post of Lecturer in several disciplines, including Surgical Gastroenterology. Since the Government found that the Department of Surgical Gastroenterology was understaffed, it created one more post of Lecturer and the Public Service Commission recommended the name of the Petitioner for appointment thereof. At this stage, an organisation by the name Cuttack Surakhya Committee filed applications before the Central Administrative Tribunal for quashing the order creating one more post of Lecturer and seeking debarment of the Petitioner from appointment thereof on the ground that the said post was created only with a view to accommodate the Petitioner. The said applications were opposed by the Government and the Petitioner on the grounds of maintainability. The Tribunal rejected the said applications. In a SLP before the Hon'ble Supreme Court the question

arose so as to whether a PIL can be entertained by the Administrative Tribunal under Section 19 of the Tribunals Act. In this context, the Hon'ble Supreme Court was called upon to examine whether the Administrative Tribunal constituted under the Tribunals Act could entertain the PIL. After referring to the provisions of the Tribunals Act, the Hon'ble Supreme Court proceeded to construe the expression "person aggrieved" in the context of the Tribunals Act. It was in this context that the Hon'ble Supreme Court held that the Administrative Tribunal cannot entertain the PIL at the instance of a "total stranger". The facts of the said case are very different from the facts and circumstances of the present case.

56. In the present case, the Petitioner has vehemently submitted that the Petition filed by it is not a PIL. It is the case of Petitioner that it is a non-profit committee / organisation set up to protect the rights of non tribals of other category in the vicinity of District Palghar.

57. The Petitioner has challenged the said Notification dated 29th August 2019 and the consequential Government Resolutions as being ex-facie arbitrary, unreasonable and violative of the fundamental rights of the members of the Petitioner who are non tribals under Article 14 to 16 of

the Constitution of India. Although not pleaded in the Petition, it has also been submitted on behalf of the Petitioner that a perusal of the posts mentioned in the Appendix to the said Notification would demonstrate that these are public offices, the appointees of which will be working at the grass root level and the members of the Petitioner will be required to deal with them directly. Therefore, it was the constitutional right of the members of the Petitioner to assert that these public offices are manned by such persons who are appointed strictly in accordance with the Constitution of India.

58. We are doubtful as to whether a Petition, which is not a public interest litigation, can be entertained on the aforesaid ground which is submitted by the Petitioner, but not pleaded by it.

59. But, that apart, it is the stated case of the Petitioner that it is seeking to protect the rights of non-tribals. In other words, it is the case of the Petitioner that it is seeking to protect the rights of non-tribals under Articles 14 to 16 of the Constitution of India, which have been violated by the reservation provided in the said Notification dated 29th August 2019.

60. Therefore, on the Petitioner's own showing, the Petitioner is

seeking to espouse the cause of non-tribals who are aspiring for recruitment to the government posts mentioned in the Appendix to the said Notification. Therefore, in our view, it is very clear that the Petitioner in the present Petition is making a complaint and raising a dispute in relation to recruitment and matters concerning recruitment to civil posts under the State. For this reason, such a complaint or dispute would be within the jurisdiction of the State Administrative Tribunal constituted under Section 15 of the Tribunals Act. For this reason, we are unable to accept the submission of Mr.Kumbhakoni that the Petitioner is not a organisation who can file an application before the State Administrative Tribunal. In our view, in the light of the law laid down by the Hon'ble Supreme Court in the case of L. Chandra Kumar, and followed by our Court in various judgments, this Petition would have to be in the first instance filed before the State Administrative Tribunal and not in this Court.

61. Further, we are unable to accept the submission of Mr.Kumbhakoni, relying upon the judgment of the Hon'ble Supreme Court in the case of ***Godrej Sara Lee Ltd.*** (Supra), that the Writ Court can be justified in entertaining a Writ Petition despite the Petitioner not having availed of an alternate remedy provided by the Statute, and that this was

more so in the case of the present Petition which dealt with legal and constitutional issues.

62. In our view, there can be no dispute with the proposition of law laid down by the Hon'ble Supreme Court in the case of ***Godrej Sara Lee Ltd.*** (Supra) that the presence of an alternate statutory remedy does not always bar this Court from entertaining a Writ Petition under Articles 226 and 227 of the Constitution of India. However, we are of the view, in light of the law laid down by the Hon'ble Supreme Court in the case of ***L. Chandra Kumar*** (Supra), that this Petition cannot, in the first instance, be filed before this Court under Articles 226 and 227 of the Constitution of India, and has to be filed in the first instance before the State Administrative Tribunal.

