

IN THE HON'BLE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
(A WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION  
OF INDIA)  
(PUBLIC INTEREST LITIGATION)

WRIT PETITION (CIVIL) No. \_\_\_\_\_ OF 2017

**IN THE MATTER OF:**

ALL INDIA LAWYERS UNION ... PETITIONER

VERSUS

UNION OF INDIA & ORS. ... RESPONDENTS

**(PAPER BOOK)**

**(FOR INDEX KINDLY SEE INSIDE)**

**ADVOCATE FOR THE PETITIONER: RESMITHA R. CHANDRAN**

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## **SYNOPSIS**

The Constitution's silence as to the vesting of judicial power is consistent with its remaining, where it had lain for more than a century, in the hands of the judiciary. It is not consistent with any intention that henceforth it should pass to or shared by, the executive or legislature. - Opinion of Lord Pearce speaking for their Lordships of the Privy Council in 1966(1) All England Reports 650.

1. The present Writ Petition is filed in public interest against the Union Government's attempt to interfere with the independence of Tribunals through Sections 182, 183, 184 and 185 of the Finance Act, 2017, the Rules framed under Section 184 thereof and notified vide G.S.R.514(E) dated 01/06/2017 issued by the Department of Revenue, Ministry of Finance.
2. Section 184 applies to the Chairman, Vice-Chairman, Chairperson, Vice-Chairperson, President, Vice-President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member, Member of the Tribunal, Appellate Tribunal or, as the case may be, Authority as specified in column (2) of the Eighth Schedule of the Finance Act, 2017 (7 of 2017). The said section has three key provisos. The first proviso says that the appointees to the above posts shall hold office for such terms as specified by the Central Government.

The second Proviso imposed an age limit of 70 years for the Chairperson or President, and in the case of others, 67 years.

The third proviso protects their salary, allowances and other terms and conditions after appointment.

3. Qualification and mode of appointment are extracted as follows:

-Qualifications for appointment of Member

The qualification for appointment of the Chairman, Chairperson, President, Vice-Chairman, Vice- Chairperson, Vice- President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member of the Tribunal, Appellate Tribunal or, as the case may be, Authority shall be such as specified in column (3) of the Schedule annexed to these rules.

Method of recruitment

4. (1) The Chairman, Chairperson, President, Vice-Chairman, Vice- Chairperson, Vice- President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member of the Tribunal, Appellate Tribunal or, as the case may be, Authority shall be appointed by the Central Government on the recommendation of a Search-cum-Selection Committee specified in column (4) of the said

Schedule in respect of the Tribunal, Appellate Tribunal or, as the case may be, Authority specified in column (2) of the said Schedule.

- (2) The Secretary to the Government of India in the Ministry or Department under which the Tribunal, Appellate Tribunal or, as the case may be, Authority is constituted or established shall be the convener of the Search-cum -Selection Committee.
- (3) The Search-cum-Selection Committee shall determine its procedure for making its recommendation.
- (4) No appointment of Chairman, Chairperson, President, Vice-Chairman, Vice- Chairperson, Vice- President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member of the Tribunal, Appellate Tribunal or Authorities shall be invalid merely by reason of any vacancy or absence in the Search-cum-Selection Committee.
- (5) Nothing in this rule shall apply to the appointment of Chairman, Chairperson, President, Vice-Chairman, Vice-Chairperson, Vice- President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member of the Tribunal, Appellate Tribunal or, as the case may be,

Authority functioning as such immediately before the commencement of these rules.

4. The Schedule of the notification is made as APPENDIX- 1 to the instant petition for easy reference. As per the same, in the case of most of the Tribunals notified therein, the presiding officer/ the chairman/ chair-person need not be a person with judicial experience, but can even be anyone with mere academic knowledge and a few years of professional experience. A couple of instances of dilutions made through Section 184 of the Finance Act by the Central Government are as follows:

- i) Industrial Tribunal constituted by the Central Government under the Industrial Disputes Act, 1947 (14 of 1947)- A person shall not be qualified for appointment as Presiding Officer, unless he,—

- (a) is, or has been, or is qualified to be, a Judge of a High Court; or

- (b) he has, for a period of not less than three-years, been a District Judge or an Additional District Judge; or

- (c) is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty years in

economics, business, commerce, law, finance, management, industry, public affairs, administration, labour relations, industrial disputes or any other matter which in the opinion of the Central Government is useful to the Industrial Tribunal.

ii) Central Administrative Tribunal under the Administrative Tribunal Act, 1985 (13 of 1985).- A person shall not be qualified for appointment as the Chairman, unless he,—

(a) is, or has been, or is qualified to be, a Judge of a High Court; or

(b) has, for a period of not less than three years, held office as Administrative Member or Judicial Member in the Central Administrative Tribunal;

(c) is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty years in economics, business, commerce, law, finance, accountancy, management, industry, public affairs or administration, or any other matter which in the opinion of the Central Government is useful to the Central Administrative Tribunal.

iii) Railway Claims Tribunal under the Railway Claims Tribunal Act, 1987 (54 of 1987)-

A person shall not be qualified for appointment as the Chairman, unless he, -

(a) is, or has been, or is qualified to be a Judge of a High Court; or

(b) has, for a period of not less than three years, held office as Vice-Chairman, Judicial Member or Technical Member, as the case may be; or

(c) is a person of ability, integrity and standing, and having a special knowledge of, and professional experience of not less than twenty-five years in claims and commercial matters relating to railways.

iv) Debts Recovery Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)- A person shall not be qualified for appointment as Presiding Officer of the Debts Recovery Tribunal, unless he,—

(a) is, or has been, or is qualified to be, a District Judge; or

(b) is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty years in economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration, banking, debt recovery or any other



matter, which in the opinion of the Central Government is useful to the Debt Recovery Tribunal.

