IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

WRIT PETITION (CIVIL) D. NO. 18999 OF 2021

PUBLIC INTEREST LITIGATION

IN THE MATTER OF:

JAIRAM RAMESH ...PETITIONER

Versus

UNION OF INDIA & ANR. …RESPONDENTS

With

I.A. No. / 2021	Application for interim relief
I.A. No. / 2021	Application for exemption from filing notarized affidavit

PAPER BOOK

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ADVOCATE FOR THE PETITIONER: MR. ABISHEK JEBARAJ

SYNOPSIS

This Writ Petition, filed in public interest under Article 32 of the Constitution, assails the proviso to Section 3(1) along with Sections 3(7), 5 and 7(1) of the Tribunal Reforms Act, 2021 [Hereinafter "**The Tribunals Act**" or "**Impugned Act**"] as being ultra-vires Articles 14, 21 and 50 of the Constitution. The Petitioner is aggrieved by the impugned Act abrogating the principle of judicial independence, and its passage being a deliberate attempt to legislatively override the judgement of this Hon'ble Court in ***Madras Bar Association v. Union of India*** **[2021 SCCOnline SC 463]** which set aside provisions identical to those being impugned, without removing the basis of the judgement.

The origins and objective of Tribunalization

The establishment of tribunals in India can be traced to the insertion of Articles 323-A and 323-B to the Constitution of India, through the Constitution 42nd Amendment Act, 1976. The objective behind the creation of Tribunals was to reduce the burden and growing backlog on the judiciary as well as to bring technical expertise to the field of law governed by such tribunals, as alluded to by the Swaran Singh Committee Report of 1976.

A Constitution Bench of this Hon'ble Court in ***L. Chandra Kumar v. Union of India*** **[[1997] 3 SCC 261]** authoritatively held that the power

of judicial review under Articles 226 and 32 of the Constitution were part of the basic structure of the Constitution. Accordingly, the Court held the role of tribunals to be supplementary to that of the High Court rather than substitutionary and gave directions for the effective and independent functioning of tribunals.

A decade thereafter, in ***Union of India v. R Gandhi, President, Madras Bar Association*** **[(2010) 11 SCC 1] [**Hereinafter "**MBA-I**"**]**, the creation of the National Company Law Tribunal [NCLT] under the Companies Act, 1956 was constitutionally upheld by this Hon'ble Court. The Court however directed the removal of defects in its structure that compromised the principles of separation of powers and the independence of the judiciary. On the passage of the Companies Act, 2013, the creation and structure of the National Company Law Tribunal was again challenged before this Hon'ble Court in ***Madras Bar Association v. Union of India*** **[(2015) 8 SCC 583] [**Hereinafter, "**MBA-II**"**]**. ***MBA-II*** upheld the validity of Section 408 by which the NCLT was constituted, but ruled that the National Company Law Tribunal could commence its operation only when various defects, such as the constitution of the selection committee, were brought in line with the directions in the ***MBA-I*** judgment.

Tribunal Reform through the Finance Act 2017

The Finance Act, 2017 [Hereinafter "**Finance Act**"], which came into force on 31.03.2017, amended various enactments to *inter alia* provide for the merger of tribunals through Sections 158 to 182 at Part XIV. The Finance Act, by way of Section 184 also conferred wide powers on the government to regulate the appointment and service conditions of members of the tribunals and read as under:

> ***"184. Qualifications, appointment, 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, appointment, 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 date on which he enters 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 [President or the Presiding Officer of the Securities Appellate Tribunal], the age of seventy years;*
>
> *(b) in the case of Vice-Chairperson, Vice-Chairman, Vice-President, Presiding Officer [of the Industrial*

Tribunal constituted by the Central Government and the Debts Recovery Tribunal] 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, VicePresident, 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."

Thereafter, on 01.06.2017, the Central Government, in exercise of its powers under Section 184 of the Finance Act notified the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017 (hereinafter "**the 2017 Rules**").

Part XIV of the Finance Act, along with the 2017 Rules came to be challenged before a Constitution Bench of this Hon'ble Court in ***Rojer Mathew v. South Indian Bank Limited and Ors.*** **[(2020) 6 SCC 1]** and came to be determined as under:

a. A challenge to Part XIV of the Finance Act on the ground that it could not have been enacted by way of a money bill under Article 110 (1) of the Constitution remained undecided as issues concerning the interpretation of money bill provisions were referred to a larger bench for determination.

b. The challenge to Section 184 of the Finance Act for being ultra-vires Article 14 of the Constitution for suffering from the vice of excessive delegation was dismissed, by a 3:2 majority. The

minority held that Section 184 was unconstitutional since it delegated essential legislative functions.

c. The 2017 Rules were set aside unanimously by this Hon'ble Court on the grounds that it contradicted the principles of independence of the judiciary, the provisions of the parent enactments and dicta of this Hon'ble Court in various Constitution Bench Judgements [such as in ***R.K. Jain v. Union of India*** **[1993 4 SCC 119];** ***L. Chandra Kumar v. Union of*** **India [[1997] 3 SCC 261];** ***Madras Bar Association v. Union of India & Anr.*** **[(2014) 10 SCC 1].**

d. The Central Government was directed to reframe the 2017 Rules in conformity with the directions of this Hon'ble Court in the aforesaid judgements.

e. A Writ of Mandamus was issued for carrying out a judicial impact assessment to guide the legislative authority to best structurally reorganize tribunals under the Finance Act.

f. <u>The Central Government was granted liberty to approach the Court to seek modification of the order after reframing new rules and as an interim order it was directed that all tribunals will be governed by the law in force prior to the passage of the Finance Act, 2017.</u>

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The enactment of the 2020 Rules and its challenge

On 12.02.2020, the Central Government notified the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2020 [hereinafter "**2020 Rules**"]. The 2020 Rules were challenged before this Hon'ble Court in ***Madras Bar Association v. Union of India & Anr*** **[2020 SCC Online SC 962]** [hereinafter "**MBA-III-2020"**] wherein the Petition was disposed of with the following directions, among others:

> *"53…(i)* ***The Union of India shall constitute a National Tribunals Commission which shall act as an independent body to supervise the appointments and functioning of Tribunals****…*
>
> *(ii) Instead of the four-member Search-cum Selection Committees provided for in Column (4) of the Schedule to the 2020 Rules…****the Search cum-Selection Committees should comprise of the following members****:*
> *(a) The Chief Justice of India or his nominee—Chairperson (with a casting vote).*
> *(b) The outgoing Chairman or Chairperson or President of the Tribunal in case of appointment of the Chairman or Chairperson or President of the Tribunal (or) the sitting Chairman or Chairperson or President of the Tribunal in case of appointment of other members of the Tribunal (or) a retired Judge of the Supreme Court of India or a retired Chief Justice of a High Court in case the Chairman or Chairperson or President of the Tribunal is not a Judicial member or if the Chairman or Chairperson or President of the Tribunal is seeking reappointment—member;*
> *(c) Secretary to the Ministry of Law and Justice, Government of India—member;*
> *(d) Secretary to the Government of India from a department other than the parent or sponsoring department, nominated by the Cabinet Secretary — member;*
> *(e) Secretary to the sponsoring or parent Ministry or Department—Member Secretary/Convener (without a vote).*
> *Till amendments are carried out, the 2020 Rules shall be read in the manner indicated.*

(iii) ***Rule 4(2) of the 2020 Rules shall be amended to provide that the Search-cum-Selection Committee shall recommend the name of one person for appointment to each post instead of a panel of two or three persons for appointment to each post****. Another name may be recommended to be included in the waiting list.*

(iv) ***The Chairpersons, Vice-Chairpersons and the members of the Tribunal shall hold office for a term of five years*** *and shall be eligible for reappointment…*

(v) The Union of India shall make serious efforts to provide suitable housing to the Chairman…and other members of the Tribunals. If providing housing is not possible, the Union of India shall pay the Chairman or Chairperson or President and Vice-Chairman, Vice-Chairperson, Vice President of the Tribunals an amount of Rs. 1,50,000/- per month as house rent allowance and Rs. 1,25,000/- per month for other members of the Tribunals. This direction shall be effective from 01.01.2021.

(vi) ***The 2020 Rules shall be amended to make advocates with an experience of at least 10 years eligible for appointment as judicial members in the Tribunals****…*

(vii) The members of the Indian Legal Service shall be eligible for appointment as judicial members in the Tribunals, provided that they fulfil the criteria applicable to advocates…

(ix) ***The Union of India shall make appointments to Tribunals within three months from the date on which the Search-cum-Selection Committee completes the selection process and makes its recommendations.***

(x) The 2020 Rules shall have prospective effect and will be applicable from 12.02.2020, as per Rule 1(2) of the 2020 Rules.

