

Supreme Court upholds validity of Tribunal Rules 2020 with modifications

The Hon'ble Supreme Court of India, in ***Madras Bar Association v. Union of India & Anr. [Writ Petition (C) No.804 of 2020, (dated November 27, 2020)]*** upheld the validity of Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2020, ("**Tribunal 2020 Rules**") with some modifications and ordered constitution of National Tribunals Commission to supervise the appointments to and functioning of tribunals.

Facts:-

Madras Bar Association ("**Petitioner**") has filed this Writ Petition raising following issues that the Tribunal 2020 Rules are unconstitutional as:

- a) The Search-cum-Selection Committees provided for in the Tribunal 2020 Rules did not conform to the principles of judicial dominance;
- b) Appointment of persons without judicial experience to the posts of Judicial Members/ Presiding Officer/ Chairpersons is in contravention to the earlier judgments of the Hon'ble Supreme Court;
- c) The term of office of the Members for four years is contrary to the earlier decisions of the Hon'ble Supreme;
- d) Advocates are not being made eligible for appointment to most of the Tribunals;
- e) Administrative control of the executive in matters relating to appointments and conditions of service is violative of the principles of separation of powers and independence of judiciary and demonstrates non-application of mind.

Further Issue raised on:-

The Constitutional validity of provisions under Tribunal 2020 Rules concerning the selection, appointment, tenure, conditions of service, and ancillary matters relating to various tribunals, which act in aid of the judicial branch.

Held:-

The Hon'ble Supreme Court of India, in ***Writ Petition (C) No.804 of 2020*** held as under:

National Tribunals Commission

- That, this judgment is to be read as a sequel, and together with the decision of the Constitution Bench in ***Roger Mathew v. South Indian Bank Limited [Civil Appeal No. 8588 of 2019, (dated November 13, 2019)]***
- Stated that, to ensure that the Tribunals should not function as another department under the control of the executive, repeated directions have been issued which have gone unheeded forcing the Petitioner to approach the Court time and again. It is high time that the Court put an end to such practice as rules framed are completely contrary to the directions issued by the Court. Further, to stop the dependence of the Tribunals on their parent Departments for routing their requirements and to ensure speedy administrative decision making. As an interregnum measure, directed constitution of a separate 'Tribunals Wing' under the Ministry of Finance, to take up, deal with and finalize requirements of all the Tribunals till the National Tribunals Commission is established.
- Observed that, it is crucial that Tribunals are run by a robust mix of experts. The functioning or non-functioning of any of these tribunals due to lack of competence or understanding has a direct adverse impact on those who expect effective and swift justice from them. These Tribunals do not function in isolation but are a part of the larger scheme of justice dispensation envisioned by the Constitution and have to function independently, and effectively, to live up to their mandate.
- Held that, the Union of India shall constitute a National Tribunals Commission which shall act as an independent body to supervise the appointments and functioning of Tribunals, as well as to conduct disciplinary proceedings against members of Tribunals and to take care of administrative and infrastructural needs of the Tribunals, in an appropriate manner.

Search-cum-Selection Committees

- The composition of Search-cum-Selection Committees provided for in Column (4) of the Schedule to the Tribunal 2020 Rules will stand changed and it will now comprise the following members:
 - a) The Chief Justice of India or his nominee—Chairperson (with a casting vote).

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- b) The outgoing Chairman or Chairperson or President of the Tribunal in case of appointment of the Chairman or Chairperson or President of the Tribunal (or) the sitting Chairman or Chairperson or President of the Tribunal in case of appointment of other members of the Tribunal (or) a retired Judge of the Hon'ble Supreme Court of India or a retired Chief Justice of Hon'ble High Court in case the Chairman or Chairperson or President of the Tribunal is not a Judicial member or if the Chairman or Chairperson or President of the Tribunal is seeking re-appointment—member;
 - c) Secretary to the Ministry of Law and Justice, Government of India—member;
 - d) Secretary to the Government of India from a department other than the parent or sponsoring department, nominated by the Cabinet Secretary—member;
 - e) Secretary to the sponsoring or parent Ministry or Department—Member Secretary/Convener (without a vote).
- Rule 4(2) of the Tribunal 2020 Rules shall be amended to provide that the Search-cum-Selection Committee shall recommend the name of one person for appointment to each post instead of a panel of two or three persons for appointment to each post. Another name may be recommended to be included in the waiting list.
 - With respect to matters of disciplinary action, the recommendations made by Search and Selection committee shall be final.