- v) Airport Appellate Tribunal under the Airport Authority of India Act, 1994(55 of 1994)-

A person shall not be eligible for appointment as Chairperson, unless he,—

(a) is, or has been, or is qualified to be, a judge of a High Court; or

(b) is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty-five years in economics, business, commerce, law, finance, accountancy, management industry, public affairs, administration or any other matter which in the opinion of the Central Government, is useful to the Appellate Tribunal.

5. It is most humbly submitted that the above instances are not exhaustive but only illustrative and the detailed list is given at Appendix -1. From Appendix -1 it can be seen that the subject notification affects the independence of all Tribunals and Quasi-Judicial authorities. The wordings -a person of ability, integrity and standing, and having special knowledge of in the opinion of the Central Governmentll, being reiterated in the column of qualification

for appointing the presiding officers to the various Tribunals is to give unbridled powers, widest of discretion and harness of control in the Central Government. At this juncture, it is pointed out that the specific amendment of NGT Act, 2010 acquires great significance. NGT Act, 2010 mandates that the Chairperson should be either a judge of the Supreme Court or has been one; is or has been a Chief Justice of a High Court. The new rules, on the contrary requires that, a person shall not be qualified for appointment as Chairperson, unless he,—

(a) is, or has been, or is qualified to be, a Judge of Supreme Court; or

(b) is, or has been, Chief Justice of a High Court; or

(c) has, for a period of not less than three years, held office as Judicial Member or Expert Member; or

(d) is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty-five years in law including five years' practical experience in the field of environment and forests.

Experts and legal fraternity are concerned that the above amendment will lead Tribunals being headed by someone who has no legal background and training. If civil servants become Chairpersons of NGT, they may not become impartial adjudicators because training and the ability to write reasoned judgments are key attributes of such objectivity. This may even lead to a situation that — All power corrupts- and the fear of loosing power corrupts absolutelyll(

page 384, 'Before Memory Fades', Fali S. Nariman, Hay House India, 2010).

6. It is noteworthy that the aforesaid provisions of Finance Act, 2017, which dilutes the independence of Tribunals comes as a reaction of the National Green Tribunal's ( NGT) earnest efforts in safeguarding the environment. It is more pertinent that this move also comes in the wake of the NGT's drive against incompetent persons holding the posts of Chairperson's of State Pollution Control Boards ( SPCBs) following its own order in the case of Rajendra Singh Bhandari v State of Uttarakhand ( OA 318 of 2013).

7. The aforementioned paragraphs makes it unambiguous that the Government's attempt to interfere with the independence of Tribunals through Sections 182, 183, 184 and 185 of the Finance Act, 2017 ,the Rules framed under Section 184 thereof and notified vide G.S.R.514(E) dated 01/06/2017, is in clear violation of the dictum laid down by this Hon'ble Court in Union of India v R. Gandhi( 2010) 11 SCC 1 that the independence of judiciary stood to suffer if the qualifications for appointment as members are diluted in haste. Increasing bureaucratic control over the selection of members of the Tribunals has destructive aftereffects, not only for the independent functioning of these bodies, but for the effective discharge of their duties for which they are created. It may be noted that the Tribunals are the –courts| of first instance in respect of law for which they have been constituted ( L. Chandrakumar v Union of India & Ors. (1997(3)

SCC 261). Hence, the composition of the Tribunals cannot be replaced by a bunch of personnel, handpicked by the Central Government and are inferior in status and casual in working. The uncertainty of tenure in the subject rules, unsatisfactory conditions of work, executive subordination in matters of administration and political interference in judicial functioning are the sure outcomes if Sections 182, 183, 184 and 185 of the Finance Act, 2017 are allowed to be continued without review by this Hon'ble Court. The negative impact of the said provisions upon the quality of justice is a great concern and agony for the lawyers as a community. As precisely held in, S.P. Gupta v Union of India & Ors. Etc. Etc.1981 Supp. SCC 87, the profession of Lawyers is an essential and integral part of the judicial system and lawyers may figuratively described as priests in the temple of justice. Sections 182, 183, 184 and 185 of the Finance Act, 2017 is likely to affect the independence of Tribunals and Quasi-Judicial authorities mentioned in Appendix- 1 herewith. This will adversely affect the rule of law, hamper the cause of justice and would de-motivate the pace of realization of constitutional objectives. Hence, the petitioner Union is filing the instant Special Leave Petition, by invoking Article 32 of the constitution of India and challenging Sections 182, 183, 184 and 185 of the Finance Act, 2017, the Rules framed under Section 184 thereof and notified vide G.S.R.514(E) dated 01/06/2017 issued by the Department of Revenue, Ministry of Finance.

## **LIST OF DATES**

01/02/2017: The Finance Bill, 2017 was introduced in the Loksabha on 01/02/2017 and was approved on 22/03/2017.

31/03/2017 Finance Bill, 2017 was passed in the Loksabha.  
Finance Bill, 2017 received Presidential assent and came into force from 01/04/2017.

01/06/2017: Consequent to the passing of finance Act, 2017, the Rules framed under Section 184 of the Finance Act got notified vide G.S.R.514(E) dated 01/06/2017 by the Department of Revenue, Ministry of Finance, Union of India . This has negatively affected the independence of Tribunals .

