

**IN THE SUPREME COURT OF INDIA**

**CIVIL ORIGINAL JURISDICTION**

**WRIT PETITION (C) NO. 906 OF 2021**

*D. No. 18516 of 2021*

**IN THE MATTER OF:**

DELHI BAR ASSOCIATION

PETITIONER

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS

WITH

I.A. NO. OF 2021

APPLICATION SEEKING EXEMPTION FROM FILING CERTIFIED  
COPY OF ANNEXURES

WITH

I.A NO. OF 2021

APPLICATION FOR ITERIM DIRECTIONS.

**PAPER-BOOK**

(FOR INDEX KINDLY SEE INSIDE)

**ADVOCATE FOR THE PETITIONER: SHYAMAL KUMAR**

### **INDEX**

<b>Sl. No.</b>	<b>Particulars</b>	<b>Page no, part To Which it belongs Part 1 part 2 (contents (contents of of Paper File book) along)</b>	<b>Remarks</b>
1	O/R on Limitation		
2	Listing Performa		
3	Cover page of Paper- Book		
4	Index of record of Proceedings		
5	Limitation Report prepared by the Registry		
6	Defect List		
7	Note Sheet		
8	Synopsis & List of Dates	B- S	
9	Writ Petition with Affidavit	1- 28	

10.	<b><u>APPENDIX</u></b> Article 32 of the Constitution of India.	29		
12.	<b><u>ANNEXURE P-1</u></b> True copy of Section 22 of the Real Estate (Regulation & Development) Act, 2016	30		
13.	<b><u>ANNEXURE P-2</u></b> . True copy of Section 46(b) of the Real Estate (Regulation & Development) Act, 2016.	31- 32		
14.	<b><u>ANNEXURE P-3.</u></b> True copy of Section 84 of the Real Estate (Regulation & Development) Act, 2016.	33		
15.	<b><u>ANNEXURE P-4.</u></b> True copy of <b>Sub-Rule(3) of Rule 17</b> of the National Capital Territory of Delhi Real Estate(Regulation & Development) Rules,2016.	34		
15.	<b><u>ANNEXURE P-5.</u></b> True copy of <b>Rule 18</b> of the National Capital Territory of Delhi Real Estate(Regulation & Development) Rules,2016	35		
16.	<b><u>ANNEXURE P-6.</u></b> True copy of <b>Rule 25</b> of the National Capital Territory of Delhi Real Estate(Regulation & Development) Rules,2016.	36		
17.	<b><u>ANNEXURE P-7.</u></b> True copy of <b>Rule 26(b)</b> of the National Capital Territory of Delhi Real Estate(Regulation & Development) Rules,2016.	37		
18.	<b><u>ANNEXURE P-8.</u></b> True copy of the notification bearing no. F.129143)/2018/L&B/RERA/23 dated 24.05.2021 inviting	38- 40		

	application for appointment on the post of Chairman & one member of the Real Estate Regulatory Authority at Delhi & Chandigarh issued by the Land & Building Department, Government of NCT of Delhi i.e. the Respondent No.2			
21.	<u>I.A NO. OF 2021</u> APPLICATION FOR INTERIM DIRECTIONS.	41-44		
22.	FILING MEMO	45		
23.	Vakalat namo	46		

A

**IN THE SUPREME COURT OF INDIA**

**CIVIL ORIGINAL JURISDICTION**

**WRIT PETITION (CIVIL) NO. 906 OF 2021**

D.No 18516 of 2021

**IN THE MATTER**

DELHI BAR ASSOCIATION

PETITIONER

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS

**OFFICE REPORT ON LIMITATION**

1. The petition is /are within time
2. The petition is barred by time and there is a delay of days in filing the same against the Notification dated 24.05.2021 and application for condonation delay has been filed.
3. There is delay of days in refiling the petition and the petition for condonation of days in refiling has been filed.

**BRANCH OFFICER**

New Delhi

DATE: 11/08/2021

A-1

## PROFORMA FOR FIRST LISTING

### SECTION

The case pertains to (Please tick/check the correct box);

- Central Act (TITLE):Article 32 of the constitution of India & The real estate(Regulation & Development) Act 2016.
- Section: U/s 22,46(b)) the Real estate(Regulation & Development) Act 2016.Rule17,18,25 & 26(b) the Real estate(Regulation & Development) Rules, 2016.
- Rule No(s) N/A
- State Act (Title) N/A
- Section N/A
- State Rule (Title) N/A
- Rule No(s) N/A
- Impugned Interim Order: (Dated N/A
- Impugned Final Order/Decree:
- High Court :
- Tribunal/Authority: (Name) N/A

- 
1. Nature of matter Civil
  2. (a) Petitioner/appellant No. Delhi Bar Association.  
 (b) e-mail ID:shyamal\_llm@rediffmail.com  
 (c) Mobile Phone Number:9899885638
  3. (a) Respondent:  
 (b) e-mail ID: N/A  
 (c) Mobile Phone number:
  4. (a) Main category classification:

A-2

(b) Sub classification:

5. Not be listed before: N/A

6a. Similar disposed of matter

with citation: WP (C) No. 502/2021 DATED 14.07.2021  
HARDKAS BAN ASSOCIATION vs. 02 FOR

6b. Similar /Pending matter: No similar matter disposed Off

7. Criminal Matter: N/A

(a) Whether accused/convict has surrendered N/A.

