[2010] 6 S.C.R. 957

MADRAS BAR ASSOCIATION

v.

UNION OF INDIA

(Transferred Case (Civil) No. 150 of 2006 etc.)

MAY 11, 2010

[K.G. BALAKRISHNAN, CJI., R.V. RAVEENDRAN, D.K. JAIN, P. SATHASIVAM AND J.M. PANCHAL, JJ.]

Constitution of India, 1950:

Article 323-B – Enabling appropriate Legislature to provide for adjudication or trial by Tribunals – Enactment of National Tax Tribunal Act, 2005 – Validity of – HELD: The petitions relating to validity of the NTT Act and the challenge to Article 323-B raises issues which did not arise in CA No. 3067/2004 and CA No. 3717/2005[1] *– Therefore, the instant cases cannot be disposed of in terms of the decision in the two civil appeals, but require to be heard separately – These matters are, therefore, directed to be de-linked and listed separately for hearing – National Tax Tribunal Act, 2005 – Validity of.*

CIVIL ORIGINAL JURISDICTION : Transfered Case (C) No. 150 of 2006.

Under Article 139 of the Constitution of India.

WITH

T.C. (C) No. 116, 117 & 118 of 2006,

W.P. (C) No. 697 of 2007.

Parag P. Tripathy, ASG, Arvind P. Datar, Ananth Padmanabhan, Nikhil Nayyar, TVS Raghavendra Sreyas, Ambuj Agrawal, Suchindran B.N., E.C. Vidya Sagar, Amey

1. *Union of India vs. R. Gandhi* (2010) 6 SCR 857.

A Nargolkar, Arti Gupta, Vismai Rao, Gaurav Agarwal, Kunal Bahri, Varun Sarin, Anubha Agarwal, Sushma Suri, Navin Prakash (for P. Parmeswaran), Sanjeev Sachdeva, Saurabh Sharma, Preet Pal Singh, Parmanand Gaur, Gagan Gupta, Achin Gupta for the appearing parties.

B

The following order of the Court was delivered

ORDER

In all these petitions, the constitutional validity of the C National Tax Tribunal Act, 2005 ('Act' for short) is challenged. In TC No.150/2006, additionally there is a challenge to section 46 of the Constitution (Forty-second Amendment) Act, 1976 and Article 323B of Constitution of India. It is contended that section 46 of the Constitution (Forty-second Amendment) Act, D is ultra vires the basic structure of the Constitution as it enables proliferation of Tribunal system and makes serious inroads into the independence of the judiciary by providing a parallel system of administration of justice, in which the executive has retained extensive control over matters such as appointment, jurisdiction, E procedure etc. It is contended that Article 323B violates the basic structure of the Constitution as it completely takes away the jurisdiction of the High Courts and vests them in the National Tax Tribunal, including trial of offences and adjudication of pure questions of law, which have always been in the exclusive F domain of the judiciary.

2. When these matters came up on 9.1.2007 before a three Judge Bench, the challenge to various sections of the Act was noticed.

G (2.1) The first challenge was to section 13 which permitted "any person" duly authorized to appear before the National Tax Tribunal. Union of India submitted that the appropriate amendment will be made in the Act to ensure that only lawyers, Chartered Accountants and parties in person will be permitted H to appear before the National Tax Tribunal.

(2.2) The second challenge was to section 5(5) of the Act which provided that the Central Government may, in consultation with the Chairperson, transfers a Member from headquarters of one Bench in one State to the headquarters of another Bench in another State or to the headquarters of any other Bench within a State. Union of India submitted that having regard to the nature of the functions to be performed by the Tribunal and the constitutional scheme of separation of powers and independence of judiciary, the expression "consultation with the Chairperson" occurring in section 5(5) of the Act should be read and construed as "concurrence of the Chairperson". A B C