63. For all the aforesaid reasons, we dismiss this Writ Petition on the ground that, in the first instance, this Court does not have jurisdiction to entertain this Writ Petition, with liberty to the Petitioner to approach the State Administrative Tribunal if it so desires.

WRIT PETITION NO.7075 OF 2023

64. In this Writ Petition, the Petitioner is a Society registered

under the Societies Registration Act, 1860 and is also a Trust registered under the Maharashtra Public Trust Act, 1950. It is the case of the Petitioner that it runs 11 Ashram Schools at various locations in Gadchiroli District (Scheduled Area) where more than 2300 students, including 881 girls, are regularly educated. The Petitioner recruits teachers for these schools as and when any sanctioned post becomes vacant. The post of a Teacher is one of the posts to which 100% reservation is provided by the said Notification dated 29th August, 2019. Therefore, the Petitioner, in accordance with the said Notification and Government Resolutions issued pursuant thereto, tried to fill up vacant posts. Despite following the procedure and issuing advertisements on several occasions, the Petitioner could not fill up the vacant posts due to non-availability of local Scheduled Tribe category candidates.

65. According to the Petitioner, there are no qualified candidates available from the said category, and, therefore, the posts are lying vacant, due to which the students are suffering. This is not only causing serious loss of quality education to the students but the other employees of the Petitioner are burdened with additional responsibility due to non-availability of eligible and qualified local Scheduled Tribe candidates. It is also the case of the Petitioner that because of the said Notification dated

29th August 2019 and the Government Resolutions issued pursuant thereto the Petitioner is prevented from appointing highly qualified eligible teachers from any other category.

66. Further, it is also the case of the Petitioner that it is an employer and a recruiter, and is not seeking recruitment, and therefore, it cannot approach the Maharashtra Administrative Tribunal with the present grievance. It is the submission of the Petitioner that its case does not fall within the provisions of section 15(1)(a) of the Tribunals Act and the present Petition before this Court is maintainable.

67. From the submissions of the Petitioner it is clear that the Petitioner is making a complaint and raising a dispute in relation to recruitment and matters concerning recruitment to the post of a Teacher, as provided in the Appendix to the said Notification dated 29th August 2019.

68. In our view, for all the reasons given above, whilst dismissing Writ Petition No.3854 of 2023, the case of the Petitioner in the present Petition squarely falls within the provisions of section 15(1)(a) of the Tribunals Act. In these circumstances, we dismiss this Writ Petition on the

ground that, in the first instance, this Court does not have jurisdiction to entertain this Petition, with liberty to the Petitioner to approach the State Administrative Tribunal, if it so desires.

WRIT PETITION NO.2548 OF 2023

69. In this Petition, it is the case of the Petitioner that it is a not-for-profit Committee set up to protect the rights of non-tribal persons of other categories in the vicinity of Palghar District and to take up the cause of these non-tribal persons. By this Petition, the Petitioner has challenged the Government Resolution dated 1st February 2023 arising from the said Notification dated 29th August 2019.

70. It is further the case of the Petitioner that the said Notification has caused grave injustice to the non-tribal qualified candidates by completely depriving them of any opportunity to participate and compete for selection to public posts in their respective home districts. It is also the case of the Petitioner that the said Notification has created unrest in sections of non-tribal categories, whose rights to secure employment in government services have been deprived, and, thus, creates rift and tension between tribal and non-tribal communities, which

is not conducive to the very objective of inclusiveness, fraternity and equality.

71. In the grounds stated in the Petition, the Petitioner has submitted that there is a gross violation of the fundamental rights of non-tribal local population guaranteed under the Constitution of India and therefore interference by this Court is just and proper.

72. From the case of the Petitioner it is clear that the Petitioner is seeking to espouse the cause of non-tribals who are aspiring for recruitment to the government posts mentioned in the Appendix to the said Notification dated 29th August 2019. Therefore, in our view, it is very clear that the Petitioner is making a complaint and raising a dispute in relation to recruitment and matters concerning recruitment to civil posts under the State. In these circumstances, for all the reasons given by us whilst dismissing Writ Petition No.3854 of 2023, such a complaint or dispute would be within the jurisdiction of the State Administrative Tribunal constituted under Section 15 of the Tribunals Act.

73. For all the aforesaid reasons, and for all the reasons given by us whilst dismissing Writ Petition No.3854 of 2023, we dismiss this Writ

Petition on the ground that, in the first instance, this Court does not have jurisdiction to entertain this Petition, with liberty to the Petitioner to approach the State Administrative Tribunal, if it so desires.