(b) FIR No. Date

(c ) Police Station

(d) Sentence Awarded:

(e) Sentence Undergone:

8. Land Acquisition Matter: N/A

(a) Date of section 4 notification

(b) Date of section 6 notification

(c) Date of section 17 notification

9. Tax Matters: State the tax effect: N/A

10 Special Category (first petitioner/appellant only)

Senior Citizen 65 Years SC/ST Woman/child disabled

Legal Aid case in custody

11. Vehicle Number (in case of Motor Accident Claim matter)

**SHYAMAL KUMAR**

AOR for petitioner(s)/appellant

AOR CODE:2003

/08/2021

**RECORD OF PROCEEDINGS**

<b>Sl. No.</b>	<b>Date of order record of Proceedings</b>	<b>Pg. Nos</b>
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## SYNOPSIS AND LIST OF DATES AND EVENTS

The present petition has been filed under Article 32 of the Constitution of India by Delhi Bar Association, Tis Hazari Courts, Delhi (“**Petitioner**”) challenging Section 22 of the Real Estate (Regulation and Development) Act, 2016 the notification bearing no. F.129143)/2018/L&B/RERA/23 dated 24.05.2021 issued by the Land & Building Department (Government of NCT Of Delhi), to the eligibility condition & qualification providing for professional experience of 20 years & 15 Years in urban development, housing, planning, law etc., for appointment of Chairperson & Members of the Real Estate Regulatory Authority respectively, being not only illegal and arbitrary but also against the settled principles of law as laid down by the Hon’ble Supreme Court of India directing for the advocates with experience of Ten year at bar are eligible for consideration on the post of Judicial Member/Presiding Officer/Chairman, for **Tribunals and/or Appellate Tribunals** and condition of work experience of 20 Year/15 Years for such appointments with Real Estate Regulatory Authority is deliberate attempt for exclusion of advocates & contrary to the submissions made by Learned Attorney General, which are recorded in para No.41 and decision of this Hon’ble Court, recorded in para No.43, in the case of Madras Bar Association Vs

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Union of India, W.P.(c) No.804 of 2020, decided on 27.11.2020, which reads inter-alia as under:-

**ADVOCATES AS JUDICIAL MEMBERS**

*41. In view of the submission of the learned Attorney General that the 2020 the Rules will be amended to make Advocates eligible for appointment to the post of judicial members of the Tribunals, the only question that remains is regarding their experience at the bar. While the Attorney General suggested that an advocate who has 25 years of experience should be considered for appointment as a Judicial member, the learned Amicus Curiae suggested that it should be 15 years. An Advocate of a High Court with experience of ten years is qualified for appointment as a Judge of the High Court as per Article 217 (2) of the Constitution of India. As the qualification for an advocate of a High Court for appointment as a Judge of a High Court is only 10 years, we are of the opinion that the experience at the bar should be on the same lines for being considered for appointment as a judicial member of a Tribunal. Exclusion of Advocates in 10 out of 19 tribunals, for consideration as judicial members, is therefore, contrary to **Union of India v. Madras Bar Association (2010)**<sup>19</sup> and **Madras Bar Association v. Union of India (2015)**<sup>20</sup>. However, it is left open to the Search-cum-Selection Committee to take into*

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*account in the experience of the Advocates at the bar and the specialization of the Advocates in the relevant branch of law while considering them for appointment as judicial members.*

42. ::::::::::::::::::::::::::::::

*43. As we have already held that Advocates are entitled to be considered as judicial members of the Tribunals, we see no harm in members of the Indian Legal Service being considered as judicial members, provided they satisfy the criteria relating to the standing at the bar and specialization required. The judgment of **Union of India v. Madras Bar Association (2010)** (supra) did not take note of the above points relating to the experience of members of Indian Legal Service at the bar. The Indian Legal Service was considered along with the other civil services for the purpose of holding that the members of Indian Legal Service are entitled to be appointed only as technical members. In the light of the submission made by the learned Attorney General and the Amicus Curiae, we hold that the members of Indian Legal Service shall be entitled to be considered for appointment as a judicial member subject to their fulfilling the other criteria which advocates are subjected to. In addition, the nature of work done by*

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*the members of the Indian Legal Service and their specialization in the relevant branches of law shall be considered by the Search-cum-Selection Committee while evaluating their candidature.”*

The Hon’ble Supreme Court of India further held in the matter of Madras Bar Association vs Union of India, W.P.(c) No.502 of 2021, decided on 14.07.2021, which reads inter-alia as under:-

*48. While recording the submission of the learned Attorney General that Rules shall be amended to make advocates eligible for appointment as Members, it was held in **MBA-III** that experience at the bar for advocates to be considered for appointment as Members should be the same as is applicable for appointment as High Court Judges, i.e., 10 years. In such view of the matter, a direction was given in **MBA-III** to amend the 2020 Rules to make advocates with at least 10 years of experience at the bar eligible for appointment as Members in tribunals. The experience of advocates at the bar and their specialization in the relevant branch of law was directed to be taken into account by the Search-cum-Selection Committee (hereinafter referred to as SCSC) while considering their appointment. Advocates were held to be entitled for reappointment for at least one term by giving preference to the service rendered by them in the*

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tribunals. Thereafter, an application was filed by the Union

of India for modification of the direction aforementioned by substituting the word, "eligible for reappointment" in the place of "entitled for reappointment". The said request of the Union of India was acceded to by this Court.

49. The direction given by this Court in the nature of mandamus in **MBA-III** is to the effect that advocates are

entitled for appointment as Members, provided they have

experience of 10 years. The first proviso to Section 184 which prescribes a minimum age of 50 years is an attempt to circumvent the direction issued in **MBA-III** striking down the experience requirement of 25 years at the bar for advocates to be eligible. Introduction of the first proviso to Section 184(1) is a direct affront to the judgment of the Court in **MBA-III**. This Court in **MBA-I** and **Roger 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

6

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 remuneration 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 **MBAILI** 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. Selections conducted for appointment of Members, ITAT pursuant to the advertisement issued in 2018 should be finalized and appointments made by considering the candidates between 35 to 50 years as also eligible”.*

The Petitioner is further challenging Section 46(b) of the Act which provides that a person shall not be qualified for appointment as the Chairperson or a Member of the Real Estate Appellate Tribunal unless in the case of a Judicial Member he has held as judicial office in the territory

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of India for at least fifteen years or has been a member of the Indian Legal Service and has held the post of additional Secretary of that Service or any equivalent post or has been an advocate for at **least twenty years** with experience in dealing with the real estate matters which is illegal & contrary to law as declared by the Hon'ble Supreme Court of India.