11/08/2017: Since experts and legal fraternity are concerned that the subject amendment of Finance Act , 2017 will lead the Tribunals- the -courts| of first instance in respect of law for which they have been constituted- being headed by someone who has no legal background and training, the present Public Interest Litigation is filed by the petitioner Union.

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IN THE HON'BLE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
(PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF  
INDIA)  
(PUBLIC INTEREST LITIGATION)

WRIT PETITION (CIVIL) No. \_\_\_\_\_ OF 2017

**IN THE MATTER OF:**

All India Lawyer's Union,  
31, Ferozeshah Road,  
New Delhi-110001.  
Rep.by its General Secretary  
Somdutt Sharma.

... Petitioner

Versus

1. Union of India,  
Ministry of Finance,  
Government of India  
Through Its Secretary,  
North Block, Cabinet  
Secretariat, Raisina Hill,  
New Delhi-110001
2. Union of India,  
Ministry of law & justice,  
Government of India,  
Through its Secretary,  
4<sup>th</sup> Floor, A- Wing, Shastri Bhavan,  
New Delhi-110001.
3. Ministry of Parliamentary Affairs,  
Government of India,  
Through its Secretary,  
Rashtrapathy Bhavan,  
New Delhi- 110001.
4. Cabinet Secretariat,  
Government of India,  
Through its Secretary,  
Rashtrapathy Bhawan,  
New Delhi-110001.

... Contesting  
Respondents



To

The Hon'ble Chief Justice of India  
And His companion Judges of the  
Hon'ble Supreme Court of India

The Humble petition of the  
Petitioner above – named

**MOST RESPECTFULLY SHEWETH:-**

1. The Petitioner is filing the present Writ Petition under Article 32
2. of the Constitution of India for issuance of a Writ, order or direction in the nature of Mandamus or any other appropriate Writ or order challenging Sections 182, 183, 184 and 185 of the Finance Act, 2017, the Rules framed under Section 184 thereof and notified vide G.S.R.514(E) dated 01/06/2017 issued by the Department of Revenue, Ministry of Finance.
- 2 This Hon'ble Court has already seized of the present issue in Writ Petition (C) No.558 of 2017, hence the Petitioner has not approached any other authority.
3. That the petitioner herein is All India Lawyers Union, a registered association formed by the cognizant members of the legal fraternity including judges, advocates, legal practitioners, law teachers and law students to uphold the principle of the preamble, spirit and true conscience of the Constitution of India and the Directive Principles, in particular the principles of national sovereignty, federalism, socialism, secularism, parliamentary

democracy, rule of law, independence of judiciary and the bar, habeas corpus, freedom of speech, expression and conscience, freedom of association, human rights- justice, social, economic, and political, liberty, equality (women's parity), fraternity and peoples welfare. The Association has got about fifty thousand socially committed activist lawyers as its members. It is not a professional organization of lawyers on the principle of trade union or service organization for the betterment of the profession. It is an organization formed *pro bono publico* .It is registered under Societies Registration Act, 1860 as Society 836/2016-17 of District, Shahadra. The Association is duly represented by its General Secretary Mr. Som Dutta Sharma, Advocate, residing at Flat No. 29, Shanker Market, Cannaught Place, New Delhi-110001. (The e-mail id of Mr. Som Dutta Sharma is [somdslaw@yahoo.com](mailto:somdslaw@yahoo.com)). His Mobile Number is 9810367189.

4. The annual income of Mr. Som Dutta Sharma is Rs.808400/-. His PAN card and Adhar Card numbers are ABMPS 6854P and 904784683208 respectively. The bye-law of the petitioner union, copy of the voter's identity card of Mr. Som Dutta Sharma and an affidavit undertaking that there is no personal gain, private or oblique reason for the petitioner in filing the instant Public Interest Litigation are enclosed with the vakalathnama.

5. The uncertainty of tenure in the subject rules, unsatisfactory conditions of work, executive subordination in matters of

administration and political interference in judicial functioning are the sure outcomes if Sections 182, 183, 184 and 185 of the Finance Act, 2017 are allowed to be continued without review by this Hon'ble Court. The negative impact of the said provisions upon the quality of justice is a great concern and agony for the lawyers as a community. Hence, following the dictum laid down in S.P. Gupta v Union of India & Ors. Etc. Etc.1981 Supp. SCC 87, the petitioner union has *locus standi* to file the instant writ petition.

6. That the petitioner union has no personal gain, private or oblique reason in filing the instant Public Interest Litigation. The petitioner union has filed the Public Interest Litigation ,with the noble aim of assisting this Hon'ble Court in ensuring the independence of judiciary including the Tribunals which likely to be affected by the amendments introduced through the Finance Act 2017 and the rules made thereunder. That the petitioner Union is not involved in any litigation before any other forum/ court/ authority which has nexus with the instant petition.

7. Respondent No. 1 is Union of India, Ministry of Finance which has issued the impugned Rules notified vide G.S.R.514(E) dated 01/06/2017.

8. Respondent No. 2 is the Union of India , Ministry of Law and Justice . Rendering of legal advice and drafting of principal legislation of various ministries is the prime responsibility of this ministry.

9. Respondent No. 3 is the Ministry of Parliamentary Affairs which provides secretarial assistance to the Cabinet Committee on Parliamentary Affairs.

