

ITEM NO.501

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition (Civil) No. 267/2012

MADRAS BAR ASSOCIATION

Petitioner

VERSUS

UNION OF INDIA & ORS.

Respondents

WITH

SLP(C) No. 15804/2017 (XI-A)

W.P.(C) No. 279/2017 (PIL-W)

W.P.(C) No. 558/2017 (PIL-W)

W.P.(C) No. 561/2017 (PIL-W)

W.P.(C) No. 625/2017 (X)

(FOR ADMISSION and IA No.66307/2017-EX-PARTE STAY)

W.P.(C) No. 640/2017 (X)

(I.A. No. 68312/2017 - STAY APPLICATION)

W.P.(C) No. 1016/2017 (PIL-W)

W.P.(C) No. 788/2017 (X)

W.P.(C) No. 925/2017 (PIL-W)

W.P.(C) No. 1098/2017 (PIL-W)

W.P.(C) No. 1129/2017 (PIL-W)

W.P.(C) No. 33/2018 (PIL-W)

W.P.(C) No. 205/2018 (X)

W.P.(C) No. 467/2018 (X)

(I.A. No. 22305/2019 - GRANT OF INTERIM RELIEF)

T.C.(C) No. 49/2018 (XVI-A)

T.C.(C) No. 51/2018 (XVI-A)

T.P.(C) No. 2199/2018 (XVI-A)

(FOR ADMISSION and IA No.171085/2018)

Date : 27-03-2019 This matter was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE N.V. RAMANA

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

HON'BLE MR. JUSTICE DEEPAK GUPTA

HON'BLE MR. JUSTICE SANJIV KHANNA

For Petitioner

Mr. Arvind P. Datar, Sr. Adv.
Mr. Nikhil Nayyar, AOR
Mr. Rahul Unnikrishnan, Adv.
Mr. N. Sai Vinod, Adv.
Mr. Dhananjay Baijal, Adv.
Mr. Divyanshu Rai, Adv.
Mr. Naveen Hegde, Adv.

Mr. Ashok Kumar Panda, Sr. Adv.
Mr. Tejaswi Kumar Pradhan, AOR
Mr. Satyabrata Panda, Adv.
Mr. Manoranjan Paikaray, Adv.
Mr. Aniruddha Purushotham, Adv.

Mr. Prem Lata Bansal, Sr. Adv.
Mr. Sanjay Sharma, Adv.
Mr. D.K. Gandhi, Adv.
Mr. Jagjit Singh Chhabra, AOR

Mr. Prem Lata Bansal, Sr. Adv.
Mr. Sanjay Sharma, Adv.
Mr. K. Krishna Kumar, AOR

Ms. Aishwarya Bhati, AOR
Ms. Vaidruti Mishra, Adv.
Mr. Biswabara Dash, Adv.
Mr. Damodar Solanki, Adv.

Mr. Jagdish Kumar Chawla, AOR
Mr. A. Kumar, Adv.

Mr. Anand Varma, AOR
Mr. Shwetank Singh, Adv.
Mr. Dhairya Madan, Adv.

Ms. Diksha Rai, AOR
Ms. Palak Mahajan, Adv.
Mr. Ishan Bisht, Adv.

Ms. Ruchira Goel, AOR
Mr. Asif Ahmed, Adv.
Mr. Kausal Sharma, Adv.
Mr. Vikhyat Oberoi, Adv.

Mrs. Maneesha Dhir, Adv.
Mr. Karan Batura, Adv.
Mr. Ashu Kansal, Adv.
Ms. Anushree Prashit Kapadia, AOR

Mr. A.K. Behera, Adv.
Mr. V.K. Verma, AOR

Mr. Priya Hingorani, Adv.
Mr. P.V. Sornonaraja, Adv.

Mr. Rupesh Kumar, AOR
Mr. Pravesh Bahuguna, Adv.
Ms. Hetvi Mota, Adv.