(xi) Appointments made prior to the 2017 Rules are governed by the parent Acts and Rules which established the concerned Tribunals. In view of the interim orders passed by the Court in Rojer Mathew (supra), appointments made during the pendency of Rojer Mathew (supra) were also governed by the parent Acts and Rules. Any appointments that were made after the 2020 Rules

> *came into force i.e. on or after 12.02.2020 shall be governed by the 2020 Rules subject to the modifications directed in the preceding paragraphs of this judgment….*
>
> *(xiv)* ***The terms and conditions relating to salary, benefits, allowances, house rent allowance etc. shall be in accordance with the terms indicated in, and directed by this judgment****…"*
>
> [Emphasis supplied].

The enactment of the Tribunal Reforms Ordinance and its constitutional challenge.

On 13.02.2021, the Tribunal Reforms (Rationalisation and Conditions of Service) Bill, 2021 was introduced in the Lok Sabha with a view to streamline and reform tribunals. However, the bill could not be taken up for consideration which resulted in the promulgation of the Tribunal Reforms (Rationalisation and Conditions of Service) Ordinance, 2021 [Hereinafter the "**Tribunals Ordinance**"] by the President of India on 04.04.2021. The salient features of the Tribunals Ordinance were as under:

1. It dissolved certain appellate tribunals/bodies and transferred their function to the High Court/civil court or central government [Sections 3 to 11].
2. Section 12 substituted Section 184 of the Finance Act, 2017 with a new Section 184 (1) to 184 (11) which, inter-alia effected the following:
    a. The central government was conferred with wide power to frame rules "for the qualifications, appointment, salaries and

allowances, resignation, removal and the other conditions of service" [Section 184 (1)].

b. A person below the age of 50 years was ineligible for appointment as Chairperson or Member [First Proviso to Section 184 (1)].

c. The allowances and benefits payable to Chairpersons and Members were made the same as a Central Government officer holding a post carrying the same pay as that of the Chairpersons and Members. [Second and third proviso to Section 184 (1)].

d. The Selection Committee was mandated to recommend a panel of two names for appointment to the post of Chairperson/Member and the Central Government was to make its decision preferably within three months from the date of the Committee's recommendation [Section 184 (7)].

e. The term of office of the Chairperson and Member of a tribunal was fixed as four years. [Section 184 (11)].

The three provisos to Section 184 (1), Section 184 (7) and Section 184 (11) of Finance Act 2017 inserted by way of Section 12 of the Tribunals Ordinance came to be challenged before this Hon'ble Court in ***Madras Bar Association v. Union of India*** **[2021 SCCOnline SC 463]** **[**Hereinafter **"MBA-IV-2021"]**. This Hon'ble Court by a 2:1 majority in ***MBA-IV-2021*** held as under:

> ***"the first proviso and the second proviso, read with the third proviso, to Section 184 overriding the judgment of***

> ***this Court in MBA-III in respect of fixing 50 years as minimum age for appointment and payment of HRA, Section 184(7) relating to recommendation of two names for each post by the SCSC and further, requiring the decision to be taken by the Government preferably within three months are declared to be unconstitutional. Section 184(11) prescribing tenure of four years is contrary to the principles of separation of powers, independence of judiciary, rule of law and Article 14 of the Constitution of India".***
>
> [Emphasis supplied].

The dissenting judgement of Hemant Gupta, J. also found unanimity with the majority as far as setting aside Section 184(7) (which mandated the recommendation of names of two members for appointment) and Section 184(11) (which fixed the tenure of appointees at four years] were concerned.

Prior to the decision of this Hon'ble Court in ***MBA-IV-2021*** on 14.07.2021, on 30.06.2021, the Central Government amended the 2020 Rules by the passage of the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) (Amendment) Rules, 2021 [Hereinafter "**2021 Rules**"]. The 2021 Rules brought some of the 2020 Rules into conformity with the judgement of this Hon'ble Court in ***MBA-III-2020*** where for example the HRA stipulation was as per the directions of this Hon'ble Court.

Passage of the Impugned Legislation

In August 2021, the Tribunals Reforms Act, 2021 [hereinafter "**Tribunals Act**" or "**Impugned Act**"] was passed by both Houses of Parliament and received Presidential Assent on 13.08.2021. The Tribunals Act which repeals the Tribunals Ordinance was made retrospectively effective from 04.04.2021 and enacted *inter alia* with the objective, "*to abolish certain tribunals and authorities and to provide a mechanism for filing appeal directly to the commercial court or the High Court*" and also "*reduce the burden on public exchequer*". The Petitioner submits that the impugned Act, contains various provisions that are identical in nature to those in the Tribunals ordinance that were set aside by this Hon'ble Court in ***MBA-IV-2021***.

Unconstitutionality of the Impugned Act

The various provisions of the impugned legislation are unconstitutional on the following counts:

1. The proviso to Section 3 (1) of the Tribunals Reforms Act, 2021, which bars the appointment to tribunals of persons below fifty years of age, violates Articles 14, 21 and 50 of the Constitution. The provision is identical to Section 184(1) of the Finance Act, 2017, which was set aside by this Hon'ble Court in ***MBA-IV-2021,*** as under:

> "***Practically, it would be difficult for an advocate appointed after attaining the age of 50 years to resume legal practice after completion of one term, in case he is not reappointed. Security of tenure and conditions of***

> ***service are recognised as core components of independence of the judiciary. Independence of the judiciary can be sustained only when the incumbents are assured of fair and reasonable conditions of service, which include adequate renumeration and security of tenure. Therefore, the first proviso to Section 184(1) is in violation of the doctrine of separation of powers as the judgment of this Court in MBA - III has been frustrated by an impermissible legislative override. Resultantly, the first proviso to Section 184 (1) is declared as unconstitutional as it is violative of Article 14 of the Constitution."***
>
> [Emphasis supplied].

The concurring opinion of Ravindra Bhat J. in the aforesaid judgement also set aside the criterion (of minimum 50 years of age) as being discriminatory under Article 14 for being ***"picked out from a hat and wholly arbitrary***".

2. Section 3(7) of the Tribunals Act which mandates the recommendation of a panel of two names by the search-cum selection committee to the Central Government violates the principles of separation of powers and judicial independence. Section 3 (7) thereby contravenes Articles 14, 21 and 50 of the Constitution and is identical to Section 184 (7) of the Finance Act, 2017 which was set aside in ***MBA-IV-2021*** as under:

> ***"53. …. Sufficient reasons were given in MBA-III to hold that executive influence should be avoided in matters of appointments to tribunals - therefore, the direction that only one person shall be recommended to each post. The decision of this Court in that regard is law laid down under Article 141 of the Constitution.*** *The only way the legislature could nullify the said decision of this Court is by curing the defect in Rule 4(2). There is no such attempt made except to repeat the provision of Rule 4(2) of the 2020 Rules in the Ordinance amending the Finance Act, 2017……"*
>
> [Emphasis supplied].

Section 3(7) of the impugned Act in so far as it grants discretion to the Central Government to take a decision on the recommendations made by that Committee, preferably within three months from the date of such recommendation is also unconstitutional and violates Article 14 of the Constitution. The impugned provision entirely nullifies the directions of this Hon'ble Court in ***Madras Bar Association v. Union of India [MBA-III -SCC 2020]*** which directed the Union "***to make appointments to tribunals within three months from the date on which the Search-cum-Selection Committee completes the selection process and makes its recommendations***".

3. Section 5 of the impugned Act, in so far as it fixes the tenure of the Chairperson and Member to a manifestly short tenure of four years, adversely impacts judicial independence and violates Article 14. Section 5 also runs against the directions of this Hon'ble Court to fix the tenure of appointees for at least five years as held in ***Rojer Mathew, MBA-III-2020*** and ***MBA-IV-2021.*** This Hon'ble Court in MBA-1V-2021 categorically held as under:

> "55. …… *After perusing the law laid down by this Court in MBA-I and Rojer Mathew (supra) which held that a short stint is anti-merit, we directed the modification of tenure in Rules 9(1) and 9(2) as five years in respect of Chairpersons and Members of tribunals in MBA-III. This Court declared in para 53(iv) that the Chairperson, Vice-Chairperson and the Members of the tribunals shall hold office for a term of five years and shall be eligible for reappointment.* ***The insertion of Section 184(11) prescribing a term of four years for the Chairpersons***

> ***and Members of tribunals by giving retrospective effect to the provision from 26.05.2017 is clearly an attempt to override the declaration of law by this Court under Article 141 in MBA-III. Therefore, clauses (i) and (ii) of Section 184(11) are declared as void and unconstitutional.****"*
>
> [Emphasis supplied].

