Page 2202 - 2217 **DOI:** *https://doij.org/10.10000/IJLMH.112169*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 5

2021

Decodifying Legislatures Intent on Abolition of Tribunals

BAISAKHI PRIYADARSHINI[1] AND PRABHUDUTTA MISHRA[2]

ABSTRACT

"Every human tribunal ought to take care to administer justice, as we look hereafter to have justice administered to ourselves"

- ***Thomas Erskine***[3]

Our Indian legal system is encountering with a lot of backlog of cases. On the month of July, while addressing a keynote, Hon'ble CJI NV Ramana, at the India-Singapore Mediation Summit, quoted that there are approximately 45 million cases pending in the Indian courts. It has been increased more due to Covid-19-induced lockdowns and restrictions and also for the vacancies of the Judges from the lower courts to higher courts. We have come across a very common maxim called "Justice delayed is justice denied". For the sake of putting forward fast justice and for relieving the burden of judiciary, "Tribunals" has been set up. It is an administrative body formed for motive of discharging quasi-judicial duties. The tribunals are not actually courts but they are directed by the principles of Natural Justice. u/a 32, 136, 226 and 227 of the Constitution of India, the "Administrative Tribunals" has been constitutionally recognized. Recently after the passing of the Tribunal Reforms Bill, 2021, the legislature has abolished nine appellate Tribunals which has been consequence into conflict between the legislature and the judiciary on the abolition of tribunals. Various renowned persons and Judges of other High courts are against abolition of Tribunals, because in their perspective, abolition of tribunals will take away the boon that was gifted to the Judiciary and ultimately confining them with the cases only. The authors hereby aim to proceed this research in 3 parts, firstly to examine the validity and constitutionality of the Tribunals Act. Secondly, to discuss about the positive aspects of tribunalisation in India. And lastly, to deliberate the views of the legislature and judiciary on the abolition of tribunals.

Keywords- *Administrative Tribunal act 1985, Quasi-judicial, Judicial review, Service Matters of the Constitution.*

[1] Author is a student at KIIT School of Law, Bhubaneswar, India.
[2] Author is a student at KIIT School of Law, Bhubaneswar, India.
[3] Thomas Erskine was a Scottish jurist and historian well known for his contributions to British law, his spirited defense of American patriot Thomas Paine & his support for the French Revolution.

 [ISSN 2581-5369]

I. INTRODUCTION

Tribunals were introduced in 1985, as a part of the Indian constitution. Tribunal are generally those executive bodies, which perform judicial functions, their primary functions being adjudication of justice. It was difficult on part of the Judiciary to cover each and every sphere to render Justice. So, in order in fill the empty spaces, that the Judiciary was not able to cover, the formation of Tribunals took place. Tribunals were created with some premediated objectives that is to give speedy disposal of cases, and giving justice at a nominal amount of expenditure.

(A) History of Tribunalisation

Over the years Judiciary has maintained equilibrium between the over encroaching competency of the Executive & pre-eminence of the Legislature. Judiciary was able for controlling both these organs because of the nature of power vested on it and as the powers flows to it from the Constitution itself. Until 1993 there was a constant conflict between the Executive and the Legislature as to who will have the extensive control over the Judiciary. The Supreme Court in many of its Judgements had affirmed that Judiciary is an independent body as it draws its power from the grund norm that is the constitution.

Until the formation of collegium, it was the President who use to appoint the Chief Justice of India (CJI) and other Judges to the Supreme Court, with the consultation of the CJI[4]. But clearly the President had his say and thus giving an upper hand to the Executive to control the Judiciary. Subsequently with evolution of collegium system and the independence of Judiciary conferred much power upon the Judiciary so as to control the other two pillars of democracy. Now the Judiciary had power to render the arbitrary acts of executive as ultra-vires and if the Legislature promulgated any law which was violative to the constitution it could declare it as unconstitutional.

As we know that with great power comes great responsibility, it was evident that Judiciary had to act now in a more detailed manner so that its decisions would be effective to the roots of the democracy. So, there was evolution of Tribunal courts in India. The idea came up as early as 1941, the first ever Administrative tribunal was instituted in embodiment of Income Tax Appellate Tribunal, it was set up by the then British government[5]. The situation for Supreme courts and the High courts had become more burdensome and in order to relieve them the Tribunals were setup by the Law commission which composed of bot Administrative and

[4] Krishnadas Rajagopal, *why is the collegium of Supreme Court judges in the spotlight*, TH, September 15, 2019.
[5] 1 M.P. JAIN, PRINCIPLES OF ADMINISTRATIVE LAW, 246-248 (7th ed. 2013).