The Petitioner is further challenging **Rule 17 (3) & 25(3)** of the National Capital territory of Delhi Real Estate (Regulation and Development)(General) Rules,2016 which provides that the Selection Committee shall select two persons for each vacancy and recommend the name to the appropriate Government for appointment with the Authority & Appellate Tribunal. which undermines the Independence of Judiciary & is contrary to Law Laid down by this Hon'ble Court in para 53 of the Madras Bar Association vs Union of India, W.P.(c) No.502 of 2021, decided on 14.07.2021 & the same is reproduced here for the sake of convenience:

*52. Rule 4(2) of the 2020 Rules pertains to the procedure to be followed by the SCSC. According to the said Rule, the SCSC should recommend two or three names for appointment to each post. A direction was given in MBA-III to amend Rule 4(2) of the 2020 Rules to provide that the*

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*SCSC shall recommend one person for appointment in each post in place of a panel of two or three persons for appointment to each post. One more name could be recommended to be included in the waiting list. Relying upon the earlier judgments of this Court in **MBA-I**, **MBA-II** and **Roger Mathew** (supra), the learned Amicus Curiae had submitted during the course of the hearing in **MBA-III** that the procedure for appointment to the Tribunal should be clearly outside executive control. The learned Attorney General submitted in **MBA-III** that the number of candidates to be recommended by SCSC can be restricted to two instead of three. To limit the discretion of the executive after the SCSC has recommended names of selected candidates, this Court in the interest of preserving independence of the judiciary, directed that Rule 4(2) should be read as empowering SCSC to recommend the name of only one person to each post.*

The Petitioner is further challenging the **Rule 18** of the National Capital Territory of Delhi Real Estate (Regulation and Development)(General) Rules,2016, which provides that Chairperson & the Members of the Authority shall not be entitled to any allowance relating to house &



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vehicle.

The Petitioner is further challenging the **Rule 26(b)** of the National Capital territory of Delhi Real Estate (Regulation and Development)(General) Rules, 2016, which provides that the Members of the Appellate Tribunal shall be paid a monthly salary equivalent to the salary drawn at the maximum scale of pay of Additional Secretary to the Government of India, prior to becoming a member, he shall be paid the salary corresponding to the post at which he retired, which is contrary to Law Laid down by this Hon'ble Court in para 49 & 50 of the Madras Bar Association vs Union of India, W.P.(c) No.502 of 2021, decided on 14.07.2021 vide which similar provisions contained in section 184 & 186(2) of the Finance Act, 2017 as amended by the Tribunal Reforms (Rationalisation and Conditions of Service) Ordinance, 2021 were declared as unconstitutional in as much as these violate the principles of separation of powers and independence of judiciary, apart from being contrary to the principles laid down by the Hon'ble Supreme Court of India in the Madras Bar Association vs Union of India, W.P.(c) No.502 of 2021, decided on 14.07.2021 & the same is reproduced here for the sake of convenience & the same is reproduced here for the sake of convenience:

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*Para 49 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 remuneration 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 **MBAlII** has been frustrated by an impermissible legislative override.*

*Para 50: The direction issued by this Court in **MBA-III** for payment of HRA was to ensure that decent accommodation is provided to Tribunal Members. Such direction was issued to uphold independence of the judiciary and it cannot be subject matter of legislative response. A mandamus issued by this Court cannot be reversed by the legislature as it would amount to impermissible legislative override. Therefore, the second proviso, read with the third proviso, to Section 184(1) is declared as unconstitutional.*

It is further submitted that the such a condition of 20/15 years of experience has been deliberately incorporated to provide safe astute for

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rehabilitation to the retired executives, who not necessarily have sufficient training or knowledge of performing the adjudicatory functions to the exclusion of the advocates, ultimately, resulting in violation of efficient dispensation of Justice by the authority in contravention of Article 14 of the constitution of India & separation of power, which is reflected from the fact that the Chairman of almost all the Authorities in the country constituted under RERA ACT are the retired executives preferably from IAS cadre i.e RERA Delhi situated at New Delhi, HARERA Gurugram situated at Gurugram (Haryana), HARERA Panchkula (Haryana), RERA U.P. at NOIDA(UP) , RERA Punjab at Chandigarh, RERA M.P at Bhopal etc. & the same is contrary to the observation made by the Hon'ble Supreme Court of India in the Madras Bar Association Vs. Union of India, W.P.(c) No.502 of 2021 decided on 14.07.2021 & the same is reproduced here for the sake of convenience:

*34. In addition, it is worthwhile to recollect that a civil servant's experience, though varied and diverse – ranging from co-ordination and administration at taluk, district and state levels, to devising, framing and implementing the government's policies and programmes, to managing statutory corporations and even commercial enterprises of the state, does not always entail adjudicatory functions. However, legal*

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*practitioners, chartered accountants and one segment of civil servants, i.e. tax administrators and adjudicators are involved in the day to day interpretation of law, leading to adjudicatory outcomes.*

Dates	Particulars
25.03.2016	<p>The Real Estate(Regulation &amp; Development) Act, 2016,(hereinafter referred to as Act), was enacted with the objects &amp; reasons to regulate &amp; promote the Real Estate Sector and to ensure the sale of real estate projects in an efficient &amp; transparent manner and to protect the interest of consumers in the real estate sector &amp; to establish an adjudicating mechanism for speedy dispute redressal &amp; also for to establish the Appellate Regulatory Authority and the adjudicating officers and matters connected therewith on incidental thereto.</p> <p><b>Section 20 of the Act</b> provides for Establishment and incorporation of the Real Estate Regulatory Authority to exercise the powers &amp; functions conferred on it under the act &amp; to adjudicate upon the cases, applications &amp; complaints filed before it.</p> <p><b>Section 21 of the Act</b> provides that the Authority</p>