4. Section 7 (1) of the impugned Act which allows the government its own discretion to fix HRA other than in conformity with the parameters as set by this Hon'ble Court in ***MBA-IV-2021*** violates the security of services conditions of appointees, the principles of judicial independence and thereby Article 14 of the Constitution.

The proviso to Section 3(1) and Sections 3(7), 5 and 7 (1) of the Tribunal Reforms Act, 2021 are identical to corresponding Sections 184 (1), 184 (7) and 184 (11) of the Finance Act 2017 which were set aside by this Hon'ble Court in ***MBA-IV-2021*** for violating the principles of judicial independence, separation of powers and Article 14 of the Constitution. The impugned provisions are therefore an unconstitutional legislative override of the judgement of this Hon'ble Court which held identical provisions to violate Part III of the Constitution, without legislatively curing the defect. This Hon'ble Court in ***Bakhtawar Trust v. MD Narayan*** **[(2003) 5 SCC 298]**, laid down the test for examining the legality of an Amending or Validating Act as under:

> ***"****The test of judging the validity of the Amending and Validating Act is, whether the legislature enacting the Validating Act has competence over the subject*

> *matter;* ***whether by validation, the said legislature has removed the defect which the Court had found in the previous laws; and whether the Validating law is consistent with the provisions of Part III of the Constitution****".*

The interpretation as to whether the impugned provisions violate Article 14 and Part III of the Constitution vests solely in the judicial domain and the ensuing directions of this Hon'ble Court in ***Madras Bar Association v. Union of India*** **[2021 SCC Online 463]** are binding on Parliament. The passage of the impugned provisions is therefore a transgression of the constitutional limits of Parliament's legislative power and undermines the power of judicial review and the Supremacy of the Constitution, which are basic features of the Constitution as repeatedly held by this Hon'ble Court [Such as in ***Kesavananda Bharati v. State of Kerala*** **[(1973) 4 SCC 225],** ***L. Chandra Kumar v. Union of India*** **[[1997] 3 SCC 261],** ***KS Puttaswamy v. Union of India*** **[(2019) 1 SCC 1]**].

The impugned provisions, and the repeated failure of the Respondents to comply with the directions of this Hon'ble Court, undermine the rule of law, the equal protection of law, the independence of the judiciary, and the principle of separation of powers that are fundamental guarantees under Articles 14, 21 and 50 of the Constitution.

Hence, the present Petition.

LIST OF DATES

18.12.1976	Articles 323-A and 323-B were added to the Constitution of India, through the Constitution 42nd Amendment Act, 1976.
09.12.1986	The decision of this Hon'ble Court in ***S.P. Sampath Kumar v. Union of India*** **[(1987) 1 SCC 124]** while holding judicial review as part of the basic structure of the Constitution, found no constitutional infirmities in the establishment of tribunals so long as they were real and effective substitutes for the High Court.
18.03.1997	This Hon'ble Court in ***L. Chandra Kumar v. Union of India*** **[[1997] 3 SCC 261]** authoritatively held that the power of judicial review of the High Courts under Articles 226/227 and of the Supreme Court under Article 32 were part of the basic structure of the Constitution and that Tribunals played only supplementary role of adjudication to that of the High Courts.
11.05.2010	The Hon'ble Supreme Court in ***Union of India v R Gandhi, President, Madras Bar Association*** **[(2010) 11 SCC 1]** ***c***onstitutionally upheld the creation of the Company Law Tribunal but also directed the removal of defects in its structure that

	compromised the principles of separation of powers and the independence of the judiciary.
14.05.2015	The Hon'ble Supreme Court in ***Madras Bar Association v. Union of India*** **[(2015) 8 SCC 583]** held that the National Company Law Tribunal could commence its operation only when the defects pointed out were brought in line with the directions in the MBA-I judgment.
31.03.2017	The Finance Act, 2017 was enacted by the Legislature and amended various enactments to *inter alia* provide for the merger of tribunals through Sections 158 to 182 at Part XIV and conferred wide powers on the government to regulate the appointment and service conditions of the members of the Tribunal.
1.06.2017	The Union Government notified the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017.
13.11.2019	This Hon'ble Court in ***Rojer Mathew v. South Indian Bank Limited and Ors.*** **[(2020) 6 SCC 1]** by a 3:2 majority dismissed the challenge to Section 184 of the Finance Act but struck down the 2017 Rules unanimously.

12.02.2020	The Central Government notified the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2020.
27.11.2020	This Hon'ble Court in ***Madras Bar Association v. Union of India & Anr*** **[2020 SCC Online SC 962]** issued several directions and suggested various changes in the Constitution of the Search-cum-Selection Committee and also directed the Union Government to constitute a National Tribunals Commissions to cater to the requirements of the Tribunals along with several other relevant observations and directions.
13.02.2021	The Tribunals Reforms (Rationalisation and Conditions of Service) Bill, 2021 was introduced in the Lok Sabha with a view to streamline tribunals and abolish certain tribunals that were not beneficial to the public. However, it could not be taken up for consideration.
04.04.2021	The President of India promulgated the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021 on the same lines as the 2021 Bill.

30.06.2021	Prior to the decision of this Hon'ble Court, Respondent No. 2 amended the 2020 Rules by the passage of the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) (Amendment) Rules, 2021 and brought some Rules in conformity with the decision of this Hon'ble Court.
14.07.2021	This Hon'ble Court in ***Madras Bar Association v. Union of India*** **[2021 SCCOnline SC 463]** set aside Section 184 of the Tribunals Ordinance.
02.08.2021	The Tribunals Reforms Bill, 2021 was introduced in the Lok Sabha.
03.08.2021	The Tribunals Reforms Bill, 2021 was passed by the Lok Sabha.
09.08.2021	The Tribunals Reforms Bill, 2021 was passed by the Rajya Sabha.
13.08.2021	The Tribunal Reform Bill, 2021 received the assent of the President and was published in the Official Gazette.
	Hence, the Present Petition.

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

WRIT PETITION (CIVIL) D. NO. 18999 OF 2021

PUBLIC INTEREST LITIGATION

IN THE MATTER OF:

1. Mr. Jairam Ramesh

Member of Parliament, (Rajya Sabha)

[redacted]

… **PETITIONER**

VERSUS

1. Union of India

Through the Secretary,

Ministry of Law & Justice,

Legislative Department,

4th Floor, A-Wing, Shastri Bhawan,

New Delhi-110001

2. Union of India

Through the Secretary,

Ministry of Finance,

Department of Revenue

North Block

New Delhi - 110 001 **…RESPONDENTS**

ALL ARE CONTESTING RESPONDENTS

A WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION IN PUBLIC INTEREST CHALLENGING THE CONSTITUTIONALITY OF THE TRIBUNALS REFORMS ACT 2021, FOR VIOLATING ARTICLES 14, 21 AND 50 OF THE CONSTITUTION

To,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUDGES OF THE SUPREME COURT OF INDIA.

THE HUMBLE PETITION OF THE PETITIONER ABOVE-NAMED

MOST RESPECTFULLY SHEWETH:

1. The present Writ Petition is being preferred before this Hon'ble Court under Article 32 of the Constitution of India, in public interest, challenging the proviso to Section 3(1) along with Sections 3(7), 5 and 7 (1) of the Tribunals Reforms Act, 2021 [Hereinafter "**The Tribunals Act**" or "**Impugned Act**"] as being ultra-vires Article 14, 21 and 50 of the Constitution. The Petitioner specifically seeks to

assail the impugned provisions for violating the sacrosanct principles of separation of powers and the independence of the judiciary that are basic features of the Constitution.

2. The Petitioner is an Indian economist and politician belonging to the Indian National Congress. He is a Member of Parliament, representing the state of Karnataka in the Rajya Sabha for multiple terms and was a member at the time of passage of the impugned Act. [redacted]

[redacted]

3. The details of the Petitioner are as follows:

Name:	Jairam Ramesh
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
Cause of Action:	As enumerated in Para 7

Nature of Injury:	As enumerated in Para 8

4. The Petitioner has no personal interest, private motive, or oblique reason in filing the instant Petition but only seeks the intervention of this Hon'ble Court in determining the Constitutionality of the impugned legislation so as to safeguard the judicial independence of Tribunals across the Country. The Petition is filed for a common cause and benefits the society at large.