 [ISSN 2581-5369]

Judicial members, who would deal with purely service matter related litigations. It was done with the objective of giving more time to the Judiciary to deal with the Civil and Criminal matters and the Administrative authorities who have expertise in that area and are sufficiently acquainted with the technicalities of that subject in service related matters so they will help in addressing the grievances of the aggrieved individuals. Administrative Tribunals could proceed easily and could give speedy reliefs because they were not bound by procedures that the ordinary courts had to follow but they were to be bound by the Principles of Natural Justice. This safeguard was necessary for insulating the interests of either parties and allow them the basic rights they have that is the opportunity to be heard.

(B) Salient features of Administrative Tribunals

- As a general rule, the Administrative Tribunals are the procreation of statues or statutory origin & they have specific powers and limited functions.
- Tribunals do not adhere to the strict rules of procedure and evidence that the courts have to follow but they are bound by principles of Natural Justice.

These features of Administrative Tribunals have subsequently helped the Law Commission to achieve the objective it had set and has helped to ease the process of adjudication. The Administrative Tribunals have aided not only in speedy trials but has gathered the trust of the people, earlier the people who used to avoid adjudication at courts, have opted for Tribunals because the process is not cumbersome and stringent.

Unlike ordinary courts, tribunals are inexpensive and generally the people are happy with the decisions of Tribunals this has been validated by the fact that there has been a subsequent decrease of appeals from the decisions of Quasi-Judicial bodies. By the 42nd amendment of the constitution, administrative tribunals came into existence by the introduction of Art- 323A & 323B in the Indian Constitution.

(C) Distinguishing features between Courts and Tribunals

- *Palais de Justice* (a French expression, means ‘Palace of justice’ or ‘a court of law’) is a part of the Judiciary and draws its power and validity from the Constitution itself. Whereas an Administrative body is generally created under a statute and it will have no existence if the statute is struck down.
- The courts can decide every matter and can give their verdict using judicial powers, on the other hand Tribunals are constituted for a particular purpose and they can deal only with those matters that the statute empowers them. Thus these quasi-judicial authorities are restricted and confined to the statute.

 [ISSN 2581-5369]

- The Judges or the presiding officer of the court are well equipped with judicial knowledge, the legal framework and the law of the land, but these Administrative bodies exercising judicial function are well versed with the executive functions and in implementation of law.
- The Judiciary is conferred with enormous power as compared to these quasi-judicial authorities as Judiciary has the freedom to interpret the laws and has the power to give decisions that can nullify the legal framework by declaring it unconstitutional but these quasi-judicial bodies are vested only with that amount of power, which the statute empowers them.
- Courts can deal with any nature of the offences, whether civil or criminal, whereas tribunals cannot deal with grave offences, they generally deal with offences related tax evasion or laws related to licensing or the offences which they are empowered to try under the statute.
- In Judicial proceedings, the Judges and the lawyers are bound by certain procedures that they have to follow, which are laid down in the Criminal Procedure Code for criminal proceedings and Civil Procedure Code for civil proceedings.

(D) Types Of Administrative Tribunals

Following given below are the various kinds of administrative tribunals regulated by rules, regulations & statutes of the Central and State Governments both: -

1. **Central Administrative Tribunal (CAT)-** The CAT mediates controversies with regard to the conditions & recruitment related to public services and posts and this was established by the 42nd constitutional amendment act. There was a ruling by the HC of Delhi that same jurisdiction and powers as a High Court can be exercised by the CAT vis-à-vis its contempt proceedings. But latterly CAT has condemned to the order of the High court of Delhi by stating that they are having their original jurisdiction with regards to the conditions and services of persons. The CAT is dominating more with the passage of time and as an independent judicial authority, it is discharging its duties. For this reason, it is even acknowledged by the Judiciary.
2. **Income Tax Appellate Tribunal (ITAT)-** The Central Govt. under the Income Tax Act, 1961, had set up the ITAT which is actually a quasi-judicial body. According to S. 252 of the Income Tax act, 1961, each bench shall consist of an accountant member and a judicial member and they have been conferred powers and functions by this act.