10. Respondent No. 4 is the Cabinet Secretariat , Government of India responsible for the administration of the Government of India( Transaction of Business) Rules,1961, facilitating smooth transaction of business in ministries / Departments of the Government by adhering to the said rules. It assists in decision making of the Government by ensuring Inter-Ministerial Co-ordination through the instrumentality of standing/ *adhoc* Committees of Secretaries.

**11. BRIEF FACTS OF THE CASE:-**

a) The Finance Bill, 2017 was introduced in the Loksabha on 01/02/2017 and was approved on 22/03/2017. On 30/03/2017 Finance Bill, 2017 was passed in the Loksabha and received Presidential assent on 30/03/2017. The Act came into force from 01/04/2017. On 01/06/2017, the rules made under Section 184 got notified.

b) Sections 182, 183, 184 and 185 of the Finance Act, 2017 ,the Rules framed under Section 184 thereof and notified vide G.S.R.514(E) dated 01/06/2017 issued by the Department of Revenue, Ministry of Finance interfere with the independence of Tribunals and are in clear violation of the dictum laid down by this Hon'ble Court in Union of India v R. Gandhi( 2010) 11 SCC 1 that the independence of judiciary stood to suffer if the qualifications for appointment as members are diluted in haste.

c) Sections 182, 183, 184 and 185 of the Finance Act, 2017 are extracted herein after for easy reference:

—182. Amendment of Act 19 of 2010.- In the National Green Tribunal Act, 2010, after Section 10, the following section shall be inserted, namely –

10-A. Qualifications, terms and conditions of service of Chairperson, Judicial Member and Expert Member.- Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of service of the Chairperson, Judicial Member and Expert Member of the Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017 shall be governed by the provisions of Section 183.

Provided that the Chairperson, Judicial Member and Expert Member appointed before the commencement of part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of Section 184 of the Finance Act, 2017 had not come into force. |

183. Application of Section 184.- Notwithstanding anything to the contrary contained in the provisions of the Acts specified in column (3) of the Eighth Schedule, on

and from the appointed day, provisions of Section 184 shall apply to the Chairperson, Vice Chairperson, Chairman, Vice-Chairman, President, Vice President, Presiding Officer or Member of the Tribunal, Appellate Tribunal or, as the case may be, other authorities as specified in column (2) of the said Schedule:

Provided that's the provisions of Section 184 shall not apply to the Chairperson, Vice Chairperson, Chairman, Vice Chairman, President, Vice-President, Presiding Officer or, as the case may be, Member holding such office as such immediately before the appointed day.

184. Qualifications, appointed, term and conditions of service, salary and allowances, etc., of Chairperson, Vice Chairperson and Members, etc., of the Tribunal, Appellate Tribunal and other Authorities.- (1) The Central Government may, by notification, make rules to provide for qualifications, appointed, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairperson, Vice Chairperson, Chairman, Vice Chairman, President, Vice President, Presiding Officer or Member of the Tribunal, Appellate Tribunal or, as the case may be, other authorities as specified in column (2) of the Eighth Schedule:

Provided that the Chairperson, Vice-Chairperson, Chairman, Vice-Chairman, President, Vice-President, Presiding Officer or Member of the Tribunal, Appellate Tribunal or other Authority shall hold office for such term as specified-in the rules made by the Central Government but not exceeding five years from the dale on which he outers upon his office and shall be eligible for reappointment:

Provided further that no Chairperson, Vice-Chairperson, Chairman, Vice-Chairman, President, Vice-President, Presiding Officer or Member shall hold office as such after he has attained such age as specified in the rules made by the Central Government which shall not exceed,-

(a) in the case of Chairperson, Chairman or President, the age of seventy years;

(b) in the case of Vice-Chairperson, Vice-Chairman, Vice-President, Presiding Officer or any other member, the age of sixty seven years.

(2) Neither the salary and allowances nor the other terms and conditions of service of Chairperson, Vice-Chairperson, Chairman, Vice-Chairman, President, Vice-President, Presiding Officer or Member of the Tribunal, Appellate Tribunal or, as the case may be, other authority may be varied to his disadvantage after his appointment.

**185. Transitional provisions.—**(1) Any person appointed as the Chairperson or Chairman, President or Vice-Chairperson or Vice-Chairman, Vice-President or Presiding Officer or Member of the Tribunals, Appellate Tribunals, or as the case may be, other authorities specified in column (2) of the Ninth Schedule and holding office as such immediately before the appointed day, shall on and from the appointed day, cease to hold such office and such Chairperson or Chairman, President, Vice-Chairperson or Vice-Chairman, Vice-President or Presiding Officer or Member shall be entitled to claim compensation not exceeding three months' pay and allowances for the premature termination of term of their office or of any contract of service. .

(2) The officers and other employees of the Tribunals, Appellate Tribunals and other authorities specified in column (2) of the Ninth Schedule appointed on deputation, before the appointed day, shall, on and from the appointed day, stand reverted to their parent cadre, Ministry or Department.

(3) Every officer or other employee of the Tribunal, Appellate Tribunal and other authorities specified in column (2) of the Ninth Schedule employed on regular basis, by such Tribunal, Appellate Tribunal or other authorities shall become, on and from the appointed day,



the officer and other employee, of the corresponding Tribunal, Appellate Tribunal or other authorities specified in column (3) of the said Schedule with same rights and privileges as to. pension, gratuity and other like benefits as would have been admissible to him if he had continued to serve the Tribunal, Appellate Tribunal or other authorities specified in column (2) of the said Schedule until his employment is duly terminated or until his remuneration, terms and conditions of employment are duly altered by such corresponding Tribunal, Appellate Tribunal or other Authorities, as the case may be, specified in column (3) of the Ninth Schedule or until the expiry of a period of one year from the appointed day if such officer or other employee opts not to continue to be the officer or other employee of such Tribunal, Appellate Tribunal or other authorities within such period.