5. The Petitioner has not approached any High Court or this Hon'ble Court with a petition of a similar nature.

6. The Petitioner humbly states that no civil, criminal or revenue litigation involving the Petitioner, which has or could have a legal nexus with the issues involved in the Petition, is pending.

7. **Cause of Action:**

This Petition has been filed in public interest as the proviso to Section 3(1) along with Sections 3(7), 5 and 7 (1) of the Tribunals Reforms Act, 2021 are ultra-vires Article 14, 21 and 50 of the Constitution. Not only does the Act abrogate

judicial independence and the principle of separation of powers, it also deliberately attempts to legislatively override the judgement of this Hon'ble Court in ***Madras Bar Association v. Union of India*** **[2021 SCCOnline SC 463]** which set aside provisions identical to those being impugned, without removing the basis of the judgement.

8. **Injury to Public:**

The impugned provisions, and the repeated failure of the Respondents to comply with the directions of this Hon'ble Court, undermine the rule of law and the equal protection of laws, as well as the principle of separation of powers and judicial independence. This will lead to an erosion of the public confidence in the judiciary, and the delivery of justice itself will be affected for the public at large. Moreover, the impugned legislation was passed without much deliberation or comprehensive impact assessment being undertaken, thus causing doubts as to whether it indeed reduces the burden on the public exchequer. If the impugned provisions remain on the statute books, it will cause grave injustice to the public since it is wholly ultra vires Articles 14, 21, and 50 of the Constitution, and undermines the independence of the judiciary.

9. **Array of Parties:**

The Respondent No. 1 is the Union of India, Ministry of Law and Justice, which is concerned with advising the various Ministries of the Central Government on legal matters and drafting of principal legislation for the Central Government. The Respondent No. 2 is the Union of India, Ministry of Finance, which is in charge of the requirements of tribunals as per the judgment of this Hon'ble Court in ***Madras Bar Association v. Union of India & Anr*** **[2020 SCC Online SC 962]** wherein it held that, *"till the National Tribunals Commission is constituted, a separate wing in the Ministry of Finance, Government of India shall be established to cater to the requirements of the Tribunals"*.

QUESTIONS OF LAW

10. The Petitioner is aggrieved not only by the impugned Act abrogating the principle of judicial independence but also by its passage being a blatantly deliberate attempt to legislatively override the judgement of this Hon'ble Court in ***Madras Bar Association v. Union of India*** **[2021 SCCOnline SC 463]**, which set aside provisions identical to those being impugned, without removing the basis of the

judgement. In these circumstances, the instant petition raises the following substantial questions of law as to the interpretation of the Constitution:

A. *Whether the proviso to Section 3 (1) of the Tribunals Reforms Act, 2021, in so far as it bars the appointment of persons below 50 years of age to Tribunals, violates Article 14 of the Constitution for being discriminatory in nature and abrogating the principles of separation of powers and judicial independence?*

B. *Whether Section 3(7) of the Tribunals Reforms Act, 2021, which mandates the recommendation of two names to the Central Government for the appointment of every Member of a Tribunal, violates Articles 14, 21 and 50 of the Constitution and binding directions of the Hon'ble Court Supreme Court in* ***Rojer Mathew v. South Indian Bank*** **[(2020) 6 SCC 1]** *and* ***Madras Bar Association v. Union of India*** **[2021 SCCOnline SC 463]***?*

C. *Whether Section 5 of the Tribunals Reforms Act, 2021 in fixing the tenure of chairman/members of*

Tribunals to four years violates the principles of separation of powers and judicial independence that are basic features of the Constitution?

D. *Whether the passage of the proviso to Section 3(1) along with Sections 3(7), 5 and 7 (1) of the Tribunals Reforms Act, 2021 amounts to unconstitutional legislative overriding of the judgement of this Hon'ble Court in* ***Madras Bar Association v. Union of India*** **[2021 SCCOnline SC 463]**, *without curing the basis of the judgement?*

FACTS OF THE CASE

The origins and objective of Tribunalization

11. The establishment of tribunals in India can be traced to the insertion of Articles 323-A and 323-B to the Constitution of India, through the Constitution 42nd Amendment Act, 1976. Article 323-A conferred Parliament with the power to provide for administrative tribunals to adjudicate disputes with regard to the service conditions of persons appointed to public services. In a similar vein, Article 323-B bestowed the legislature with the power to constitute tribunals for the adjudication of any dispute with respect to the list of matters

specified under Article 323-B (2). The objective behind the creation of Tribunals was to reduce the burden and growing backlog on the judiciary as well as to bring technical expertise to the field of law governed by such tribunals, as alluded to by the Swaran Singh Committee Report of 1976. Articles 323-A and 323-B were given further effect to by the passage of the Administrative Tribunals Act, 1985 and soon fell under judicial scrutiny.

12. The decision of this Hon'ble Court in ***S.P. Sampath Kumar v. Union of India*** **[(1987) 1 SCC 124]** while holding judicial review as part of the basic structure of the Constitution**,** found no constitutional infirmities in the establishment of tribunals so long as they were real and effective substitutes for the High Court. However, ambiguity over the effect of tribunalization on the power of judicial review of High Courts under Articles 226/227 and the continuing teething problems of tribunals, led to various constitutional issues being referred to a larger bench of this Hon'ble Court in ***L. Chandra Kumar v. Union of India*** **[[1997] 3 SCC 261].** ***L. Chandra Kumar*** authoritatively held that the power of judicial review of the High Courts

under Articles 226/227 and of the Supreme Court under Article 32 were part of the basic structure of the Constitution. Accordingly, the Court held the role of tribunals to be supplementary to that of the High Court rather than substitutionary and gave directions for the effective and independent functioning of tribunals.

13. A decade thereafter, in ***Union of India v. R Gandhi, President, Madras Bar Association*** [Hereinafter "**MBA-I**"] [**(2010) 11 SCC 1**], the constitutional validity of Chapters 1-B and 1-C of the Companies Act,1956 as inserted by the Companies (Second Amendment) Act, 2002 which provided for the constitution of a National Company Law Tribunal [NCLT] and the National Company Law Appellate Tribunal [NCLAT] came to be challenged. This Hon'ble Court in ***MBA-I*** while Constitutionally upholding the creation of the National Company Law Tribunal directed the removal of defects in its structure that compromised the principles of separation of powers and the independence of the judiciary.

14. On the passage of the Companies Act, 2013, the creation and structure of the National Company Law Tribunal was

again challenged before this Hon'ble Court in ***Madras Bar Association v. Union of India*** **[(2015) 8 SCC 583]** [Hereinafter, "**MBA-II**"]. This Hon'ble Court in ***MBA-II*** upheld the validity of Section 408 by which the NCLT was constituted but set aside certain provisions such as those relating to the appointment of Technical Members and the constitution of the Selection Committee under Sections 409 (3) and 412(2). Ultimately, this Hon'ble Court held that the National Company Law Tribunal could commence its operation only when the defects pointed out were brought in line with the directions in the ***MBA-I*** judgment.

Tribunal Reform through the Finance Act 2017

15. The Finance Act, 2017 [Hereinafter "**Finance Act**"], which came into force on 31.03.2017, amended various enactments to *inter alia* provide for the merger of tribunals through Sections 158 to 182 at Part XIV. The Finance Act, by way of Section 184 also conferred wide powers on the government to regulate the appointment and service conditions of members of the tribunals and read as under:

> ***"184. Qualifications, appointment, 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, appointment, 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 date on which he enters 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 [President or the Presiding Officer of the Securities Appellate Tribunal], the age of seventy years;

(b) in the case of Vice-Chairperson, Vice-Chairman, Vice-President, Presiding Officer [of the Industrial Tribunal constituted by the Central Government and the Debts Recovery Tribunal] 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."

[Emphasis supplied].

A copy of the relevant provisions of the Finance Act 2017 dated nil is hereto marked and annexed as **Annexure P-1** [**Pages 49 to 50**].

16. Thereafter, on 01.06.2017, the Central Government, in exercise of its powers under Section 184 of the Finance Act notified the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017 (hereinafter "**the 2017 Rules**"). A copy of the aforesaid rules notified on 01.06.2017 is hereto marked and annexed as **Annexure P-2** [**Pages 51 to 72**].