Mr. A. Subba Rao, Adv.
Mr. Sudipto Sircar, Adv.
Mr. Annam D.N. Rao, AOR
Mr. Annam Venkatesh, Adv.
Mr. Rahul Mishra, Adv.

Mr. Renjith B. Marar, Adv.
Ms. Lakshmi N. Kaimal, AOR
Mr. Krishnadas Villadath, Adv.

Mr. Muhammad Ali Khan, Adv.
Mr. Abhishek Jebraj, Adv.
Mr. Omar Hoda, Adv.
Mr. Namrah Nasir, Adv.
Mr. Nikhil Swami, AOR

Ms. Mayuri Raghuvanshi, AOR
Mr. Prakash Ranjan Nayak, AOR

For Respondents

Mr. K.K. Venugopal, AG
Mr. Tushar Mehta, SG
Ms. Madhavi Divan, ASG
Ms. V. Mohana, Sr. Adv.
Mr. Zoheb Hossain, AOR
Mr. R. Balasubramanian, Adv.
Ms. Shraddha Deshmukh, Adv.
Mr. Birun Taurk, Adv.
Ms. Rukmani Bobde, Adv.
Mr. Saurabh Mishra, Adv.
Ms. Binu Tamta, Adv.
Mr. Rajat Nair, Adv.
Ms. Nikita Capoor, Adv.
Ms. Ankita Sharma, Adv.
Mr. Pankaj Pandey, Adv.
Mr. Arvind Kumar Sharma, Adv.
Mr. B.K. Prasad, Adv.
Mr. Mukesh Kumar Maroria, AOR

Mr. K.S. Namdar, Sr. Adv.
Mr. Hitesh Kumar Sharma, Adv.
Mr. S.K. Rajora, Adv.
Mr. A.K. Sharma, Adv. (AOR)
Mrs. Anil Katiyar, AOR

Mr. Ajay Bansal, Adv.
Mr. Kuldip Singh, Adv. (AOR)
Mrs. Veena Bansal, Adv.
Mr. Gaurav Yadava, Adv.

Mr. Ajay Veer Singh Jain, Adv.
Ms. Mamta Jain, Adv.
Mr. uday Ram Bokadia, Adv.
Ms. Divya Garg, Adv.
Mr. Sonal Jain, AOR

Mr. P.I. Jose, AOR
Ms. P.S. Chandralekha, Adv.

Mr. Ashok Mathur, AOR

UPON hearing the counsel the Court made the following
O R D E R

Writ Petition (Civil) No. 267/2012

The prayers made in this writ petition are as follows:-

“(i) A writ of mandamus, directing the Union of India, to implement the directions of this Hon’ble Court in Union of India v. R. Gandhi (2010) 11 SCC 1 and L. Chandra Kumar v. Union of India (1997) 3 SCC 261, where Ministry of Law & Justice, Government of India was ordered to take over the administration of all tribunals created by Parliament and streamline the functioning of the same;

(ii) A writ of mandamus directing the Ministry of Law & Justice to promptly carry out a ‘Judicial Impact Assessment’ on all tribunals created by Parliament and submit a report on the same to this Hon’ble Court;

(iii) A writ of declaration, declaring Sections 14C & 53D of the Competition Act, 2002; Section 12(5) of the Right to Information Act, 2005; Section 15M of the SEBI Act, 1999; Section 14C of the TRAI Act, 1997 & Section 6(2) of the Administrative Tribunals Act, 1985, as being contrary to the specific directions of the Constitution Bench of this Hon’ble Court in Union of India v. R. Gandhi (2010) 11 SCC 1;”

This reference to the larger Bench is primarily

regarding non-implementation of the directions issued by this Court in *L. Chandra Kumar vs. Union of India & Ors.*, (1997) 3 SCC 261 and *Union of India vs. R. Gandhi, President, Madras Bar Association*, (2010) 11 SCC 1, which inter alia, are to the effect that the Tribunals functioning in the country should be brought under one nodal agency, which this Court had identified to be the Ministry of Law and Justice. The operative directions in *L. Chandra Kumar* (supra) as contained in paragraph 96 are clear and categorical and are to the following effect:-