(4) Any appeal, application or proceeding pending before the Tribunal, Appellate Tribunal or other authorities specified in column (2) of the Ninth Schedule, before the appointed day, shall stand transferred to the corresponding Tribunal, Appellate Tribunal or other authorities specified in column (3) of the said Schedule and the said Tribunal, Appellate Tribunal or other Authority shall, on and from the appointed day, deal with de novo or from the stage at which such appeal,

application or proceeding stood before the date of their transfer and shall dispose them in accordance with the provisions of the Act specified in column (2) of the said Schedule.

(5) The balance of all monies received by, or advanced to the Tribunal, Appellate Tribunal or other authorities specified in column (2) of the Ninth Schedule and not spent by it before the appointed day, shall, on and from the appointed day, stand transferred to and vest in the Central Government which shall be utilised for the purposes stated in sub-section (7).

(6) All property of whatever kind owned by, or vested in, the Tribunal, Appellate Tribunal or other authorities specified in column (2) of the Ninth Schedule before the appointed day, shall stand transferred to, on and from the appointed day, and shall vest in the Central Government.

(7) All liabilities and obligations of whatever kind incurred by the Tribunal, Appellate Tribunal or other authorities specified in column (2) of the Ninth Schedule and subsisting immediately before the appointed day, shall, on and from the appointed day, be deemed to be the liabilities or obligations, as the case may be, of the corresponding Tribunal, Appellate Tribunal or other authorities specified in column (3) of the Ninth Schedule;

and any proceeding or cause of action, pending or existing immediately before the appointed day by or against the Tribunal, Appellate Tribunal or other authorities specified in column (2) of the Ninth Schedule in relation to such liability or obligation may, on and from the appointed day, be continued or enforced by or against the corresponding Tribunal, Appellate Tribunal or other Authority specified in column (3) of the Ninth Schedule.

A true copy of the Finance Act, 2017 is annexed herewith and marked as **ANNEXURE: P/1 (Pages\_\_\_\_\_)**

b) The Rules framed under Section 184 thereof and notified vide G.S.R.514(E) dated 01/06/2017 issued by the Department of Revenue, Ministry of Finance is annexed herewith and marked as **ANNEXURE: P/2 (Pages\_\_\_\_\_)** The qualification for appointment of the Chairman, Chairperson, President, Vice-Chairman, Vice-Chairperson, Vice- President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member of various Tribunals, Appellate Tribunals and Authorities are specified in column (3) of the Schedule annexed to Annexure: P/2 rules.( The Schedule is given separately as Appendix -1 for easy reference).

c) As per the same, in the case of most of the Tribunals notified therein, the presiding officer/ the chairman/ chair-person need not be a person with judicial experience, but can even be anyone with mere

academic knowledge and a few years of professional experience. A couple of instances of dilutions made through Section 184 of the Finance Act by the Central Government are as follows:

i) Industrial Tribunal constituted by the Central Government under the Industrial Disputes Act, 1947 (14 of 1947)- A person shall not be qualified for appointment as Presiding Officer, unless he,—

(a) is, or has been,

or is qualified to be, a Judge of a High Court; or

(b) he has, for a period of not less than three-years, been a District Judge or an Additional District Judge; or

(c) is a person of ability, integrity and standing,

and having special knowledge of, and

professional experience of not less than

twenty years in economics, business,

commerce, law, finance, management,

industry, public affairs, administration, labour

relations, industrial disputes or any other

matter which in the opinion of the Central

Government is useful to the Industrial

Tribunal.

ii) Central Administrative Tribunal under the Administrative Tribunal Act, 1985 (13 of 1985).- A

person shall not be qualified for appointment as the Chairman, unless he,—

(a) is, or has been, or is qualified to be, a Judge of a High Court; or

(b) has, for a period of not less than three years, held office as Administrative Member or Judicial Member in the Central Administrative Tribunal;

(c) is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty years in economics, business, commerce, law, finance, accountancy, management, industry, public affairs or administration, or any other matter which in the opinion of the Central Government is useful to the Central Administrative Tribunal.

iii) Railway Claims Tribunal under the Railway Claims

Tribunal Act, 1987 (54 of 1987)-

A person shall not be qualified for appointment as the Chairman, unless he, -

(a) is, or has been, or is qualified to be a Judge of a High Court; or

(b) has, for a period of not less than three years, held office as Vice-Chairman, Judicial Member or Technical Member, as the case may be; or

(c) is a person of ability, integrity and standing, and having a special knowledge of, and professional experience of not less than twenty-five years in claims and commercial matters relating to railways.

iv) Debts Recovery Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)-  
A person shall not be qualified for appointment as Presiding Officer of the Debts Recovery Tribunal, unless he,—

(a) is, or has been, or is qualified to be, a District Judge; or

(b) is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty years in economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration, banking, debt recovery or any other matter, which in the opinion of the Central Government is useful to the Debt Recovery Tribunal.

v) Airport Appellate Tribunal under the Airport Authority of India Act, 1994(55 of 1994)-

A person shall not be eligible for appointment as Chairperson, unless he,—

(a) is, or has been, or is qualified to be, a judge of a High Court; or

(b) is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty-five years in economics, business, commerce, law, finance, accountancy, management industry, public affairs, administration or any other matter which in the opinion of the Central Government, is useful to the Appellate Tribunal.