17. Part XIV of the Finance Act, along with the 2017 Rules came to be challenged before a Constitution Bench of this Hon'ble Court in ***Rojer Mathew v. South Indian Bank Limited and Ors.*** **[(2020) 6 SCC 1]** and came to be determined as under:

    a. A challenge to Part XIV of the Finance Act on the ground that it could not have been enacted by way of a money bill under Article 110 (1) of the Constitution remained undecided as issues concerning the

interpretation of money bill provisions were referred to a larger bench for determination.

b. The challenge to Section 184 of the Finance Act for being ultra-vires Article 14 of the Constitution for suffering from the vice of excessive delegation was dismissed, by a 3:2 majority. The minority held that Section 184 was unconstitutional since it delegated essential legislative functions.

c. The 2017 Rules were set aside unanimously by this Hon'ble Court on the grounds that it contradicted the principles of independence of the judiciary, the provisions of the parent enactments, and dicta of this Hon'ble Court in various Constitution Bench Judgements [Such as in ***R.K. Jain v. Union of India*** **[1993 4 SCC 119]*; L. Chandra Kumar v. Union of India*** **[[1997] 3 SCC 261],** ***Madras Bar Association v. Union of India & Anr*** **[(2014) 10 SCC 1]**].

d. The Central Government was directed to reframe the 2017 Rules in conformity with the directions of this Hon'ble Court in the aforesaid judgements.

e. A Writ of Mandamus was issued for carrying out a judicial impact assessment to guide the legislative

authority to best structurally reorganize tribunals under the Finance Act.

f. The Central Government was granted liberty to approach the Court to seek modification of the order after reframing new rules and as an interim order it was directed that all tribunals will be governed by the law in force prior to the passage of the Finance Act, 2017.

The enactment of the 2020 Rules and its challenge

18. On 12.02.2020, the Central Government notified the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2020 (hereinafter "**the 2020 Rules**"). A copy of the aforesaid rules notified on 12.02.2020 are hereto marked and annexed to this Writ Petition as **Annexure P-3** [**Pages 73 to 90**].

19. The 2020 Rules were challenged before this Hon'ble Court in ***Madras Bar Association v. Union of India & Anr*** **[2020 SCC Online SC 962]** [hereinafter "**MBA-III-2020"** or **"MBA-III**"] wherein the Petition was disposed of with the following directions:

"53…(i) ***The Union of India shall constitute a National Tribunals Commission which shall act as an independent body to supervise the appointments and functioning of Tribunals****, as well as to conduct disciplinary proceedings against members of Tribunals and to take care of administrative and infrastructural needs of the Tribunals, in an appropriate manner. Till the National Tribunals Commission is constituted, a separate wing in the Ministry of Finance, Government of India shall be established to cater to the requirements of the Tribunals.*

(ii) Instead of the four-member Search-cum Selection Committees provided for in Column (4) of the Schedule to the 2020 Rules with the Chief Justice of India or his nominee, outgoing or sitting Chairman or Chairperson or President of the Tribunal and two Secretaries to the Government of India, ***the Search cum-Selection Committees should comprise of the following members****:*

(a) The Chief Justice of India or his nominee—Chairperson (with a casting vote).

(b) The outgoing Chairman or Chairperson or President of the Tribunal in case of appointment of the Chairman or Chairperson or President of the Tribunal (or) the sitting Chairman or Chairperson or President of the Tribunal in case of appointment of other members of the Tribunal (or) a retired Judge of the Supreme Court of India or a retired Chief Justice of a High Court in case the Chairman or Chairperson or President of the Tribunal is not a Judicial member or if the Chairman or Chairperson or President of the Tribunal is seeking reappointment—member;

(c) Secretary to the Ministry of Law and Justice, Government of India—member;

(d) Secretary to the Government of India from a department other than the parent or sponsoring

department, nominated by the Cabinet Secretary — member;

(e) Secretary to the sponsoring or parent Ministry or Department—Member Secretary/Convener (without a vote).

Till amendments are carried out, the 2020 Rules shall be read in the manner indicated.

(iii) ***Rule 4(2) of the 2020 Rules shall be amended to provide that the Search-cum-Selection Committee shall recommend the name of one person for appointment to each post instead of a panel of two or three persons for appointment to each post****. Another name may be recommended to be included in the waiting list.*

(iv) ***The Chairpersons, Vice-Chairpersons and the members of the Tribunal shall hold office for a term of five years*** *and shall be eligible for reappointment. Rule 9(2) of the 2020 Rules shall be amended to provide that the Vice-Chairman, Vice-Chairperson and Vice President and other members shall hold office till they attain the age of sixty-seven years.*

(v) The Union of India shall make serious efforts to provide suitable housing to the Chairman…and other members of the Tribunals. If providing housing is not possible, the Union of India shall pay the Chairman or Chairperson or President and Vice-Chairman, Vice-Chairperson, Vice President of the Tribunals an amount of Rs. 1,50,000/- per month as house rent allowance and Rs. 1,25,000/- per month for other members of the Tribunals. This direction shall be effective from 01.01.2021.

(vi) ***The 2020 Rules shall be amended to make advocates with an experience of at least 10 years eligible for appointment as judicial members in the Tribunals****. While considering advocates for*

appointment as judicial members in the Tribunals, the Search-cum-Selection Committee shall take into account the experience of the Advocate at the bar and their specialization in the relevant branches of law. They shall be entitled for reappointment for at least one term by giving preference to the service rendered by them for the Tribunals.

(vii) The members of the Indian Legal Service shall be eligible for appointment as judicial members in the Tribunals, provided that they fulfil the criteria applicable to advocates subject to suitability to be assessed by the Search-cum-Selection Committee on the basis of their experience and knowledge in the specialized branch of law.

(viii) Rule 8 of the 2020 Rules shall be amended to reflect that the recommendations of the Search cum-Selection Committee in matters of disciplinary actions shall be final and the recommendations of the Search-cum-Selection Committee shall be implemented by the Central Government.

(ix) ***The Union of India shall make appointments to Tribunals within three months from the date on which the Search-cum-Selection Committee completes the selection process and makes its recommendations.***

(x) The 2020 Rules shall have prospective effect and will be applicable from 12.02.2020, as per Rule 1(2) of the 2020 Rules.

(xi) Appointments made prior to the 2017 Rules are governed by the parent Acts and Rules which established the concerned Tribunals. In view of the interim orders passed by the Court in Rojer Mathew (supra), appointments made during the pendency of Rojer Mathew (supra) were also governed by the

parent Acts and Rules. Any appointments that were made after the 2020 Rules came into force i.e. on or after 12.02.2020 shall be governed by the 2020 Rules subject to the modifications directed in the preceding paragraphs of this judgment….

(xiv) ***The terms and conditions relating to salary, benefits, allowances, house rent allowance etc. shall be in accordance with the terms indicated in, and directed by this judgment****…"*

[Emphasis supplied].

The enactment of the Tribunals Reforms Ordinance and its constitutional challenge.

21. On 13.02.2021, the Tribunals Reforms (Rationalisation and Conditions of Service) Bill, 2021 was introduced in the Lok Sabha with a view to streamline tribunals and abolish certain tribunals that were not beneficial to the public. However, the bill could not be taken up for consideration and the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021 [Hereinafter the "**Tribunals Ordinance**"] was promulgated on 04.04.2021 by the President of India. The salient features of the Tribunals Ordinance were as under:

    1. It dissolved certain appellate tribunals/bodies and transferred their function to the High Court/civil court or central government [Sections 3 to 11].

2. Section 12 substituted Section 184 of the Finance Act, 2017 with a new Section 184 (1) to 184 (11) which, inter-alia effected the following:

   a. The central government was conferred with wide power to frame rules "for the qualifications, appointment, salaries and allowances, resignation, removal and the other conditions of service" [Section 184 (1)].

   b. A person below the age of 50 years was ineligible for appointment as Chairperson or Member [First Proviso to Section 184 (1)]

   c. The allowances and benefits payable to Chairpersons and Members were made the same as a Central Government officer holding a post carrying the same pay as that of the Chairpersons and Members [Second and third proviso to Section 184 (1)].

   d. The Selection Committee shall recommend a panel of two names for appointment to the post of

Chairperson or Member and the Central Government shall take a decision preferably within three months from the date of the recommendation of the Committee [Section 184 (7)].

e. The term of office of the Chairperson and Member of a tribunal was fixed as four years. [Section 184 (11)].

A copy of the Tribunals Ordinance promulgated on 04.04.2021 is hereto marked and annexed as **Annexure P-4** to this Writ Petition [**Pages 91 to 112**].