“We are of the view that, until a wholly independent agency for the administration of all such Tribunals can be set-up, it is desirable that all such Tribunals should be, as far as possible, under a single nodal Ministry which will be in a position to oversee the working of these Tribunals. For a number of reasons that Ministry should appropriately be the Ministry of Law. It would be open for the Ministry, in its turn, to appoint an independent supervisory body to oversee the working of the Tribunals. This will ensure that if the President or Chairperson of the Tribunal is for some reason unable to take sufficient interest in the working of the Tribunal, the entire system will not languish and the ultimate consumer of justice will not suffer. The creation of a single umbrella organisation will, in our view, remove many of the ills of the present system. If the need arises, there can be separate umbrella organisations at the Central and the State levels. Such a supervisory authority must try to ensure that the independence of the members of all such Tribunals is maintained. To that extent, the procedure for the selection of the members of the Tribunals, the manner in which funds are allocated for the functioning of the Tribunals and all other consequential details will have to be clearly spelt out.”

Tentatively, we are of the view that the said directions ought to have been implemented by the Government of India long back. In the course of

hearing today, learned Attorney General for India relying on an affidavit filed on behalf of the Union of India in the year 2013, had pointed out certain difficulties including the need for an amendment of the Government of India (Allocation of Business) Rules, 1961. Learned Attorney General has also pointed out that the Ministry of Law and Justice is overburdened and may not be able to act and function as the nodal agency, which the Court had in mind while issuing directions way back in the year 1997 in *L. Chandra Kumar* (supra).

There cannot be any manner of doubt that to ensure the efficient functioning and to streamline the working of Tribunals, they should be brought under one agency, as already felt and observed by this Court in *L. Chandra Kumar* (supra). The Court would like to have benefit of the view of the Government of India as on today by means of an affidavit of the competent authority to be filed within two weeks from today.

The second prayer made in the writ petition has also been considered by us and in this regard we have taken note of compilation placed before the Court by the learned Attorney General, which would go to show the present vacancy position in different Tribunals, which is one of the issues that we would attempt to resolve. From the compilation of the learned Attorney General, it appears that the Central Administrative Tribunal, the Intellectual Property Appellate Board, the Armed Forces Tribunal, the National Green Tribunal and the Income Tax Appellate Tribunal would require immediate attention. While every endeavour would be made by the nominee of the Chief Justice who heads the Selection Committee before whom the issue of recommendations may have been pending to expedite the

same, such of the recommendations which have already been made by the Search-cum-Selection Committee as is in the case of National Company Law Tribunal and National Company Law Appellate Tribunal, should be immediately implemented by making appointments within the aforesaid period of two weeks and the result thereof be placed before the Court vide affidavit of the competent authority, as ordered to be filed by the present order.

Once the aforesaid information is made available, appropriate orders will be passed by this Court, which may, inter alia, include remitting the matter to smaller Bench for monitoring on a continuous basis, so as to ensure due and proper functioning of the Tribunals.

Matter be listed before this Bench after two weeks.

SLP(C) No. 15804/2017, W.P.(C) No. 279/2017, W.P.(C) No. 558/2017, W.P.(C) No. 561/2017, W.P.(C) No. 625/2017, W.P.(C) No. 640/2017, W.P.(C) No. 1016/2017, W.P.(C) No. 788/2017, W.P.(C) No. 925/2017, W.P.(C) No. 1098/2017, W.P.(C) No. 1129/2017, W.P.(C) No. 33/2018, W.P.(C) No. 205/2018, W.P.(C) No. 467/2018, T.C.(C) No. 49/2018, T.C.(C) No. 51/2018, T.P.(C) No. 2199/2018

Heard in part.

Put up for further hearing tomorrow (28.3.2019).

(Deepak Guglani)
Court Master

(Anand Prakash)
Court Master