 [ISSN 2581-5369]

3. **Election Commission (EC)-** The EC of India is indeed a mammoth for which democracy plays most vital role in our country. It came into existence in the year 1950. Its adjudicates the matter related to granting of election ideogram to political parties. Most importantly, in the Supreme Court, we can challenge the decisions of this commission.
4. **Foreign Exchange Regulation Appellate Board (FERAB)-** This act was enacted to keep an eye on companies controlled by foreign, in India, in 1947. Then it was amended in the year 1973. The initiation of this FERAB took place under the Foreign Exchange Regulation Act, 1973. The main purpose of this act is to check upon certain payments, to control the import and export of currency, to keep an eye on the dealings in foreign exchange and securities, and lastly to sustain precious foreign exchange. A person can file an appeal who is dissatisfied with the order of adjudication.
5. **Industrial Tribunal-** This tribunal was set up under the Industrial Disputes Act, 1947. The Central & State governments has powers to constitute it. It mostly sorts out industrial disputes.
6. **Customs and Excise Revenue Appellate Tribunal (CERAT)-** This was enacted in 1986 by the Government. It delegates its function as of a High court.
7. **Claims Tribunal-** The Parliament of India passed an act which maintains all the aspects of road transport vehicles. It's the Motor Vehicles Act which came into force in 1989. This act gave rise to a new forum called motor accidents claims tribunals. Such tribunals have wide powers for recording evidence and giving justice to party.

II. VALIDITY AND CONSTITUTIONALITY OF TRIBUNALS – ARTICLE 323-A & 323-B

(A) Jurisdiction of tribunals in service matters

With regard to the service matters, various administrative tribunals have been conferred with the powers & authority. It is also vested with jurisdiction. Earlier, any suits related to any kind of civil rights carried off by the civil courts[6], before the existence of administrative tribunals. The civil courts are now being forbidden by the Administrative Tribunal Act 1985[7]. Moreover, a provision was existing under Article-136 of the Indian Constitution[8], i.e., except the Supreme Court, all the other courts were precluded.

Further, in the case of ***Sampath Kumar v. Union of India***[9]**,** this said provision was amended.

[6] Code of Civil Procedure, 1908, No. 5, Acts of Parliament, 1908.
[7] The Administrative Tribunal Act, 1985, No. 13, Acts of Parliament, 1985.
[8] The Administrative Tribunal (Amendment) Act, 1986, No. 13, Acts of Parliament, 1986.
[9] Sampath Kumar v. Union of India, A.I.R. 1987 S.C. 386 (India).

 [ISSN 2581-5369]

Then the expression of "no court except" was added. The exception includes the Supreme court, Labour court, any industrial tribunals, etc.

As a matter of fact, the administrative tribunals remained obsolete since a long time. But, in order to decrease the burden of pending cases of service litigation and to relieve the courts, it was recommended by the Law Commission of India to establish such tribunals comprising of administrative and judicial authorities to decide such matters related to service and all.

Under the articles 323A & 323B, the Indian Constitution has given power to the Parliament for establishment of Tribunals and also to decide upon their powers and functions.

According to article 323A of the Indian Constitution, the parliament has been vested with powers to form administrative tribunals. The said provision will mediate complaints and disputes arisen vis-à-vis conditions & recruitment of service of individuals who are in the posts concerning the affairs of the Union & also the states. Basically, those who are appointed for community service, etc. Under Article 226 & 227 of our Constitution, the tribunals were subjected to Judicial review[10] by the high courts, prior to the enactment of Article 323A of our Constitution. The Code of civil procedure cannot be binding upon them. Because those tribunals only follow the principles of natural justice where they would be no biasness and inequity. The Hon'ble President of India will appoint the Chairman & Vice-chairman directly from administrative & judiciary services.

Following are the 3 kinds of Tribunals-

1. Central Administrative Tribunal (CAT) – For Services under Central Government.
2. State Administrative Tribunal (SAT) – For Services under State Government.
3. Joint Administrative Tribunal (JAT) – Tribunals for two States.

As per article 323B of the Indian constitution, the Parliament and the state legislatures both have the power to form tribunals. It has been set up for solving the issues related to any taxation matters such as assessment, collection, levy etc. It can also hear the cases concerning about elections of Central/State legislatures houses.