22. The three provisos to Section 184 (1), Section 184 (7) and Section 184 (11) of Finance Act 2017 inserted by way of Section 12 of the Tribunals Ordinance came to be challenged before this Hon'ble Court in ***Madras Bar Association v. Union of India*** **[2021 SCCOnline SC 463]** **[**Hereinafter **"MBA-IV-2021"** or **"MBA-IV"]**. This Hon'ble Court by a 2:1 majority in ***MBA-IV-2021*** held as under:

> ***"the first proviso and the second proviso, read with the third proviso, to Section 184 overriding the judgment of this Court in MBA-III in respect of fixing 50 years as minimum age for appointment***

and payment of HRA, Section 184(7) relating to recommendation of two names for each post by the SCSC and further, requiring the decision to be taken by the Government preferably within three months are declared to be unconstitutional. Section 184(11) prescribing tenure of four years is contrary to the principles of separation of powers, independence of judiciary, rule of law and Article 14 of the Constitution of India".

[Emphasis supplied].

The dissenting judgement of Hemant Gupta, J. also found unanimity with the majority judgement in so far as setting aside Section 184 (7) which mandated the recommendation of names of two members for appointment and Section 184(11) which fixed the tenure of appointees at four years.

23. Prior to the decision of this Hon'ble Court in ***MBA-IV-2021*** on 14.07.2021, on 30.06.2021, the Central Government amended the 2020 Rules by the passage of the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) (Amendment) Rules, 2021 [Hereinafter "**2021 Rules**"]. The 2021 Rules brought some of the 2020 Rules into conformity with the judgement of this Hon'ble Court in ***MBA-III-2020*** where for example the HRA stipulation was as per the directions of this Hon'ble Court. A copy of the 2021 Rules

notified by the Central Government on 30.06.2021, is hereto marked and annexed as **Annexure P-5** to this Writ Petition [**Pages 113 to 120**].

Passage of the Impugned Legislation

24. On 02.08.2021, the Tribunals Reforms Bill, 2021 was introduced in the Lok Sabha. The Tribunals Reforms Bill was passed by the Lok Sabha on 03.08.2021 and the Rajya Sabha on 09.08.2021. On 13.08.2021 the legislation enacted received Presidential Assent and as per Section 1(2) of the Tribunals Reforms Act, 2021 [Hereinafter "**impugned Act**" or **"Tribunals Act"]** comes into force retrospectively on 04.04.2021. The Tribunals Act which repeals the Tribunals Ordinance was enacted inter alia with the objective, "*to abolish certain tribunals and authorities and to provide a mechanism for filing appeal directly to the commercial court or the High Court*" and also "*reduce the burden on public exchequer*".

A copy of the Tribunals Reforms Act, 2021 dated 13 August 2021 is hereto marked and annexed as **Annexure P-6** to this Writ Petition [**Pages 121 to 137**].

25. The Petitioner submits that the impugned Act, contains various provisions that are identical in nature to those in the Tribunals ordinance that were set aside by this Hon'ble Court in ***MBA-IV-2021***. These provisions [Hereinafter "**impugned provisions/sections**"] are as under:

a. Section 3 (1) of the Tribunals Act makes persons under the age of 50 ineligible to be appointed as Chairpersons or Members to tribunals, and reads as under:

"*3. (1) Notwithstanding anything contained in any judgment, order or decree of any court, or in any law for the time being in force, the Central Government may, by notification in the Official Gazette, make rules to provide for the qualifications, appointment, salaries and allowances, resignation, removal and other conditions of service of the Chairperson and Member of a Tribunal after taking into consideration the experience, specialisation in the relevant field and the provisions of this Act:*
Provided that a person who has not completed the age of fifty years shall not be eligible for appointment as a Chairperson or Member" [emphasis supplied].

This provision is identical to the proviso to Section 184 (1) of the Finance Act, 2017 that was set aside by this Hon'ble Court in ***MBA-IV-2021.***

b. Section 3(7) of the Tribunals Act **mandates the recommendation of a panel of two names by the search-cum selection committee to the Central Government** and "the Central Government shall take a decision on the recommendations made by that Committee, **preferably within three months** from the date of such recommendation". This provision is identical to Section 184 (7) of the Finance Act, 2017 that was set aside by this Hon'ble Court in ***MBA-IV-2021***.

c. Section 5 of the Tribunals Act mandates a fixed tenure of four years for appointees and states as under:

"Notwithstanding anything contained in any judgment, order or decree of any court, or in any law for the time being in force,— (i) the Chairperson of a Tribunal ***shall hold office for a term of four years*** *or till he attains the age of seventy years, whichever is earlier; (ii)* ***the Member of a Tribunal shall hold office for a term of four years*** *or till he attains the age of sixty-seven years, whichever is earlier:"*

[Emphasis supplied].

This provision is identical to Section 184 (11) (i) and Section 184 (11) (ii) of the Finance Act, 2017 that was set aside by this Hon'ble Court in ***MBA-IV-2021***.

d. Section 7 (1) and its proviso read as follows:

> "*…the Central Government may make rules to provide for the salary of the Chairperson and Member of a Tribunal and they shall be paid allowances and benefits to the extent as are admissible to a Central Government officer holding the post carrying the same pay:*
> *Provided that if the Chairperson or Member takes a house on rent, he may be reimbursed a house rent higher than the house rent allowance as are admissible to a Central Government officer holding the post carrying the same pay, subject to such limitations and conditions as may be provided by rules*"
>
> This allows the government its own discretion to fix HRA other than in conformity with the parameters as set by this Hon'ble Court in ***MBA-IV-2021*** and is identical to the second and third proviso of Section 184 (1) of the Finance Act, 2017 that was set aside by this Hon'ble Court in the aforesaid judgement.

A comparative table showing that the impugned sections are identical to those provisions set aside by this Hon'ble Court in ***MBA-IV-2021*** dated nil is hereto marked and annexed as **Annexure P-7** to this Writ Petition [**Pages 138 to 140**].

26. The Petitioner's case is that the impugned provisions by fixing the tenure of persons appointed to tribunals to four years, and mandating the recommendation of two names for

selection to a post, abrogates the complementary principles of separation of powers and judicial independence that are foundational to the judicial branch. It is also submitted that the bar on appointing persons below fifty years of age reduces the effectiveness of tribunals by both stifling talent and fomenting vacancies, flies against various judgements of this Hon'ble Court in ***MBA-I, Rojer Mathew, MBA-III-2020*** and ***MBA-IV-2021***, and is blatantly discriminatory under Article 14 of the Constitution. The Respondents' failure to fix allowances/HRA and make the 3-month appointment timeline mandatory also violates the directions of this Hon'ble Court in ***MBA-III-2020/MBA-IV-2021*** and thwarts the judicial independence of Tribunals and its separation from the executive.

27. Most pertinently, the Petitioner submits that the impugned provisions are all preceded by the following non-obstante clause: "*Notwithstanding anything contained in any judgment, order or decree of any court, or in any law for the time being in force*". This amounts to a deliberate attempt by the Respondents to override the judgement of this Hon'ble Court in ***MBA-IV-2021*** [which struck down

identical provisions in the Tribunals Ordinance] without any modification of the basis of such judgement. The Respondents' attempt to legislatively override the judgement of this Hon'ble Court in ***MBA-IV-2021*** is not just deliberate but also repeated since this Hon'ble Court in ***MBA-IV-2021*** found the Respondents guilty of overriding the judgement of this Hon'ble Court in ***MBA-III-2020***, again without removing its basis. These actions of the Respondents undermine both the power of judicial review and the Supremacy of the Constitution, which are basic features of the Constitution as repeatedly held by this Hon'ble Court [Such as in ***Kesavananda Bharati v. State of Kerala*** **[(1973) 4 SCC 225],** ***L. Chandra Kumar v. Union of India*** **[[1997] 3 SCC 261],** ***KS Puttaswamy v. Union of India*** **[(2019) 1 SCC 1]**].

28. Finally, it is submitted that the impugned Act is purportedly passed with the objective of reducing the financial burden on the exchequer as several tribunals have not resulted in faster adjudication as observed from data collected over the last three years. However, the transfer of cases from such tribunals to the High Courts which also suffer from a huge

pendency defeats the purpose of Tribunalization while also leaving the core problem of lack of adjudicatory members and infrastructure wholly unaddressed. In this regard, it is crucial to submit that this Hon'ble Court in ***Rojer Mathew*** had issued a writ of mandamus to the Respondents to undertake a judicial impact assessment to best inform any tribunal reform that is legislatively undertaken. In violation of the aforesaid direction, the impugned legislation was passed without much deliberation or comprehensive impact assessment being undertaken.