WRIT PETITION NO.10469 OF 2023

74. In this Petition, the Petitioner is a registered trust under the Maharashtra Public Trust Act, 1950. It is the case of the Petitioner that its main purpose is to look after and promote educational, customary, health and social betterment and advancement of Scheduled Tribe persons. It is further the case of the Petitioner that it has undertaken various programmes, workshops and other activities for betterment of backward class people and resolving caste related issues and that it has discussed caste related issues with government officers.

75. In the Petition, the Petitioner has challenged the said Notification dated 29th August 2019 and the Government Resolutions dated 1st February 2023 and 10th May 2023, as being arbitrary and ultra vires Articles 13, 14, 15 and 16 of the Constitution of India. The Petitioner has also sought a declaration that the Advertisement dated 8th June 2023 issued for the post of Forest Guard and the Advertisement dated 26th June 2023 issued for the post of Talathi, following the criteria

adopted in the aforesaid Government Resolutions, is unconstitutional, illegal and unsustainable.

76. In the Petition it is the case of the Petitioner that the said Notification dated 29th August 2019, by limiting its benefit only to local Scheduled Tribe candidates, is discriminatory of Scheduled Tribe candidates of other categories, deprives aspiring Scheduled Tribe candidates from outside the Scheduled Area of seeking public employment and takes away the opportunity of non Scheduled Tribe candidates from even applying for the posts reserved under the said Notification.

77. Thus, it is clear from the Petition that the Petitioner is seeking to espouse the cause of non-local Scheduled Tribe candidates i.e. Scheduled Tribe candidates from outside the Scheduled Areas as well as the cause of non-tribals who are aspiring recruitment to the government posts mentioned in the Appendix to the said Notification dated 29th August 2019. Therefore, in our view, it is very clear that the Petitioner, in the present Petition, is making a complaint and raising a dispute in relation to recruitment and matters concerning recruitment to civil posts under the State. In these circumstances, for all the reasons given by us

whilst dismissing Writ Petition No.3854 of 2023, such a complaint or dispute would be within the jurisdiction of the State Administrative Tribunal constituted under Section 15 of the Tribunals Act.

78. For all the aforesaid reasons, and for the reasons stated by us whilst dismissing Writ Petition No.3854 of 2023, we dismiss this Writ Petition on the ground that, in the first instance, this Court does not have jurisdiction to entertain this Petition, with liberty to the Petitioner to approach the State Administrative Tribunal, if it so desires.

WRIT PETITION NO.7074 OF 2023

79. In this Petition the Petitioners claim to be unemployed educated youth possessing requisite educational, technical and other qualifications required for appointment to various posts such as Assistant Teacher, Agricultural Superintendent and other posts.

80. By this Petition, the Petitioners have challenged the said Notification dated 29th August, 2019 as being unconstitutional and ultra vires Article 13(2), 14, 15 and 16(2) of the Constitution of India and have sought quashing of the Government Resolution dated 1st February 2023.

81. In the Petition it is the case of the Petitioner that the said Notification dated 29th August 2019 and the Government Resolution dated 1st February 2023 issued pursuant thereto, by providing for 100% reservation for candidates belonging to local Scheduled Tribes, have deprived candidates like the Petitioners, who do not belong to the Scheduled Tribe category, though they are residing in the Scheduled Areas, to get the benefit of employment, which is arbitrary, unjust, unconstitutional and contrary to the reservation policy of the State.

82. From the case of the Petitioner it is clear that the Petitioner is seeking to espouse the cause of non-tribals who are aspiring recruitment to the government posts mentioned in the Appendix to the said Notification dated 29th August 2019. Therefore, in our view, it is very clear that the Petitioners are making a complaint and raising a dispute in relation to recruitment and matters concerning recruitment to civil posts under the State. In these circumstances, for all the reasons given by us whilst dismissing Writ Petition No.3854 of 2023, such a complaint or dispute would be within the jurisdiction of the State Administrative Tribunal constituted under Section 15 of the Tribunals Act.

83. For all the aforesaid reasons, and for all the reasons given by

us whilst dismissing Writ Petition No.3854 of 2023, we dismiss this Writ Petition on the ground that, in the first instance, this Court does not have jurisdiction to entertain this Petition, with liberty to the Petitioner to approach the State Administrative Tribunal, if it so desires.

84. Since we have dismissed the Writ Petitions, all Interim Applications and Civil Applications filed in these Writ Petitions are also disposed of.

85. In the facts and circumstances of the case, there shall be no order as to costs in all the Writ Petitions.

(FIRDOSH P POONTIWALLA,J.)

(SUNIL B. SHUKRE,J.)