Under article 136 of our Constitution, except the Supreme Court[11], the Central Administrative Tribunal can delegate all the jurisdiction, power and authority rehearsed by every courts. However, the Act isn't applicable to any armed forces members, the SC & HC's officers & servants, Secretarial Staff of the Lok Sabha, Rajya Sabha, Vidhan sabha and is also not

[10] Sanjay Gupta & Smriti Sharma, *Judicial Analysis of the Powers and Functions of the Administrative Tribunals*, 3 CULJ 83, 86-92 (2014).
[11] The Administrative Tribunal Act, 1985, No. 13, Acts of Parliament, 1985.

 [ISSN 2581-5369]

applicable to Central Industrial Security Force, etc.

(B) Superintendence of High Courts over Tribunals

The jurisdiction of the High Court over tribunals has been impeded by under Article- 226 & 227 of the Indian Constitution. We cannot assume that judicial review rights are not given to the civil servants by turning out the High court's jurisdiction after the administrative tribunal is established. The eviction of jurisdiction of the HC made u/a 226 & 227 and the remedy bestowed in the SC u/a 136 of the Indian Constitution will lead to the issue of increasing pending cases and delivering of justice lately. That's why, administrative tribunals have been established in order to get rid of the above problems. The court held in the *L Chandra Shekhar's*[12] case, the judiciary should control the tribunals, otherwise called as quasi-judicial bodies. The High court must be given the power to administer it. To emphasize the rule of law and independence of Judicial power, Article-226 of constitution of India is needed for judicial review[13].

III. JC SHAH COMMITTEE

In 1958, the Law Commission of India endorsed the formation of appellate Tribunals at the Centre and States as well. It was mentioned in the 14th announcement on reform of Judicial Administration. Afterwards, in 1974, it puts up the Tribunal or Commission should be established for dealing service matters. It was raised in its 58th report on Structure & Jurisdiction of the higher judiciary. In 1969, the committee was set up under the Chairpersonship of Justice J. C. Shah, which proposed to establish an individualistic tribunal for handling service matters.

Soon after, the endorsement was made in 1976 by the Swaran Singh Committee which stated that the administrative tribunal is to be established at the State & the Centre level as well to adjudicate the service matters. After the 42nd Amendment, 1976, the Indian Constitution added article 323A and 323B under part XIV-A[14]. It was designated as 'Tribunals'. Article 323A talks about formation of administrative tribunals and article 323B about tribunals for other matters.

The main intention of establishing such tribunals is-

- Reduction of arrearage

[12] L Chandra Shekhar vs Union of India, AIR 1997 SC 1125 (India).
[13] *Supra note* 9 at p.6
[14] DIGANTH RAJ SEHGAL, *L. CHANDRA KUMAR V. UNION OF INDIA : A RE-EXAMINATION*, IPLEADERS BLOG (SEPT. 28, 2021, 10:36 AM), HTTPS://BLOG.IPLEADERS.IN/L-CHANDRA-KUMAR-V-UNION-INDIA-RE-EXAMINATION/ .

 [ISSN 2581-5369]

- Achieve speedy disposal of cases related to revenue & service matters as well.

After the Administrative Tribunals Act, 1985 was enforced, multiplicity of pending service matters was brought under the hegemony of the Tribunals.

IV. THE ADMINISTRATIVE TRIBUNALS ACT

In 1985, the Administrative Tribunal Act was passed after so many years of the Constitutional amendment 1976. This act declares that a Central & State Administrative Tribunal in every state or 2 or more states must be there. Here is the brief of the sections mentioned in the act.

1. Section-2 talks about the applicability of this act which would be applied to every Government employee such as Members of air force, armed or naval of the country, officers and servants of the HC, and members appointed to a secretariat staff.
2. Section-4 specifies that a tribunal may be established by giving a notification by the central government. After taking approval from the central government, administrative tribunal can also be formed by the State Government. And with the consent of the Govt. 2 or more states can set up as joint administrative tribunals.
3. Section-5 set out the tribunal's composition. It shall comprise of administrative or judicial members & a chairperson.
4. Section-6 talks about the qualifications for chairman, Vice Chairman, and other members. The Chairman must have been a High Court's judge or Vice-chairman for above 5 years. He must be a Secretary or additional posts having similar income as a secretary. The Vice-Chairman must have been the High Court's Judge for more than 2years or secretary for above 2years or Additional secretary for more than 5 years. And the rest members like an administrative and a judicial member. To be eligible for an administrative member, in centre level, he/she must be in the post of Secretary for more than two years or any post similar to that. And in State level, he/she must be an additional secretary for more than 2 years and also joint secretary for more than 5 years. To be eligible for a judicial member, he must be a High Court's judge for more than 2 years and also he/she must be a secretary at the legal affairs dept.
5. Section-9 talks about the powers of the President to remove the chairperson from the office for the reason of misbehaviour and impotency.
6. Section-14 throws highlight upon Jurisdiction, powers and authority of the Central Administrative Tribunal.
7. Section-15 talks about the Jurisdiction, powers and authority of State Administrative Tribunals.