(c) From Appendix -1 it can be seen that the subject notification affects the independence of all Tribunals and Quasi-Judicial authorities. The wordings -a person of ability, integrity and standing, and having special knowledge of in the opinion of the Central Government, being reiterated in the column of qualification for appointing the presiding officers to the various Tribunals is to give unbridled powers, widest of discretion and harness of control

to the Central Government. At this juncture, it is pointed out that the specific amendment of NGT Act, 2010 acquires great significance. NGT Act, 2010 mandates that the Chairperson should be either a judge of the Supreme Court or has been one; is or has been a Chief Justice of a High Court. The new rules, on the contrary requires that, a person shall not be qualified for appointment as Chairperson, unless he,—

(a) is, or has been, or is qualified to be, a Judge of Supreme Court; or

(b) is, or has been, Chief Justice of a High Court; or

(c) has, for a period of not less than three years, held office as Judicial Member or Expert Member;

or

(d) is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty-five years in law including five years' practical experience in the field of environment and forests.

d) Experts and legal fraternity are concerned that the above amendment will lead Tribunals being headed by someone who has no legal background and training. If civil servants become



Chairpersons of Tribunals, they may not become impartial adjudicators because training and the ability to write reasoned judgments are key attributes of such objectivity. The subject amendment is also in clear violation of the dictum laid down by this Hon'ble Court in *Union of India v R. Gandhi* (2010) 11 SCC 1 that the independence of judiciary stood to suffer if the qualifications for appointment as members are diluted in haste.

e) Increasing bureaucratic control over the selection of members of the Tribunals has destructive aftereffects, not only for the independent functioning of these bodies, but for the effective discharge of their duties for which they are created. It may be noted that the Tribunals are the -courts of first instance in respect of law for which they have been constituted (*L.Chandrakumar v Union of India & Ors.* (1997(3) SCC 261). Hence, the composition of the Tribunals cannot be replaced by a bunch of personnel, handpicked by the Central Government and are inferior in status and casual in working. The uncertainty of tenure in the subject rules, unsatisfactory conditions of work, executive subordination in matters of administration and political interference in judicial functioning are the sure outcomes if Sections 182, 183, 184 and 185 of the Finance Act, 2017 are allowed to be continued without review by this Hon'ble Court. The negative impact of the said provisions upon the quality of justice is a great concern and agony for the lawyers as a community. As precisely held in, *S.P. Gupta v Union of India & Ors.*

Etc. Etc.1981 Supp. SCC 87 , the profession of Lawyers is an essential and integral part of the judicial system and lawyers may figuratively described as priests in the temple of justice. Sections 182, 183, 184 and 185 of the Finance Act, 2017 is likely to affect the independence of Tribunals and Quasi-Judicial authorities mentioned in Appendix- 1 herewith. This will adversely affect the rule of law, hamper the cause of justice and would de-motivate the pace of realization of constitutional objectives.

f) In this circumstance, the petitioner Union is filing the instant Special Leave Petition, by invoking Article 32 of the constitution of India and challenging Sections 182, 183, 184 and 185 of the Finance Act, 2017 ,the Rules framed under Section 184 thereof and notified vide G.S.R.514(E) dated 01/06/2017 issued by the Department of Revenue, Ministry of Finance in as much as to preserve rule of law’, further the cause of justice and to accelerate the pace of realization of constitutional objectives.

g) That the petitioner Union has not filed any other petition on the subject matter or seeking similar reliefs either in this Hon’ble Court or before any of the High Courts .

12. That the instant Writ Petition is filed without any delay or laches and there is no legal bar in entertaining the same. The petitioner Union has no other alternative or efficacious remedy except to file the present Writ Petition under Order XXXVIII Rule 12 of The Supreme

Court Rules, 2013, before this Hon'ble Court , by invoking Article 32 of the Constitution of India.

13. That the Annexures are true and correct copies of the respective originals.

14. That in the circumstances mentioned hereinabove, this Writ Petition is being preferred by the Petitioner Union interalia on the following among other grounds:

### **GROUND**

A. It is submitted that the Tribunals are the –courts| of first instance in respect of law for which they have been constituted (L.Chandrakumar v Union of India & Ors. (1997(3) SCC 261). Hence, the composition of the Tribunals cannot be replaced by a bunch of personnel, handpicked by the Central Government and are inferior in status and casual in working. The uncertainty of tenure in the subject rules, unsatisfactory conditions of work, executive subordination in matters of administration and political interference in judicial functioning are the sure outcomes if Sections 182, 183, 184 and 185 of the Finance Act, 2017 are allowed to be continued without review by this Hon'ble Court. Sections 182, 183, 184 and 185 of the Finance Act, 2017 is likely to affect the independence of Tribunals and Quasi-Judicial authorities mentioned in Appendix- 1 herewith. This will adversely affect the rule of law, hamper the cause of justice and would de-motivate the pace of realization of constitutional objectives.

B. The negative impact of Sections 182, 183, 184 and 185 of the Finance Act, 2017 and the rules made thereunder, upon the quality of justice, is a great concern and agony for the lawyers as a community. As precisely held in, *S.P. Gupta v Union of India & Ors.* Etc. Etc.1981 Supp. SCC 87, the profession of Lawyers is an essential and integral part of the judicial system and lawyers may figuratively described as priests in the temple of justice. Hence it is the interest of the Petitioner Union to assist this Hon'ble Court in examining the vires of the said provisions under Sections 182, 183, 184 and 185 of the Finance Act, 2017 and the rules made thereunder.