29. The sum and substance of the Petitioner's case is therefore that the impugned provisions, and the repeated failure of the Respondents to comply with the directions of this Hon'ble Court, undermine the rule of law and the equal protection of laws that are fundamental guarantees under Article 14 and 21 of the Constitution. In these circumstances, the Petitioner has no other alternative efficacious remedy, except to file the present Writ Petition under Article 32 of the Constitution on the following grounds, among others, without prejudice to each other:

GROUNDS

A. BECAUSE the principle of separation of powers is a part of the basic structure of the Constitution and applies to Courts and Tribunals alike. In this regard, a Constitution Bench of this Hon'ble Court in ***Rojer Mathew v. South Indian Bank*** **[(2020) 6 SCC 1]**, held:

> *"The doctrine of separation of powers has been well recognised and re-interpreted by this Court as an important facet of the basic structure of the Constitution, in its dictum in Kesavananda Bharati v. State of Kerala and several other later decisions.* ***The exclusion of the Judiciary from the control and influence of the Executive is not limited to traditional Courts alone, but also includes Tribunals*** *since they are formed as an alternative to Courts and perform judicial functions".*
>
> [Emphasis supplied].

B. BECAUSE the independence of the judiciary is also a basic feature of the Constitution and is concomitant to safeguarding the separation of powers between organs of government as well as the Court's power of judicial review. This Hon'ble Court in ***MBA-IV-2021*** held as under:

> **"***Independence of the judiciary is one of the foundational pillars of every democracy governed by the rule of law, where the constitution reigns supreme. Some constitutions may guarantee this in emphatic terms, whereas in others, there may be no single provision manifested in the constitution, but rather, the idea may emerge as a compelling inference - through the kind of assurances articulated by express provisions (tenure, eligibility, age of*

superannuation, conditions where removal is possible only through Parliamentary or legislative process, manner of appointment etc)"

C. BECAUSE the violation of the principle of separation of powers negates the right to equality under Article 14 of the Constitution. The effect of the separation of powers on the right to equality was observed by this Hon'ble Court in ***MBA-IV-2021*** as under:

> *"Separation of powers between three organs—the legislature, executive and judiciary—is also nothing but a consequence of principles of equality enshrined in Article 14 of the Constitution of India. Accordingly, breach of separation of judicial power may amount to negation of equality under Article 14.* ***Stated thus, a legislation can be invalidated on the basis of breach of the separation of powers since such breach is negation of equality under Article 14 of the Constitution****."*
>
> [Emphasis supplied].

D. BECAUSE the proviso to Section 3 (1) of the Tribunals Reforms Act, 2021 is flagrantly unconstitutional in so far as it violates Articles 14 and 50 of the Constitution. This infirmity flows from the proviso's bar on appointment to tribunals of persons below fifty years of age, which undermines the length/security of tenure and violates both judicial independence and the principle of separation of powers.

E. BECAUSE this Hon'ble Court in ***MBA-IV-2021*** explicitly set aside the proviso to Section 184 (1) of the Finance Act, 2017 which proscribed persons below 50 years of age from being appointed to Tribunals. In setting aside the provision, the Hon'ble Court held as under:

> *"49. …… This Court in MBA-I and Rojer Mathew (supra) underlined the importance of recruitment of Members from the bar at a young age to ensure a longer tenure. Fixing a minimum age for recruitment of Members as 50 years would act as a deterrent for competent advocates to seek appointment. Practically, it would be difficult for an advocate appointed after attaining the age of 50 years to resume legal practice after completion of one term, in case he is not reappointed. Security of tenure and conditions of service are recognised as core components of independence of the judiciary.* ***Independence of the judiciary can be sustained only when the incumbents are assured of fair and reasonable conditions of service, which include adequate renumeration and security of tenure. Therefore, the first proviso to Section 184(1) is in violation of the doctrine of separation of powers as the judgment of this Court in MBA - III has been frustrated by an impermissible legislative override. Resultantly, the first proviso to Section 184 (1) is declared as unconstitutional as it is violative of Article 14 of the Constitution……."***
>
> [Emphasis supplied].

F. BECAUSE the proviso to Section 3 (1) of the Tribunals Reforms Act, 2021 in so far as it bars appointments to tribunals of persons below fifty years of age is

discriminatory and violative of Article 14 of the Constitution. In ***Anuj Garg v. Hotel Assn. of India*** **[(2008) 3 SCC 1]**, the Court set aside an age discrimination of those below 25 years and held as under:

> "*25. Hotel management has opened up a vista for young men and women for employment. A large number of them are taking hotel management graduation courses. They pass their examinations at a very young age. If prohibition in employment of women and men below 25 years is to be implemented in its letter and spirit, a large section of young graduates who have spent a lot of time, money and energy in obtaining the degree or diploma in hotel management would be deprived of their right of employment. Right to be considered for employment subject to just exceptions is recognised by Article 16 of the Constitution. Right of employment itself may not be a fundamental right but in terms of both Articles 14 and 16 of the Constitution of India, each person similarly situated has a fundamental right to be considered therefor".*

Again, this Hon'ble Court in ***MBA-IV-2021*** set aside the bar on appointing persons below fifty years of age to Tribunals as arbitrary and violative of Article 14, wherein the opinion of Ravindra Bhat J. held as under:

> *"**The criterion (of minimum 50 years of age) is virtually "picked out from a hat" and wholly arbitrary"***
>
> [Emphasis supplied].

G. BECAUSE Section 3(7) of the Tribunals Act which mandates the recommendation of a panel of two names by

the search-cum selection committee to the Central Government, violates the principles of separation of powers and judicial independence. Section 3 (7) therefore contravenes Articles 14, 21 and 50 of the Constitution.

H. BECAUSE the mandate to recommend two names as per Section 3 (7) of the impugned Act is identical to Section 184 (7) of the Finance Act, 2017 which was unanimously set aside by this Hon'ble Court in ***MBA-IV*** wherein it was held as under:

> ***"53. …. Sufficient reasons were given in MBA-III to hold that executive influence should be avoided in matters of appointments to tribunals - therefore, the direction that only one person shall be recommended to each post. The decision of this Court in that regard is law laid down under Article 141 of the Constitution.*** *The only way the legislature could nullify the said decision of this Court is by curing the defect in Rule 4(2). There is no such attempt made except to repeat the provision of Rule 4(2) of the 2020 Rules in the Ordinance amending the Finance Act, 2017……"*
>
> [Emphasis supplied]

I. BECAUSE Section 3(7) of the impugned Act in so far as it grants discretion to the Central Government to take a decision on the recommendations made by that Committee, preferably within three months from the date of such recommendation, is also unconstitutional and violates

Article 14 of the Constitution. The impugned provision also nullifies the directions of this Hon'ble Court in ***MBA-III-2020*** which directed the Union ***"to make appointments to tribunals within three months from the date on which the Search-cum-Selection Committee completes the selection process and makes its recommendations"***. The aforesaid provision which found identical expression in Section 184 (7) of the Finance Act, 2017 was therefore set aside by this Hon'ble Court in ***MBA-IV-2021***, which held as under:

> *"54. The second part of Section 184(7) provides that the Government shall take a decision regarding the recommendations made by the SCSC preferably within a period of three months. This is in response to the direction given by this Court in MBA-III that the Government shall make appointments to tribunals within three months from the completion of the selection and recommendation by the SCSC. Such direction was necessitated in view of the lethargy shown by the Union of India in making appointments and filling up the posts of Chairpersons and Members of tribunals which have been long vacant. The tribunals which are constituted as an alternative mechanism for speedy resolution of disputes have become non-functional due to the large number of posts which are kept unfilled for a long period of time. Tribunals have become ineffective vehicles of administration of justice, resulting in complete denial of access to justice to the litigant public. The conditions of service for appointment to the posts of Chairpersons and Members have been mired in controversy for the past several years, thereby, adversely affecting the basic functioning of tribunals. This Court is aghast to note that some tribunals are on the verge of closure due to the absence of Members.* ***The direction given by this Court for***

expediting the process of appointment was in the larger interest of administration of justice and to uphold the rule of law. Section 184(7) as amended by the Ordinance permitting the Government to take a decision preferably within three months from the date of recommendation of the SCSC is invalid and unconstitutional, as this amended provision simply seeks to negate the directions of this Court.

[Emphasis supplied].