	<p>shall consist of a chairperson and not less than two whole time members to be appointed by the appropriate Government.</p> <p><b>Section 22 of the Act</b> provides that the Chairperson and other members of the Authority shall be appointed by the appropriate government on the recommendations of a selection committee, in such manner as may be prescribed, from amongst the persons having adequate knowledge of and professional experience of at least twenty years in case of the chairperson and fifteen years in the case of members in the field of urban development, real estate, law etc.</p> <p><b>Section 45 of the Act</b> provides for Establishment of Real Estate Appellate Tribunal consisting of a Chairperson &amp; not less than two whole time members of which one shall be a Judicial member and other shall be a Technical or Administrative member to be appointed by the appropriate government to exercise the appellate jurisdiction against any order or direction given by the Real Estate Regulatory Authority or its adjudicating officer.</p> <p><b>Section 46 (b)</b> of the Act provides that a person shall not be qualified for appointment as the Chairperson or a Member of the Appellate Tribunal unless in the</p>
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	<p>case of a Judicial Member he has held the a judicial office in the territory of India for at least fifteen years or has been a member of the Indian Legal Service and has held the post of additional Secretary of that Service or any equivalent post or has been an advocate for at least <b>twenty years</b> with experience in dealing with the real estate matters.</p>
24.11.2016	<p>In exercise of power conferred by <b>section 84</b> and in pursuance of sub-clause (iii) of clause(g) of the Real Estate(Regulation &amp; Development)Act,2016, the Central Government made the National Capital Territory of Delhi Real Estate(Regulation &amp; Development) Rules,2016 which came to effect on 24.11.2016 &amp; the same is referred to hereinafter as “Rules”.</p> <p><b>Sub-Rule(3) of Rule 17</b> provides that the selection committee shall select two persons for each vacancy and recommend the same to the appropriate government for appointment to the Real Estate Regulatory Authority.</p> <p><b>Rule 18</b> provides that Chairperson &amp; the Members of the Authority shall not be entitled to any allowance relating to house &amp; vehicle.</p> <p><b>Rule 25</b> provides the procedure for selection of</p>

	<p>Members of Appellate Tribunal and its sub-rule(3) provides that the selection committee shall select two persons for each vacancy and recommend the same to the appropriate government.</p> <p><b>Rule 26 (b)</b> provides that the Members of the Appellate Tribunal shall be paid a monthly salary equivalent to the salary drawn at the maximum scale of pay of Additional Secretary to the Government of India, prior to becoming a member, he shall be paid the salary corresponding to the post at which he retired.</p>
24.05.2021	<p>The notification bearing no. F.129143)/2018/L&amp;B/RERA/23 dated 24.05.2021 issued by the Land &amp; Building Department (Government of NCT Of Delhi) inviting applications for appointment on the post of Chairperson /members of the Real Estate Regulatory Authority from persons having experience of 20 &amp; 15 Years respectively in terms of the Section 22 of the Real Estate (Regulation &amp; Development) Act,2016.</p>
27.11.2020	<p>The Hon'ble Supreme Court of India in the matter of Madras Bar Association vs Union of India, W.P.(c) No.804 of 2020 vide its Judgment dated 27.11.2020 was pleased to declare the eligibility condition of 25</p>

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	<p>years of experience as advocates provided by “Qualification, Experience &amp; other condition of Service of members) Rules,2020, as unconstitutional &amp; directed for the advocates with experience of Ten year at bar are eligible for consideration on the post of Judicial Member/Presiding Officer/Chairman, for <b>Tribunals and/or Appellate Tribunals.</b> and condition of work experience of 20Year/15Years for such appointments with Real Estate Regulatory Authority is deliberate attempt for exclusion of advocates &amp; contrary to the the submissions made by Learned Attorney General, which are recorded in para No.41 and decision of this Hon’ble Court, recorded in para No.43; in the matter of Madras Bar Association vs Union of India, W.P.(c) No.804 of 2020, decided on 27.11.2020, which reads inter-alia as under:-</p>
14.07.2021	<p>The Hon’ble Supreme Court of India in the matter of Madras Bar Association vs Union of India, W.P.(c) No.502 of 2021 vide its Judgment dated 14.07.2021 was pleased to declare the eligibility condition of minimum 50 years of age of advocates provided by “the Tribunal Reforms (Rationalisation &amp; condition of Service Ordinance) Rules,2021, as unconstitutional &amp; directed for the advocates with</p>



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experience of Ten year at bar are eligible for consideration on the post of Judicial Member/Presiding Officer/Chairman, for **Tribunals and/or Appellate Tribunals.**

The Hon'ble Supreme Court further directed for the payment of HRA to ensure that decent accommodation is provided to Tribunal Members Such direction was issued to uphold independence of the judiciary and it cannot be subject matter of legislative response. A mandamus issued by this Court cannot be reversed by the legislature as it would amount to impermissible legislative override.

The Hon'ble Supreme Court was further pleased to direct that the Search-cum-Selection Committee shall recommend one person for appointment in each post in place of a panel of two or three persons for appointment to each post. One more name could be recommended to be included in the waiting list. The procedure for appointment to the Tribunal should be clearly outside executive control. To limit the discretion of the executive after the SCSC has recommended names of selected candidates, this Court in the interest of preserving independence of the judiciary, directed that Rule 4(2) should be read as

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	empowering SCSC to recommend the name of only one person to each post.
	<p>In view of the Law declared by the Hon'ble Supreme Court of India, the Section 22, Section 46(b) of the Real estate (Regulation &amp; Development) Act 2016 and Rule 17(3), 18, 25(3) &amp; 26(b) are arbitrary, discriminatory and illegal, in view of the Judgment dated 14.07.2021 passed in the case of Madras Bar Association vs Union of India, W.P.(c) No.502 of 2021 vide its Judgment dated 14.07.2021. Hence the captioned petition is filed by the Petitioner.</p>

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 906 OF 2021  
D. No. 18516 of 2021

DELHI BAR ASSOCIATION, DELHI

(THROUGH ITS SENIOR VICE PRESIDENT)

TIS HAZARI COURTS,

DELHI

----- PETITIONER

VERSUS

1. UNION OF INDIA

THROUGH ITS SECRETARY

MINISTRY OF HOUSING & URBAN AFFAIRS,

ROOM NO.122-C, NIRMAN BHAWAN ,

NEW DELHI-110001.