C. Section 184 of the Finance Act, 2017 suffers from the vice of excessive delegation which confers unanalyzed and uncontrolled power to the executive, than even vested with the Parliament. This is a typical example of violation of independence of the judiciary- which is a basic feature of the Constitution- in a circuitest way.

D. The heart and core of a democracy lies in the judicial process and that means independent and fearless judges free from executive control brought up in judicial traditions and training to judicial ways of working and thinking. The main bulwarks of liberty and freedom lie there and it is clear that uncontrolled powers of discrimination in the matters that seriously affect the lives and properties of people cannot be left to the executive or a set of handpicked persons appointed by that executive. It is noteworthy that Section 182 of the Finance Act,

2017 inserted Section 10 A of the NGT Act, 2010 enabling the executive, rather than the Parliament to decide the qualification, appointment, terms of office, salaries and allowances, resignation and removal of its chairperson, judicial member and expert member. This is notwithstanding what other provisions of NGT Act may say. It may be noted that the aforesaid provisions of Finance Act, 2017, which dilutes the independence of Tribunals comes as a reaction of the National Green Tribunal's (NGT) earnest efforts in safeguarding the environment. It is more pertinent that this move also comes in the wake of the NGT's drive against incompetent persons holding the posts of Chairperson's of State Pollution Control Boards (SPCBs) following its own order in the case of Rajendra Singh Bhandari v State of Uttarakhand (OA 318 of 2013). Hence the impugned amendments are an attempt by the executive to take the harness of an un-amenable quasi-judicial horse in its control.

E. Rule of law is a basic feature of our constitution. —No Parliament, even if unanimous, no party in power even if it commands National consensus, can alter these basic features or structure. So viewed, the rule of law prevails *vis-à-vis* the House and even the Court. What is arbitrary is violative of rule of law, as the Supreme Court has laid down. (Justice (late) V. R. Krishna Iyer, —From the Bench to the Bar, page 90, Universal, 2013). The sections of Finance Act, 2017 and Rules made thereunder impugned in the present petition gives arbitrary powers to the Central Government

and hence are against the concept of 'rule of law' being upheld by this Hon'ble Court over decades.

F. The Annexure-P/2 Rules are ultra vires the NGT Act, 2010 as it is well settled that subordinate legislation cannot override a substantive law.

G. The impugned rules violate the principles laid down by this Hon'ble Court in Madras Bar Association v Union of India( 2014) 10 SCC 1 and Union of India V R. Gandhi(2010) 11 SCC1 , by deleting the requirement of a Sitting Judge of the Supreme Court as the nominee of the Chief Justice of India to head the Search and Selection Committee and substituting it with a nominee of the Central Government-executive. This is clear violation of independence of judiciary.

H. As per the impugned rules, even an expert member who holds only a science degree with 5 years of experience in environmental matters can be appointed as the Chairperson of the NGT. This is in total violation and *ultravires* of Section of NGT Act, 2010 by which the qualifications of the Chairperson is fixed as who is or has been a judge of the Supreme Court of India or a chief Justice of the High Court . In Madras Bar Association V Union of India(2014) 10 SCC 1, it has been held that Chairperson would be required to decide questions of law and hence should be a judicial member.

I. As per the National Green Tribunal Act, 2010, the term of office of a member of the NGT is 5 years and the same has been reduced to 3 years by the impugned rules.

J. The Tribunals covered by the amendment are not petty Tribunals with quasi-judicial authority. These Tribunals are with vast powers determining the rights of the citizens under Part III including the Right under Article 21. The Right to clean air, water and environment is part of Right to Life under the Constitution of India. When executive violates these rights, violating the principles of sustainable development and going for plunder of natural resources, the Tribunals should have full-fledged independence in protecting the Rights of the citizens. The impugned amendments would necessarily make inroads into the independence of the Tribunal.

K. The passing of Finance Act, 2017 as a Money bill is a colourable exercise of power and a fraud on the Constitution. The substantive provisions therein are not matters incidental to those enumerated in clauses (a)-(f) of Article 110(1) of the Constitution of India. Only because it is certified by the Speaker as 'Money Bill' will not render the legislation immune from judicial review, in a given case as there is fraud on the Constitution (I. R. Coelho v State of Tamil Nadu(1999) 7 SCC 580). The aim of the Central Government is to get administrative and judicial control over the Tribunals .

L. The passing of Bills as 'Money Bills' by colourable exercise of power and in violation of Article 110 violate the very concept of –

Checks and Balances as a Constitutional Doctrine of interplay between the Legislature, Executive and the Judiciary.

M. The subject amendments by way of Money Bills exclude Rajya Sabha – the Upper House- from the legislative process and this causes a serious dearth into the concept of Federalism which again is a basic feature of our Constitution.

N. It is submitted that a Tribunal which is created to supplement the High Court is legal training and experience and judicial acumen, equipment and approach. The impugned amendments , paving way for non-judicial persons to preside the Tribunals, will only hamper the said supplemental process of Tribunals.

O. The Government is the litigant in most of the cases coming before the Tribunals. If such Tribunals are not conducive for judicial independence, and may even tend, directly or indirectly to influence their decision making processes. Hence, the provisions of law impugned in the instant petition are to be declared as ultra vires the Constitution of India as the same are violative of the principles of natural justice and rule of law. This may even lead to a situation that —All power corrupts- and the fear of loosing power corrupts absolutelyll( page 384, ‘Before Memory Fades’, Fali S. Nariman, Hay House India, 2010).