 [ISSN 2581-5369]

8. Section-16 states about authority, jurisdiction and powers of a Joint Administrative Tribunal.
9. Section-21 specifies about the limitations of the administrative tribunal. The application must be made within 1 year. After the expiration of period, it might be accepted if there is adequate reason for not filing the case within 3 years.
10. Section-22 talks about procedure and powers of Tribunals- The administrative tribunal is not obligated by the code of civil procedure. They have their own discretion to determine their methods for speedy disposal of cases.

V. How Tribunalisation helps in the functioning or operating of Administrative bodies

To subjugate the paramount gap in the judicial system, the administrative tribunals has been established. Taking note of the legal maxim ***Lex dilationes semper exhorret*** which means 'The law always abhors delays'[15]. Under Article 32, 136, 226 and 227 of the Indian Constitution, it has been constitutionally recognized. The powers and functions conferred on this tribunal are not exclusively administrative in nature, are only quasi-judicial. Central Administrative Tribunal, Claims Tribunal, Election Commission, Foreign Exchange Regulation Appellate Board, Industrial Tribunal, ITAT, Customs and Excise Revenue Appellate Tribunal, etc., are various types of Administrative tribunals[16].

Since, it is neither an administrative department of the Government nor an executive body, so quasi- judicial functions to any other authorities cannot be delegated by it. Even they are locked up by the Natural Justice principles, that's why it is certain to operate judicially. The documentation of facts, application of legal principles & at last giving the decisions is must for this tribunal. It is almost identical to a court in many facets because the courts and tribunals are initiated and infused with judicial powers by the State itself. The existence of such tribunals is permanent. Therefore, they are termed as adjudicating bodies because they handle and then solve the disputes between parties. "They are 'administrative' only because they are part of an administrative scheme for which a Minister is responsible to Parliament, and because the reasons for preferring them to the ordinary courts are administrative reasons."[17]

There is no proper or relevant definition of "Tribunal" given anywhere, but still somehow by referring specific cases, we can understand its meaning and the limitation to its powers.

---

[15] K. I. Vibhute, *Administrative Tribunals and the High Courts: A Plea for Judicial Review*, 29 JILI 524 (1987).
[16] Rachit Garg, *Conclusive research on the administrative tribunal*, IPLEADERS BLOG (Sept. 29, 5:45PM), https://blog.ipleaders.in/conclusive-research-administrative-tribunal/ .
[17] WADE & FORSYTH, ADMINISTRATIVE LAW 910-11(9th ed. 2005).

 [ISSN 2581-5369]

(A) Related Cases

#1 Sambamurthy vs State of Andhra Pradesh[18]**-** In this case, the constitutionality of Article 371D was challenged in the court the claim was that the article is unconstitutional on the ground that it gave the power to the state government to modify the order of the administrative tribunal. The Court held that the Administrative Tribunal as a substitute of the High Court held the law unconstitutional and was thus struck down.

#2 S.P. Sampath Kumar vs Union of India[19]**-** This case opened the way for Administrative Tribunals, although in this case, the constitutional validity of the Administrative Tribunal Act, 1085 was challenged on the ground that it gave more control to the executive and subsequently curtailing the Judicial Independence but The five-judge bench of the Supreme Court gave green signal to this act by violating many of the established Judicial precedents and held the act to be valid because there were many cases pending in the High court and in order to relieve certain burden and as Tribunals became the need of the hour. It was to be established at the cost of Judicial Review. Justice Bhagwati reiterated that through the establishment of Tribunals the Supreme Court's power to review under Art 32 but what is being taken away is the High Court's power to Judicially Review. It was also stated that this move was taken in order to choose worthy successors of the High Court

#3 L Chandra Shekhar vs Union of India[20]**-** In this case again the validity of both the Articles were challenged and it was challenged that the High Court's power to Judicially review being curtailed affects the basic structure of the constitution, this led to the formation of a seven Judge bench of the Supreme court and the court in this case rejected the contention of the Supreme Court's earlier bench and reaffirmed that as the power to the High court flows from the constitution itself, the salary, the tenure of the members of the High court is given in the constitution itself so the Tribunal can never be at par the High court because its members are appointed by the selection committee and not the Constitution. So the Seven Judge bench's ruling had an overriding effect over the Sampath Kumar's Judgement case and the Judges reaffirmed that the tribunals will only "Supplement" the High court and through this Judgement the High court's power under Article 226 was re levied on them.