2. GOVT. OF NCT OF DELHI

THROUGH ITS SECRETARY

LAND & BUILDING DEPARTMENT

B-BLOCK, VIKASH BHAWAN

NEW DELHI-110002

... RESPONDENTS

2

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF AN APPROPRIATE WRIT AND/OR ORDER(S) AND/OR DIRECTION(S) TO DECLARE & QUASH SECTION 22 & 46 (B) OF THE REAL ESTATE(REGULATION & DEVELOPMENT) ACT,2016 RULE 17(3), 18,25(3), 26(B) OF THE NATIONAL CAPITAL TERRITORY OF DELHI REAL ESTATE(REGULATION & DEVELOPMENT) RULES,2016 & NOTIFICATION BEARING NO. F.129143)/2018/L&B/RERA/23 DATED 24.05.2021 INVITING APPLICATION FOR APPOINTMENT ON THE POST OF CHAIRMAN & ONE MEMBER OF THE REAL ESTATE REGULATORY AUTHORITY AT DELHI & CHANDIGARH IN TERMS OF THE AFORESAID ACT & RULES, BEING ARBITRARY, DISCRIMINATORY, ILLEGAL AND UNCONSTITUTIONAL, WHEREBY EXPERIENCE OF 20/15 YRS HAS BEEN IMPOSED UPON PRACTICING ADVOCATES WHO ARE QUALIFIED TO BE A DISTRICT JUDGE FOR THE POST OF CHAIRMAN/MEMBER OF THE REAL ESTATE REGULATORY AUTHORITY, FURTHER EXPERIENCE OF 20 YEARS HAS BEEN PROVIDED FOR BECOMING JUDICIAL MEMBER OF THE APPELLATE TRIBUNAL.

TO

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

THE PETITIONER MOST RESPECTFULLY AND HUMBLY  
SUBMITS AS UNDER THAT :

**MOST RESPECTFULLY SHOWETH THAT:**

1. The Petitioner is a constituted and elected body of advocates being an association in the name & style of "Delhi Bar Association" at Tis Hazari Courts, Delhi. The petition is being filed through its senior vice president who is authorised to file and institute the present petition.

2. The brief facts of the case are that:

A. The Real Estate(Regulation & Development) Act, 2016,(hereinafter referred to as the Act), was enacted by the Parliament with the objects & reasons to regulate & promote the Real Estate Sector and to ensure the sale of real estate projects in an efficient & transparent manner and to protect the interest of consumers in the real estate sector & to establish an adjudicating mechanism for speedy dispute redressal & also to establish the Appellate Tribunal to hear appeals from the decisions, directions & orders of the Real Estate Regulatory Authority & the adjudicating officers and for matters

4

connected therewith or incidental thereto.

**B. Section 20 of the Act** provides for Establishment and incorporation of the Real Estate Regulatory Authority to exercise the powers & functions conferred on it under the act & to adjudicate upon the cases, applications & complaints filed before it.

**C. Section 21 of the Act** provides that the Authority shall consist of a chairperson and not less than two whole time members to be appointed by the appropriate Government.

**D. Section 22 of the Act** provides that the Chairperson and other members of the Authority shall be appointed by the appropriate government on the recommendations of a selection committee, in such manner as may be prescribed, from amongst the persons having adequate knowledge of and professional experience of **at least twenty years** in case of the chairperson and **fifteen years** in the case of members in the field of urban development, real estate, law etc. True copy of Section 22 of the Real Estate (Regulation & Development) Act, 2016, is annexed herewith as **ANNEXURE P-1**(at pages 30 to 30 )

**E. Section 45 of the Act** provides for Establishment of Real Estate

Appellate Tribunal consisting of a Chairperson & not less than two whole time members of which one shall be a Judicial member and other shall be a Technical or Administrative member to be appointed by the appropriate government to exercise the appellate jurisdiction against any order or direction given by the Real Estate Regulatory Authority or its adjudicating officer.

**F. Section 46 (b)** of the Act provides that a person shall not be qualified for appointment as the Chairperson or a Member of the Appellate Tribunal unless in the case of a Judicial Member he has held the a judicial office in the territory of India for at least fifteen years or has been a member of the Indian Legal Service and has held the post of additional Secretary of that Service or any equivalent post or has been an advocate for at least **twenty years** with experience in dealing with the real estate matters. True copy of Section 46 (b) of the Real Estate (Regulation & Development) Act, 2016, is annexed herewith as **ANNEXURE P-2**(at pages 31 to 32)

**G.** In exercise of power conferred by **section 84** and in pursuance of sub-clause (iii) of clause(g) of the Real Estate(Regulation &

Development) Act, 2016, the Central Government i.e. the Respondent No.1 made the National Capital Territory of Delhi Real Estate (Regulation & Development) Rules, 2016 which came to effect on 24.11.2016 & the same is referred to hereinafter as “Rules”. True copy of Section 84 of the Real Estate (Regulation & Development) Act, 2016, is annexed herewith as **ANNEXURE P-3**(at pages to 33 )

**H. Sub-Rule(3) of Rule 17** the National Capital Territory of Delhi Real Estate (Regulation & Development) Rules, 2016 provides that the selection committee shall select two persons for each vacancy and recommend the same to the appropriate government for appointment to the Real Estate Regulatory Authority. True copy of **Sub-Rule(3) of Rule 17** the National Capital Territory of Delhi Real Estate (Regulation & Development) Rules, 2016 is annexed herewith as **ANNEXURE P-4**(at pages to 34 )

**I. Rule 18** provides that Chairperson & the Members of the Authority shall not be entitled to any allowance relating to house & vehicle. True copy of **Rule 18** the National Capital Territory of Delhi Real Estate (Regulation & Development) Rules, 2016 is annexed



7

herewith as ANNEXURE P-5(at pages to 35 )

**J. Rule 25** provides the procedure for selection of Members of Appellate Tribunal and its sub-rule(3) provides that the selection committee shall select two persons for each vacancy and recommend the same to the appropriate government. True copy of **Rule 25** the National Capital Territory of Delhi Real Estate(Regulation & Development) Rules,2016 is annexed herewith as ANNEXURE P-6(at pages to 36 )

**K. Rule 26 (b)** provides that the Members of the Appellate Tribunal shall be paid a monthly salary equivalent to the salary drawn at the maximum scale of pay of Additional Secretary to the Government of India, prior to becoming a member, he shall be paid the salary corresponding to the post at which he retired. True copy of **Sub-Rule 26(b)** of the National Capital Territory of Delhi Real Estate(Regulation & Development) Rules,2016 is annexed herewith as ANNEXURE P-7(at pages to 37)