P. Sections 182, 183, 184 and 185 of the Finance Act, 2017 may tend are arbitrary in nature as giving wide discretion to the Central



Government in the overall functioning and imparting of judicial decision making process and hence are unconstitutional, null and void and *ultra vires* Articles 14, 19 and 21 of the Constitution of India and hence *void ab initio*.

Q. Sections 182, 183, 184 and 185 of the Finance Act, 2017 and the rules made therein are in clear violation of the dictum laid down by this Hon'ble Court in Union of India v R. Gandhi( 2010) 11 SCC 1 that the independence of judiciary stood to suffer if the qualifications for appointment as members are diluted in haste. At this juncture is noteworthy that this Hon'ble court has held many a time that the executive control over the functioning of the Tribunal shall only be minimal. The respondents while creating the impugned provisions ought to have considered that ample judicial power administered with ample judicial wisdom is the need of the hour; not a curtailment of the judicial power- at least until the other constitutional functionaries are capable of commanding the utmost confidence of the supreme power of this country, i.e., the electorate as they repose upon the judiciary. This Hon'ble Court as the *sentinel on the qui vive* ought to intervene at this crucial juncture of the 'History of India' witnessing the -tyranny of majority| as feared and foreseen by the founding fathers of our precious constitution.

**PRAYER:**

In view of the above facts and circumstances, it is humbly prayed that this Hon'ble Court may be:

a) Issue a writ or order or direction in the nature of Mandamus or any other appropriate Writ or order declaring that Sections 182, 183, 184 and 185 of the Finance Act, 2017 and the Rules framed under Section 184 thereof and notified vide G.S.R.514 (E) dated 01/06/2017 issued by the Department of Revenue, Ministry of Finance are unconstitutional, null and void and *ultra vires* Articles 14, 19 and 21 of the Constitution of India and hence *void ab initio*;

and

b) to issue any other writ or direction(s) or Order(s) as the Hon'ble Court may deem fit and proper in view of the facts and circumstances of the case and in the interest of justice.

FOR THIS ACT OF KINDNESS THE HUMBLE PETITIONER  
SHALL AS IN DUTY BOUND EVER PRAY.

DRAWN & FILED BY

(RESMITHA R. CHANDRAN)  
**ADVOCATE FOR THE PETITIONER**

DRAWN ON: 09.08.2017  
FILED ON: 11.08.2017

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) No. \_\_\_\_\_ OF 2017

**IN THE MATTER OF:**

THE COMMUNIST PARTY OF INDIA (MARXIST)  
THROUGH ITS GENERAL SECRETARY ... PETITIONER

Versus

THE UNION OF INDIA & ANR ...  
RESPONDENTS

**AFFIDAVIT**

I, Som Dutta Sharma, Advocate, aged 68 years, S/O (Late) Mr. Ram Sigh Sharma, residing at Flat No. 29, Shanker Market, Cannaught Place, New Delhi-110001, do hereby solemnly affirm and state as under:

1. I am the authorized representative of the petitioner union and fully conversant with the facts and circumstances of the case and as such competent to swear this affidavit.
2. I have read and understood the contents of the Writ Petition at pages to and Synopsis and List of Dates at pages B to , and I say that the contents thereof are true and correct to the best of my knowledge and belief and the information derived from the records of the case. The legal submissions are based on the advice received from my counsel which I believe to be true.
3. That there is no personal gain, private or oblique reason for me to file the instant Writ Petition.
4. That the Annexures filed with the Writ Petition are true and correct copies of the originals.
5. That I have not filed any other Writ Petition in this Hon'ble Court or any other court with regard to the subject matter of the present Writ Petition.

**DEPONENT**

I, the above named deponent do hereby verify that the contents made in para Nos.1 to 5 of the above affidavit are true and correct to the best of my knowledge and belief. Nothing material has been concealed there from. Verified by me on this day of August, 2017.

**DEPONENT**



## **APPENDIX-I**

### -Qualifications for appointment of Member

The qualification for appointment of the Chairman, Chairperson, President, Vice-Chairman, Vice- Chairperson, Vice- President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member of the Tribunal, Appellate Tribunal or, as the case may be, Authority shall be such as specified in column (3) of the Schedule annexed to these rules.

### Method of recruitment

4. (1) The Chairman, Chairperson, President, Vice-Chairman, Vice- Chairperson, Vice- President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member of the Tribunal, Appellate Tribunal or, as the case may be, Authority shall be appointed by the Central Government on the recommendation of a Search-cum-Selection Committee specified in column (4) of the said Schedule in respect of the Tribunal, Appellate Tribunal or, as the case may be, Authority specified in column (2) of the said Schedule.

- (2) The Secretary to the Government of India in the Ministry or Department under which the Tribunal, Appellate Tribunal or, as the case may be, Authority is constituted or established shall be the convener of the Search-cum -Selection Committee.
- (3) The Search-cum-Selection Committee shall determine its procedure for making its recommendation.
- (4) No appointment of Chairman, Chairperson, President, Vice-Chairman, Vice- Chairperson, Vice- President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member of the Tribunal, Appellate Tribunal or Authorities shall be invalid merely by reason of any vacancy or absence in the Search-cum-Selection Committee.
- (5) Nothing in this rule shall apply to the appointment of Chairman, Chairperson, President, Vice-Chairman, Vice-Chairperson, Vice- President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member of the Tribunal, Appellate Tribunal or, as the case may be, Authority functioning as such immediately before the commencement of these rules.