#4 Union of India vs R Gandhi[21] **-** After the Parliament had established the National Company Law Tribunal and the National Company Law Appellate Tribunal, the constitutionality of

[18] Sambamurthy vs State of Andhra Pradesh, AIR 1987 SC 663 (India).
[19] S.P. Sampath Kumar v. Union of India, (1987) 1 SCC 124 (India).
[20] L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 (India).
[21] Union of India v. R. Gandhi, President, Madras Bar Association, (2010) 11 SCC 1 (India).

 [ISSN 2581-5369]

NCLT and NCLAT was challenged in the Supreme Court on the ground that it eventually transferred the jurisdiction of cases from the High Court to the tribunals as it violated the doctrine of separation of powers and the constitutionality of Art 323-A was challenged. The Court held that Parliament had the power to set up tribunals and that power flowed from the constitution as Article 323-A and 323-B were enumerated in part 14-A of the constitution and the creation of tribunals did not violate the principle of rule of law, separation of power. It instead reduced the burden of the courts. But they were violative to the extent of the appointment of members to the Tribunal as through appointment and determining qualifications the executive tried to interfere and encroached upon the independence of Judiciary the Supreme court had mandated that there should be a balance between the executive and Judicial members of the Tribunal. The Supreme court gave order that as a whole the NCLT and NCLAT were not unconstitutional but up to the extent of executive interference they were. So, by following the reform as ordered by the Supreme Court, they can be established and Article 323-A and 323-B were never unconstitutional but the setting up of committees for appointment of members to the Tribunals were unconstitutional as they clearly violated Supreme Court's order to maintain a balance between executive and Judicial members in the committee. The Supreme court in this case clearly stated that the Independence of judiciary cannot be neglected at any cost.

#5 Durga Shankar Mehta vs. Raghuraj Singh[22]- The Supreme Court in this case gave a wider definition to the tribunal and defined it as: The expression 'tribunal' as given in the Article 136 does not mean the same thing as ordinary courts but also includes, within it, all adjudicating bodies, provided they are established by the central and the state government and are vested with the judicial powers as distinguished from the administrative or executive functions.

#6 Jaswant Sugar Mills Ltd vs Lakhsmi Chand[23]- In this case it was restated that the basic test to determine tribunal was to see, whether it comes within the meaning of Article 136 and 227 of the constitution. It is also an adjudicating authority, which is also vested with the judicial power by the State under an enabling statute.

#7 Dhulabhai v. State of Madhya Pradesh[24]- It was decided in this case that the constitutionality of the Acts as laid down by the legislature can be decided by ordinary courts, while an administrative tribunal cannot do so as they only deal with question of facts and not question of law.

[22] Durga Shankar Mehta v. Thakur Raghuraj Singh, A.I.R. 1954 S.C. 520 (India).
[23] Jaswant Sugar Mills Ltd., Meerut v. Lakshmi Chand, A.I.R. 1963 S.C. 677 (India).
[24] **Dhulabhai v. State of M.P., AIR 1969 SC 78 (India).**

 [ISSN 2581-5369]

***#8 State of Orissa v. Bhagawan Sarangi*[25]-** In this case the supreme court reaffirmed the said principle that all the Tribunals can be Judicially reviewed by the High court and held that the Orissa state Administrative Tribunal was bound by the decision of the High court.

VI. ABOLITION OF TRIBUNALS

(A) Legislature's view on Abolition of Tribunals

The Legislature with the objective to abolish 9 appellate Tribunals such as the control of National Highways Act, 2002, The Customs Act, 1962, The Trademark Act, 1999, The Airports Authority of India Act, 1994, The Cinematograph Act, 1952, and The Geographical Indication of Goods Act, 1999. In order to eradicate these acts, they came up with the Tribunal Reforms Bill, 2021.