3. The eligibility condition & qualification providing for professional experience of 20 years & 15 Years in urban development, housing, planning, law etc., for appointment of Chairperson & Members of

the Real Estate Regulatory Authority respectively in Section 22 of the aforesaid Act, is not illegal and arbitrary but also against the settled principles of law as laid down by the Hon'ble Supreme Court of India directing for the advocates with experience of Ten year at bar are eligible for consideration on the post of Judicial Member/Presiding Officer/Chairman, for **Tribunals and/or Appellate Tribunals** and condition of work experience of 20 Year/15 Years for such appointments with Real Estate Regulatory Authority is deliberate attempt for exclusion of advocates & contrary to the submissions made by Learned Attorney General, which are recorded in para No.41 and decision of this Hon'ble Court, recorded in para No.43, in the case of Madras Bar Association Vs Union of India, W.P.(c) No.804 of 2020, decided on 27.11.2020, which reads inter-alia as under:-

#### ***ADVOCATES AS JUDICIAL MEMBERS***

*41. In view of the submission of the learned Attorney General that the 2020 the Rules will be amended to make Advocates eligible for appointment to the post of judicial members of the Tribunals, the only question that remains is regarding their experience at the bar. While the Attorney General suggested that an advocate who has 25 years of experience should be*

*considered for appointment as a Judicial member, the learned Amicus Curiae suggested that it should be 15 years. An Advocate of a High Court with experience of ten years is qualified for appointment as a Judge of the High Court as per Article 217 (2) of the Constitution of India. As the qualification for an advocate of a High Court for appointment as a Judge of a High Court is only 10 years, we are of the opinion that the experience at the bar should be on the same lines for being considered for appointment as a judicial member of a Tribunal. Exclusion of Advocates in 10 out of 19 tribunals, for consideration as judicial members, is therefore, contrary to **Union of India v. Madras Bar Association (2010)**<sup>19</sup> and **Madras Bar Association v. Union of India (2015)**<sup>20</sup>. However, it is left open to the Search-cum-Selection Committee to take into account in the experience of the Advocates at the bar and the specialization of the Advocates in the relevant branch of law while considering them for appointment as judicial members.*

42. ::::::::::::::::::::::::::::::

43. *As we have already held that Advocates are entitled to be considered as judicial members of the Tribunals, we see no harm in members of the Indian Legal Service being considered as judicial members,*

*provided they satisfy the criteria relating to the standing at the bar and specialization required. The judgment of **Union of India v. Madras Bar Association (2010)** (supra) did not take note of the above points relating to the experience of members of Indian Legal Service at the bar. The Indian Legal Service was considered along with the other civil services for the purpose of holding that the members of Indian Legal Service are entitled to be appointed only as technical members. In the light of the submission made by the learned Attorney General and the Amicus Curiae, we hold that the members of Indian Legal Service shall be entitled to be considered for appointment as a judicial member subject to their fulfilling the other criteria which advocates are subjected to. In addition, the nature of work done by the members of the Indian Legal Service and their specialization in the relevant branches of law shall be considered by the Search-cum-Selection Committee while evaluating their candidature.”*

4. The Hon’ble Supreme Court of India further held in the matter of Madras Bar Association vs Union of India, W.P.(c) No.502 of 2021, decided on 14.07.2021, which reads inter-alia as under:-

48. While recording the submission of the learned Attorney General that Rules shall be amended to make advocates eligible for appointment as Members, it was held in **MBA-III** that experience at the bar for advocates to be considered for appointment as Members should be the same as is applicable for appointment as High Court Judges, i.e., 10 years. In such view of the matter, a direction was given in **MBA-III** to amend the 2020 Rules to make advocates with at least 10 years of experience at the bar eligible for appointment as Members in tribunals. The experience of advocates at the bar and their specialization in the relevant branch of law was directed to be taken into account by the Search-cum-Selection Committee (hereinafter referred to as **SCSC**) while considering their appointment. Advocates were held to be entitled for reappointment for at least one term by giving preference to the service rendered by them in the tribunals. Thereafter, an application was filed by the Union of India for modification of the direction aforementioned by substituting the word, "eligible for reappointment" in the place of "entitled for reappointment". The said request of the Union of India was acceded to by this Court.

49. The direction given by this Court in the nature of

*mandamus in MBA-III is to the effect that advocates are*

*entitled for appointment as Members, provided they have*

*experience of 10 years. The first proviso to Section 184 which prescribes a minimum age of 50 years is an attempt to circumvent the direction issued in MBA-III striking down the experience requirement of 25 years at the bar for advocates to be eligible. Introduction of the first proviso to Section 184(1) is a direct affront to the judgment of the Court in MBA-III. This Court in MBA-I and Roger 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 remuneration 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 **MB AIII** 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. Selections conducted for appointment of Members, ITAT pursuant to the advertisement issued in 2018 should be finalized and appointments made by considering the candidates between 35 to 50 years as also eligible”.*

5. The Petitioner further submits that Section 46(a) (b) of the Act which provides that a person shall not be qualified for appointment as the Chairperson or a Member of the Real Estate Appellate Tribunal unless in the case of a Judicial Member he has held as judicial office in the territory of India for at least fifteen years or has been a member of the Indian Legal Service and has held the post of additional Secretary of that Service or any equivalent post or has been an advocate for at **least twenty years** with experience in dealing with the real estate matters, is violation of Article 14 of the

constitution of India, illegal & contrary to law as declared by the Hon'ble Supreme Court of India.

6. The Petitioner further submits that **Rule 17 (3) & 25(3)** of the National Capital territory of Delhi Real Estate (Regulation and Development)(General) Rules,2016 which provides that the Selection Committee shall select two persons for each vacancy and recommend the name to the appropriate Government for appointment with the Authority & Appellate Tribunal, undermines the Independence of Judiciary & is contrary to Law as held by the Hon'ble Supreme Court of India in para 53 of **the Madras Bar Association vs Union of India, W.P.(c) No.502 of 2021, decided on 14.07.2021** & the same is reproduced here for the sake of convenience:

*52. Rule 4(2) of the 2020 Rules pertains to the procedure to be followed by the SCSC. According to the said Rule, the SCSC should recommend two or three names for appointment to each post. A direction was given in MBA-III to amend Rule 4(2) of the 2020 Rules to provide that the SCSC shall recommend one person for appointment in each post in place of a panel of two*



*or three persons for appointment to each post. One more name could be recommended to be included in the waiting list. Relying upon the earlier judgments of this Court in **MBA-I**, **MBA-II** and **Rojer Mathew** (supra), the learned Amicus Curiae had submitted during the course of the hearing in **MBA-III** that the procedure for appointment to the Tribunal should be clearly outside executive control. The learned Attorney General submitted in **MBA-III** that the number of candidates to be recommended by SCSC can be restricted to two instead of three. To limit the discretion of the executive after the SCSC has recommended names of selected candidates, this Court in the interest of preserving independence of the judiciary, directed that Rule 4(2) should be read as empowering SCSC to recommend the name of only one person to each post.*

7. The Petitioner is further challenging the **Rule 18** of the National Capital territory of Delhi Real Estate (Regulation and Development)(General) Rules,2016, which provides that Chairperson & the Members of the Authority shall not be entitled to any allowance relating to house & vehicle.