(2.3) The third challenge was to Section 7 which provided for a Selection Committee comprising of the Chief Justice of India or a Judge of the Supreme Court nominated by him, (b) Secretary in the Ministry of Law & Justice, and (c) Secretary in the Ministry of Finance. It was contended by the petitioners that two of the Members who are Secretaries to the Government forming the majority may override the opinion of the Chief Justice or his nominee which was improper. It was stated on behalf of the Union of India that there was no question of two Secretaries overriding the opinion of the Chief Justice of India or his nominee since primacy of the Chairperson was inbuilt in the system and this aspect will be duly clarified. D E

(2.4) In regard to certain other defects in the Act, pointed out by the petitioners, it was submitted that the Union Government will examine them and wherever necessary suitable amendments will be made. F

In view of these submissions, on 9.1.2007, this Court made an order reserving liberty to the Union Government to mention the matter for listing after the appropriate amendments were made in the Act. G

3. On 21.1.2009, when arguments in CA No. 3067 of 2004 and CA No. 3717/2005, which related to the challenge to Parts 1B and 1C of Companies Act, 1956 were in progress before H

A the Constitution Bench, it was submitted that these matters involved a similar issue and they could be tagged and disposed of in terms of the decision in those appeals. Therefore the Constitution Bench directed these cases to be listed with those appeals, even though there is no order of reference in these
B matters.

4. CA No. 3067 of 2004 and CA No. 3717 of 2005 were subsequently heard at length and were reserved for judgment. These matters which were tagged were also reserved for
C judgment.

5. We have disposed of CA No.3067/2004 and CA No. 3717/2005 today by a separate order. In so far as these cases are concerned, we find that TC (Civil) No. 150/2006 involves the challenge to Article 323B of the Constitution. The said
D Article enables appropriate legislatures to provide by law, for adjudication or trial by tribunals or any disputes, complaints, or offences with respect to all or any of the matters specified in clause (2) thereof. Sub-clause (i) of Clause 2 of Article 323B enables such tribunals to try offences against laws with respect
E to any of the matters specified in clauses (a) to (h) of clause (2) of the said Article.

6. One of the contentions urged in support of the challenge to Article 323B relate to the fact that Tribunals do not follow the normal rules of evidence contained in Evidence Act. In criminal
F trials, an accused is presumed to be innocent till proved guilty beyond reasonable doubt, and Evidence Act plays an important role, as appreciation of evidence and consequential findings of facts are crucial. The trial would require experience and expertise in criminal law, which means that the Judge or the
G adjudicator to be legally trained. Tribunals which follow their own summary procedure, are not bound by the strict rules of evidence and the members will not be legally trained. Therefore it may lead to convictions of persons on evidence which is not sufficient in probative value or on the basis of inadmissible
H evidence. It is submitted that it would thus be a retrograde step

for separation of executive from the judiciary. A

7. Appeals on issues on law are traditionally heard by courts. Article 323B enable constitution of Tribunals which will be hearing appeals on pure questions of law which is the function of courts. In L. *Chandra Kumar* v. *Union of India* (1997) 3 SCC 261, this court considered the validity of only Clause 3(d) of Article 323B but did not consider the validity of other provisions of Article 323B. B

8. The appeals relating to constitutional validity of National Company Law Tribunals under the Companies Act, 1956 did not involve the consideration of Article 323B. The constitutional issues raised in TC (Civil) No. 150/2006 were not touched as the power to establish Company Tribunals was not traceable to Article 323B but to several entries of Lists I and III of Seventh Schedule and consequently there was no challenge to this Article. C D

9. The basis of attack in regard to Part 1B and 1C of Companies Act and the provisions of NTT Act are completely different. The challenge to Part IB & IC of Companies Act, 1956 seeks to derive support from Article 323B by contending that Article 323B is a bar for constitution of any Tribunal in respect of matters not enumerated therein. On the other hand the challenge to NTT Act is based on the challenge to Article 323B itself. E F

10. We therefore find that these petitions relating to the validity of the NTT Act and the challenge to Article 323B raises issues which did not arise in the two civil appeals. Therefore these cases can not be disposed of in terms of the decision in the civil appeals but requires to be heard separately. We accordingly direct that these matters be delinked and listed separately for hearing. G

R.P. Transferred cases delinked and to be listed separately for hearing H