Term of Office

- Opines that the term of 4 years as envisaged in Rule 9(1) and (2) of the Tribunal 2020 Rules has "*No rationale except that four years is more than three years prescribed in the 2017 Rules*". Thus, directs the modification of the tenure in Rules 9(1) and 9(2) of the Tribunal 2020 Rules as five years in respect of Chairman or Chairperson, Vice Chairman or Vice-Chairperson and the members.
- Accepts Amicus Curiae's submission that under the Tribunal 2020 Rules, the Vice Chairman, Vice-Chairperson or Vice-President or members in almost all the

Tribunals will have only a short tenure of less than three years if the maximum age is 65 years.

- Accordingly, directs the Government to amend Rule 9 (1) of the Tribunal 2020 Rules by making the term of Chairman, Chairperson or President as five years or till they attain 70 years, whichever is earlier and other members dealt with in Rule 9(2) as five years or till they attain 67 years, whichever is earlier.

House Rent Allowance

- States that the Union of India shall make serious efforts to provide suitable housing to the Chairman or Chairperson or President and other members of the Tribunals.
- Directs that if providing housing is not possible, the central government shall increase the house rent allowance from Rs.75,000/- to Rs. 1,25,000/- for members of the tribunal and to Rs. 1,50,000/- for President & Vice-President w.e.f. January 1, 2021

Advocates as Judicial Members

- The Tribunal 2020 Rules shall be amended to make advocates with an experience of at least 10 years eligible for appointment as judicial members in the Tribunals. While considering advocates for appointment as judicial members in the Tribunals, the Search-cum-Selection Committee shall take into account the experience of the Advocate at the bar and their specialization in the relevant branches of law. They shall be entitled for reappointment for at least one term by giving preference to the service rendered by them for the Tribunals.

Eligibility of Members of Indian Legal Service

- Allowed appointment of member of Indian Legal Service as judicial members of the tribunals. Opines, *"wherever legal expertise in the particular domain is implicated, it would be natural that advocates with experience in the same, or ancillary field would provide the "catchment" for consideration for membership. This is also the case with selection of technical members, who would have expertise in the scientific or technical, or wherever required, policy background."*

- SC differs from its prior ruling in ***Union of India v. Madras Bar Association [(2007) 76 SCL 350 SC]*** as it did consider the experience of members of Indian Legal Service at the bar and the Indian Legal Service was considered along with the other civil services for the purpose of holding that the members of Indian Legal Service are entitled to be appointed only as technical members.

Time limit for appointment

- Appointments to tribunals shall be made within 3 months from the date on which the Search-cum-Selection Committee completes the selection process and recommendations are made by the search committee.

Application of Tribunal 2020 Rules

- The Tribunal 2020 Rules shall have prospective effect and will be applicable only from February 12, 2020.
- Appointments made prior to 2017 Rules and appointments made during pendency of **Roger Mathew judgment** shall be governed by respective statutes.
- Appointments made under the Tribunal 2020 Rules till the date of this judgment, shall not be considered invalid, insofar as they conformed to the recommendations of the Search-cum-Selection Committees in terms of the Tribunal 2020 Rules. Such appointments are upheld and shall not be called into question on the ground that the Search-cum-Selection Committees which recommended the appointment of Chairman, Chairperson, President or other members were in terms of the Tribunal 2020 Rules, as they stood before the modifications directed in this judgment.
- Chairpersons, Vice-Chairpersons and members of tribunals appointed prior to February 12, 2020 shall be governed by parent statute and rules as per which they were appointed.
- When reserving the matter for judgment, the Supreme Court had extended the tenures of chairpersons, vice-chairpersons and members of tribunals till December 31, 2020. In view of the final judgment, the retirements of chairpersons, vice-chairpersons and members of tribunals shall be in accordance with the applicable rules.

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