The Petitioner is further challenging the **Rule 26(b)** of the National Capital territory of Delhi Real Estate (Regulation and Development)(General) Rules, 2016, which provides that the Members of the Appellate Tribunal shall be paid a monthly salary equivalent to the salary drawn at the maximum scale of pay of Additional Secretary to the Government of India, prior to becoming a member, he shall be paid the salary corresponding to the post at which he retired, these rules are again contrary to Law Laid down by this **Hon'ble Court in para 49 & 50 of the Madras Bar Association vs Union of India, W.P.(c) No.502 of 2021, decided on 14.07.2021** vide which similar provisions contained in **section 184 & 186(2) of the Finance Act, 2017** as amended by the Tribunal Reforms (Rationalisation and Conditions of Service) Ordinance, 2021 were declared as unconstitutional in as much as these violate the principles of separation of powers and independence of judiciary, apart from being contrary to the principles laid down by the Hon'ble Supreme Court of India in the Madras Bar Association vs Union of India, W.P.(c) No.502 of 2021, decided on 14.07.2021 & the same is reproduced here for the sake of convenience & the same is reproduced here for the sake of convenience:

***Para 49** 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 remuneration 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 **MBAlII** has been frustrated by an impermissible legislative override.*

***Para 50:** The direction issued by this Court in **MBA-III** for payment of HRA was to ensure that decent accommodation is provided to Tribunal Members. Such direction was issued to uphold independence of the judiciary and it cannot be subject matter of legislative response. A mandamus issued by this Court cannot be reversed by the legislature as it would amount to impermissible legislative override. Therefore, the second proviso, read with the third proviso, to Section 184(1) is declared as unconstitutional.*

8. It is further submitted that the such a condition of 20/15 years of experience has been deliberately incorporated to provide safe astute

for rehabilitation to the retired executives, who not necessarily have sufficient training or knowledge of performing the adjudicatory functions to the exclusion of the advocates, ultimately, resulting in violation of efficient dispensation of Justice by the authority in contravention of Article 14 of the constitution of India & separation of power, which is reflected from the fact that the Chairman of almost all the Authorities in the country constituted under RERA ACT are the retired executives preferably from IAS cadre i.e RERA Delhi situated at New Delhi, HARERA Gurugram situated at Gurugram (Haryana), HARERA Panchkula (Haryana), RERA U.P. at NOIDA(UP) , RERA Punjab at Chandigarh, RERA M.P at Bhopal etc. & the same is contrary to the observation made by the Hon'ble Supreme Court of India in the Madras Bar Association Vs. Union of India, W.P.(c) No.502 of 2021 decided on 14.07.2021 & the same is reproduced here for the sake of convenience:

*34. In addition, it is worthwhile to recollect that a civil servant's experience, though varied and diverse – ranging from co-ordination and administration at taluk, district and state levels, to devising, framing and implementing the government's policies and programmes, to managing statutory corporations and even commercial enterprises of the state, does not*

*always entail adjudicatory functions. However, legal practitioners, chartered accountants and one segment of civil servants, i.e. tax administrators and adjudicators are involved in the day to day interpretation of law, leading to adjudicatory outcomes.*

**9. That in *Rojer Mathew Vs. South Indian Bank Ltd. & Ors* (2020)**

**6 SCC 1,** the *vires* of Rules, 2017, were challenged on multiple grounds. One of the pertinent aspect was that the Qualification of the persons manning the Tribunals. *Apropos* this aspect, the Hon'ble Apex Court *inter-alia* held that:

*“257. Though the legislature is empowered to prescribe qualifications for members, the Court held that superior courts in the country retain their power of judicial review over the prescribed qualifications to ensure that judicial functions are discharged effectively. The Court surveyed various enactments and the qualifications prescribed in them for appointment as judicial and technical members and noted that the ‘speed at which the qualifications for appointment as members is being diluted is, to say the*

*least, a matter of great concern for the independence of the judiciary.’ The Court cautioned that tribunals cannot become providers of sinecure to members of civil services, by appointing them as technical members. The Court emphasised that ‘impartiality, independence, fairness and reasonableness in decision making are the hallmarks of judiciary’ and laid down the eligibility criteria for judicial and technical members...”*

10. That it is pertinent to mention here that the Hon’ble Apex Court in **Roger Mathew (supra)**, held that Rules, 2017 are violative of *‘impartiality, independence, fairness and reasonableness in decision making are the hallmarks of judiciary’*. Commenting on the independence of Tribunals, the Hon’ble Supreme Court *inter-alia* held that:

*“154. Independence of a quasi-judicial authority like the tribunal highlighted in the above decisions would be, therefore, read as the policy and guideline applicable. Principle of independence of judiciary/tribunal has within its fold two broad concepts, as held in Supreme Court Advocates-On-Record Association and*

Another v. Union of India<sup>40</sup> {See paragraph 714}, (i) independence of an individual judge, that is, decisional independence; and (ii) independence of the judiciary or the Tribunal as an institution or an organ of the State, that is, functional independence. Individual independence has various facets which include security of tenure, procedure for renewal, terms and conditions of service like salary, allowances, etc. which should be fair and just and which should be protected and not varied to his/her disadvantage after appointment. Independence of the institution refers to sufficient degree of separation from other branches of the government, especially when the branch is a litigant or one of the parties before the tribunal. Functional independence would include method of selection and qualifications prescribed, as independence begins with appointment of persons of calibre, ability and integrity. Protection from interference and independence from the executive pressure, fearlessness from other power centres – economic and political, and freedom from prejudices acquired and nurtured by the class to which the adjudicator belongs, are important attributes of institutional independence.”