J. BECAUSE Section 5 of the impugned Act in so far as it fixes the tenure of the Chairperson and Member to a manifestly short tenure of four years adversely impacts judicial independence and violates Article 14. Section 5 also runs against the directions of this Hon'ble Court to fix the tenure of appointees for at least five years as held in ***Rojer Mathew, MBA-III-2020*** and ***MBA-IV-2021.*** In ***Rojer Mathew***, this Hon'ble Court explicitly held as under:

"175. Another oddity which was brought to our notice is that there has been an imposition of a short tenure of three years for the members of the Tribunals as enumerated in the Schedule of Tribunals Rules, 2017. ***A short tenure, coupled with provision of routine suspensions pending enquiry and lack of immunity thereof increases the influence and control of the Executive over Members of Tribunals, thus adversely affecting the impartiality of the Tribunals****. Furthermore, prescribing such short tenures precludes cultivation of adjudicatory experience and is thus injurious to the efficacy of Tribunals"*

[Emphasis supplied].

K. BECAUSE Section 5 of the impugned Act is identical to the provisions of Section 184 (11) of the Finance Act, 2017

which was set aside by this Hon'ble Court in ***MBA-IV-2021*** which held as under:

> *"55. …… After perusing the law laid down by this Court in MBA-I and Rojer Mathew (supra) which held that a short stint is anti-merit, we directed the modification of tenure in Rules 9(1) and 9(2) as five years in respect of Chairpersons and Members of tribunals in MBA-III. This Court declared in para 53(iv) that the Chairperson, Vice-Chairperson and the Members of the tribunals shall hold office for a term of five years and shall be eligible for reappointment.* ***The insertion of Section 184(11) prescribing a term of four years for the Chairpersons and Members of tribunals by giving retrospective effect to the provision from 26.05.2017 is clearly an attempt to override the declaration of law by this Court under Article 141 in MBA-III. Therefore, clauses (i) and (ii) of Section 184(11) are declared as void and unconstitutional."***
>
> [Emphasis supplied].

L. BECAUSE Section 7 (1) of the impugned Act, which allows the government its own discretion to fix HRA other than in conformity with the parameters as set by this Hon'ble Court in ***MBA-IV-2021***, violates the security of services conditions of appointees, the principles of judicial independence and thereby Article 14 of the Constitution.

M. BECAUSE the passage of the impugned proviso to Section 3(1) and Sections 3(7), 5 and 7 (1) of the Tribunals Reforms Act, 2021 amounts to unconstitutional legislative overriding

of the judgement of this Hon'ble Court in ***MBA-IV-2021***, which set aside various provisions under Section 184 of the Finance Act 2017 that were identical to those under challenge herein. This Hon'ble Court in ***Bakhtawar Trust v. MD Narayan*** **[(2003) 5 SCC 298]** laid down the test for examining the legality of an Amending or Validating Act as under:

> ***"****The test of judging the validity of the Amending and Validating Act is, whether the legislature enacting the Validating Act has competence over the subject matter;* ***whether by validation, the said legislature has removed the defect which the Court had found in the previous laws; and whether the Validating law is consistent with the provisions of Part III of the Constitution****".*
>
> [Emphasis supplied].

N. BECAUSE the proviso to Section 3(1) and Sections 3(7), 5 and 7 (1) of the Tribunals Reforms Act, 2021 are identical to corresponding Sections 184 (1), 184 (7) and 184 (11) of the Finance Act, 2017, which were set aside by this Hon'ble Court in ***MBA-IV-2021*** for violating the principles of judicial independence, separation of powers and Article 14 of the Constitution. The impugned provisions therefore amount to a constitutionally impermissible legislative override for they continue to stand inconsistently with Part III of the Constitution without any curing of such defect.

O. BECAUSE various decisions of this Hon'ble Court such as in ***L. Chandra Kumar v. Union of India*** **[[1997] 3 SCC 261]** and ***Kesavananda Bharati v. State of Kerala*** **[(1973) 4 SCC 225]** have held that the power of judicial review vests solely with the judiciary and is part of the basic structure of the Constitution. As held by the United States Supreme Court in ***Marbury v. Madison*** **[5 U.S 137 (1803)]**, "*it is emphatically the province and duty of the judicial department to say what the law is*." Therefore, the interpretation as to whether the impugned provisions violate Article 14 and Part III of the Constitution vests solely in the judicial domain and the ensuing directions of this Hon'ble Court in ***MBA-IV-2021*** are binding on Parliament.

P. BECAUSE the impugned provisions are all preceded by the following non-obstante clause: "*Notwithstanding anything contained in any judgment, order or decree of any court, or in any law for the time being in force*". This amounts to a deliberate attempt by the Respondents to override the judgement of this Hon'ble Court in ***MBA-IV-2021*** and

enact identical provisions that were already set aside without any removal of the basis of such judgement.

Q. BECAUSE the impugned provisions are not just a legislative attempt to deliberately override the judgement of this Hon'ble Court in ***MBA-IV-2021*** but also amounts to a repeated attempt to do so. This as even *in* ***MBA-IV-2021***, the Respondents were found guilty of overriding the judgement of this Hon'ble Court in ***MBA-III-2020,*** again without removing its basis.

R. BECAUSE the impugned provisions in so far as they unconstitutionally override the judgement of this Hon'ble Court amount to a transgression of the constitutional limits of Parliament's legislative power and undermine the power of judicial review and the Supremacy of the Constitution, which are basic features of the Constitution as repeatedly held by this Hon'ble Court [Such as in ***Kesavananda Bharati v. State of Kerala*** **[(1973) 4 SCC 225],** ***L. Chandra Kumar v. Union of India*** **[[1997] 3 SCC 261],** ***KS Puttaswamy v. Union of India*** **[(2019) 1 SCC 1]**].

S. BECAUSE this Hon'ble Court in ***Rojer Mathew*** had issued a writ of mandamus to the Respondents to undertake a judicial impact assessment to best inform any tribunal reform that is legislatively undertaken. In violation of the aforesaid direction, the impugned legislation was passed without much deliberation or comprehensive impact assessment being undertaken and therefore runs contrary to the writ of this Hon'ble Court. The very objective of the Act to transfer cases from Tribunals to the High Courts when the latter are overburdened remains questionable in its wisdom and therefore the undertaking of a judicial impact assessment of tribunals is much necessitated.

T. BECAUSE Parliament cannot do indirectly what it is unable to do directly. This Hon'ble Court in ***State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga*** **[1952 SCR 889]** held that:

> ***61.*** *...It is well-settled that Parliament with limited powers cannot do indirectly what it cannot do directly. (Vide South Australia v. Commonwealth [65 CLR 373] ; and Madden v. Nelson & Port Sheppard RW Co. [1899 AC 626] . In Deputy Federal Commissioner of Taxation (N.S.W.) v. W.R. Moran Proprietary Ltd. [61 CLR 735 at 793] , it was observed as follows:*
>
> > *"Where the law-making authority is of a limited or qualified character, obviously it may be necessary*

> *to examine with some strictness the substance of the legislation for the purpose of determining what it is that the legislature is really doing. In such cases the court is not to be over persuaded by the appearance of the challenged legislation .... In that case, this court applied the well known principle that in relation to constitutional prohibitions binding a legislature, that legislature cannot disobey the prohibition merely by employing an indirect method of achieving exactly the same result…. The same issue may be whether legislation which at first sight appears to conform to constitutional requirements is colourable or disguised. In such cases the court may have to look behind names, forms and appearances to determine whether or not the legislation is colourable or disguised."*

Thus, it cannot be said that the impugned provisions are valid at law, as identical provisions in the Tribunals Ordinance were struck down by this Hon'ble Court for being unconstitutional in ***MBA-IV-2021***.

U. The Petitioner craves the leave of this Hon'ble Court to add, amend, alter, omit or vary any of the above grounds at an appropriate stage, if and when required.

PRAYER

In view of the above, the Petitioner most humbly prays that this Hon'ble Court may be pleased to:

(a) Pass an appropriate writ, order or direction declaring the proviso to Section 3(1) along with Sections 3(7), 5 and 7 (1)

of the Tribunals Reforms Act as unconstitutional and ultra-vires Articles 14, 21 and 50 of the Constitution of India.

(b) Pass any other order deemed fit in the facts and circumstances of this case.

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

DRAWN BY:

Muhammad Ali Khan

Abishek Jebaraj

Nupur Raut

Omar Hoda

ADVOCATES

FILED BY:

MR. ABISHEK JEBARAJ

ADVOCATE FOR THE PETITIONER

DRAWN ON: 16.08.2021

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