Legislature's contention on behalf of this move was that the individuals who differ from the decisions of these Administrative Tribunals can directly prefer appeal to the High Court or Commercial court. These appellate Administrative Tribunals not only add an additional layer to the process of litigation but also cause a sufficient amount of delay to the remedy seeker. It is clear that Legislature does not want to add more and more layers to screen out the cases when it comes to the High court but it wants the mechanism to be such that it does not contribute to the age old process of delaying justice, rather it aims to become more friendly with the litigants.

Even it would address the shortage of administrative authorities at other Tribunals where there is a need. By abolition of these Tribunals, Legislature focuses to streamline the mechanism and to confer on the High Court these powers of appellate bodies so that they have the jurisdiction to try these cases, furthermore by doing so it wants to end the cumbersome procedure.

(B) Legislature's Approach

On March 2017, the Parliament passed the Finance Act with the intent to streamline the mechanism of Tribunals so as to minimise the number of Tribunals to 19. Through the Finance Act, the Central Government could now frame rules and set up a committee, who would recommend the Salary of the members appointed, what process shall be complied for their appointment, their term period allowances.

In 2019, the Union Minister MP Jairam Ramesh filed a petition questioning the constitutionality of the rules formed by the Central Government, the Constitutional bench of the Supreme Court headed by Chief Justice of India, Mr. Ranjan Gogoi struck down those rules as they quashed with the Preamble of the Parent Act (Finance Act) and ordered to amend the

[25] State of Orissa v. Bhagawan Sarangi, (1995) 1 SCC 399 (India).

 [ISSN 2581-5369]

Finance Act. The Legislature made certain amendments to the Finance Act in the year 2021 as it was ordered earlier by the SC in the year 2019.

Certain provisions of the amended Finance Act were challenged again by the **Madras Bar Association** and subsequently the current Finance Minister Smt. Nirmala Sitaraman introduced the Tribunals Reforms Bill on 1st August 2021, which was passed in the Lok Sabha on 3rd August 2021.

(C) The Tribunals Reforms Bill 2021

Recently after the passing of the Tribunal Reforms Bill, 2021, the legislature has abolished nine appellate Tribunals which has been consequence into conflict between the legislature and the judiciary on the abolition of tribunals. This act transfers the functions of any specific appellate tribunals to High courts, etc. It also abolished some tribunals and also brought some variations in terms of services. The Tribunals Reforms (Rationalisation & Conditions of service) Ordinance was replaced by the Tribunals Reforms Act, 2021. The IPR Appellate Board, Airports Appellate Tribunal, Film Certification Appellate Tribunal, Plant Varieties Protection Appellate Tribunal, etc., are the types of tribunals which has been abolished by the current bill.

Regrettably, the Supreme court has contended this quickly passing of the bill. Because prior to the commencement of this bill, it was annulled in the case of ***Madras Bar Association v. UOI***[26] by the SC**,** a writ petition was filled challenging the constitutionality of the said amendment by the Bar Association of the Madras, in such a manner contending the legislature indeed disobeying independence of the judiciary & the doctrines of separation of powers. It was passed in the judgement that the Chairpersons, Vice-Chairpersons and the members of the Tribunal shall hold office for a term of five years, they shall be eligible for reappointment; and other members shall hold office till they attain the age of sixty-seven years. Not less than 10 years of experience is required in case of advocates to be appointed/ reappointed as judicial members. It is upon the discretion of the Search-cum-Selection Committee. Then, in April 2021, this former Ordinance was passed by the Indian Govt. after this judgment of the Hon'ble Supreme court. Again, the petitioners approached to the SC by contending that those provisions were violating the independence of judicial power and also the essence of the separation of powers. Also it is contravening the Art- 14, 21, and 50 of our Constitution. After hearing arguments, the Supreme Court ruled that the Chairperson shall hold the office for 5 years prior to his/her age turns 70. And the members shall hold the office for 5 years before they turn 67

[26] Madras Bar Assn. v. Union of India, (2014) 10 SCC 1 (India).

 [ISSN 2581-5369]

y/o. Further it held that the section 12 of the ordinance which talks about the eligibility criteria for appointments to the Tribunals as 50 years of age, is invalid. It recapitulated that advocates having 10 years of experience are eligible for appointment.

In our Indian judiciary, approximately beyond 3 crore cases are unsettled in different courts. And currently not less than 91000 cases are pending before the High court of different states. This Tribunal reform bill will lead to the difficult task that will cause a lot of work pressure on the Higher judiciary. In various precedents, the Hon'ble SC has highlighted the advantages and the need of separate tribunals to reduce the burden of pending cases.

(D) Grey areas of Tribunals Reforms Bill, 2021

Although the bill was introduced with the idea to discharge the Supreme court's orders, but still it suffered from the same lacunas.

a) The Legislature had earlier fixed the term period for which the members of the Tribunals would hold office was for 4 years. The Supreme court had earlier set aside this enactment of the legislature citing that it is contravening the framework of the Indian Constitution by infringing the Independence of Judiciary & the Doctrine of Separation of powers. The legislatures demand to control the Tribunal's members indirectly through fixing their tenures. Hence, it is proved that this bill is purely violating the orders laid down back in 2019.
b) The second jolt that it suffered was, the Legislature had fixed the age limit for a member to be appointed as a Chairman as 50 and thus restricting younger individuals having merit from occupying that position. The Supreme Court was of the opinion that by fixing an age limit, equal opportunity was being curtailed from other members of the Tribunal, which is guaranteed as u/a 14 of the Indian Constitution.

(E) The view of Judges and renowned Lawyers on Abolition of Tribunals

Mr Manmohan Singh, the Delhi HC's preceding Judge & Intellectual Property Rights Tribunal's former Chairman, was of the opinion that taking down Tribunals such as the Intellectual Property Rights Tribunal will also adversely affect the International relations, as India is obligated by the TRIPs resemblance. It talks about the establishment of separate tribunals to solve the issues concerned with IPR laws.

It also had certain standards that the members qualified must be well - acquainted with the technicalities of the IP act and by abolishing the Tribunals and conferring their powers with the High court who are not well versed with the Intellectual Property Rights Act will have impact on decision making and ultimately affecting the parties.

 [ISSN 2581-5369]

Another Renowned Lawyer Abhisek Manu Singhvi, was of the same opinion that it will be cumbersome for the High court to deal with cases that involve technicalities, he also mentioned that almost 40 percent of the Judicial seats are vacant in the High court, and abolition of tribunal will not aid in any way, rather it will over burden the High Courts which are already occupied with so many important cases.

Various other renowned persons and Judges of other High courts are of the same view, they are against abolition of Tribunals, because the objective of setting up of Tribunal was to somehow shift the weight from the Judiciary so that it can give more focus and attention to the cases that actually require Judicial attention but Abolition of tribunal will take away the boon that was gifted to the Judiciary and ultimately confining them with the cases only.

VII. CONCLUSION

The formation of Tribunals took place in order to lessen the pressure and burden upon the Judiciary and to make them a free body so that they can give judicial decisions with ease. Tribunals were established to give speedy and fair decisions that would favour both the parties their adjudication process is such that the decision would be beneficial to both the parties, as they were not bound by the procedures that the ordinary courts have to follow. Even it came up as solution to another problem, as in most of the cases the government was one of the parties, as remedy could not be given in due time, it piled up as arrears on the governmental bodies which became a subsequent burden on the governmental funds. But eventually in practical field the ideology for its creation dried up as the Tribunals could not render speedy and economic justice to the aggrieved people, which was its main objective, subsequently it became a burden on the governmental funds and the members of the Tribunal who have great work experience and are well acquainted with the technicalities have become less efficient with the course of time. More over the dream to establish an independent and autonomous body without any outside interference, could not gather much pace as it seems that there has been frequent executive interference, which has been many a times ordered by the Judiciary for a restructure. Judiciary with the aim to maintain Independence of Judiciary has many a times ordered for the restructuring of committees appointing members to the Tribunals, so as to maintain a balance between executive interference and independence of the Judiciary. But all goes in vain as the Executive does not pay enough heed to orders of Judiciary and again and again comes up with similar defects in the bills. The government's decision to scrap down certain tribunals is rightful to certain extent because keeping a body without any fruitful result will unnecessarily affect the financial stability of the government. Even for the

 [ISSN 2581-5369]

composition of a Tribunal a good amount of human resources need to be invested, if the government uses those resources in some other sphere they might yield better benefits. Although there are certain pros, but it comes with a drawback, it will be more burdensome for the High courts to deal with so many cases. So ultimately the government has arrived at the same problem that it had earlier before the creation of Tribunals. It will be interesting to see how the government tackles with the problem and how effective solution it can come up with in the upcoming years.

*****

 [ISSN 2581-5369]