11. The Respondent No. 2, vide notification bearing no. F.129143)/2018/L&B/RERA/23 dated 24.05.2021 invited application for the post of Chairman & one member of the Real Estate Regulatory Authority at Delhi & Chandigarh from the persons eligible in terms of section 22 of the Real Estate (Regulation and Development) Act, 2016 which is unconstitutional & contrary to the law declared by the Hon'ble Supreme Court of India & the same has caused great prejudice to the members of the Bar association but would further effect the efficiency of the Justice delivery system/Authority. True copy of the notification bearing no. F.129143)/2018/L&B/RERA/23 dated 24.05.2021 inviting application for appointment on the post of Chairman & one member of the Real Estate Regulatory Authority at Delhi & Chandigarh issued by the Land & Building Department, Government of NCT of Delhi i.e. the Respondent No.2 is annexed herewith & marked as ANNEXURE P-8(at pages ~~32~~ to 40 ).

12. **NON FILING PARA:** The Petitioner has not filed any other similar petition, before this Hon'ble Court or any other Court in India for the relief claimed in the present Writ Petition.



13. That, the Writ Petitioner submits that there is no other alternative equally efficacious remedy available to them in view of the peculiar facts of the case and the decision of this Hon'ble Supreme Court of India in the matter of Madras Bar Association decided on 14.07.2021.

14. That, the Petitioner states they are approaching this Hon'ble Court as expeditiously as possible and there is no delay or laches in filing the present Writ Petition.

15. That, this Hon'ble Court has jurisdiction to entertain, try and dispose of this Writ Petition under Article 32 of the Constitution of India in view of peculiar facts of the case and also, in view of the decision of this Hon'ble Court in the matter of Madras Bar Association [decided on 14.07.2021 [supra].

16. That, the Annexures produced herewith are true copies of their respective originals.

17. That, this Writ Petition is *bona fide*.

18. PRAYERS:-

24

It is therefore, most respectfully and humbly prayed that this Hon'ble Court may gracefully be pleased to:-

- A.** Allow the Present writ petition;
- B.** Issue appropriate Writ and/or any other order(s) and/or directions to declare the provision of Section 22 & 46(a) (b) of the Real Estate(Regulation & Development) Act,2016 being arbitrary, discriminatory, illegal and unconstitutional and accordingly may please kindly be set aside;
- C.** Issue appropriate Writ and/or any other order(s) and/or directions to declare the provision of Rule 17(3), 18,25(3), 26(b) of the National Capital Territory of Delhi Real Estate(Regulation & Development) Rules,2016, being arbitrary, discriminatory, illegal and unconstitutional and accordingly may please kindly be set aside;
- D.** Issue appropriate Writ and/or any other order(s) and/or directions to declare notification bearing no. F.129143)/2018/L&B/RERA/23 dated 24.05.2021 inviting application for appointment on the post of Chairman & one member of the Real Estate Regulatory

25

Authority at Delhi & Chandigarh issued by the Land & Building Department, Government of NCT of Delhi i.ee the Respondent No.2 in terms of Section 22 of the Real Estate(Regulation & Development) Act,2016 , being arbitrary, illegal and unconstitutional and accordingly may please kindly be set aside;

E. Issue appropriate Writ and/or any other order(s) and/or directions to respondents to comply and/or implement paras No.41 and 43 of the decision of this Hon'ble Court in the matter of Madras Bar Association [supra].

F. Any such appropriate Writ and/or any other order(s) and/or directions to respondents under the facts and circumstances of the present case.

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

Drawn on:

Drawn & Filed by :-

Filed on: 11.08.2021

Place: New Delhi

SHYAMAL KUMAR  
Advocate for the Petitioner

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 906 OF 2021

D.No 18516 of 2021

IN THE MATTER OF:

DELHI BAR ASSOCIATION

PETITIONER

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS

**CERTIFICATE**

“Certified that the Special Leave Petition is confined only to the pleadings before the Court whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Special Leave Petition. It is further certified that the copies of the documents/Annexure attached to the Special Leave Petition are necessary to answer the question of law raised in the Petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon’ble Court. This certificate is given on the basis of the instructions given by the Petitioner whose affidavit is filed in support of the Special Leave Petition.

**SHYAMAL KUMAR**

ADVOCATE FOR THE PETITIONER

FILED ON: 14.08.2021

28

27

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 906 OF 2021

IN THE MATTER OF:-

DELHI BAR ASSOCIATION

.....PETITIONER

VERSUS

UNION OF INDIA & ORS

.....RESPONDENTS

AFFIDAVIT

I, ANIL KUMAR TOMAR AGED ABOUT    YEARS S/O SHRI-----  
MAHABIR SINGH, SENIOR VICE PRESIDENT DELHI BAR  
ASSOCIATION, TIS HAZARI COURTS (DELHI), OFFICE AT  
CHAMBER NO. 400A-----CIVIL SIDE, TIS HAZARI COURTS,  
DELHI do hereby solemnly affirm and state as under:-

1. That I am senior vice president of the Petitioner in the above mentioned Writ Petition and as such I am fully conversant with all facts of the case and competent to swear this affidavit.

2. That I have read and understood the contents of Synopsis and List of Dates at pages B to C as well as the contents of Writ Petition in paras 1 to \_\_\_ at pages \_\_\_ to \_\_\_ and I say that the contents thereof are true and correct to the best of my knowledge and belief. I have also read and understood the contents of I.A.(s) filed with the Writ Petition and I say that the contents thereof are true and correct.
3. That the Annexures filed herewith are true copies of their respective originals.




DEPONENT

VERIFICATION:

I say that the contents of the above affidavit are true and correct as per my knowledge, no part of it is false and nothing material has been concealed therefrom.

Verified at Delhi on this      day of August, 2021.



DEPONENT

**32. Remedies for enforcement of rights conferred by this Part**

- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
- (2) The Supreme Court shall have the power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
- (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).
- (4) The right guaranteed by this Article shall not be suspended except as otherwise provided for by this Constitution.



**THE REAL ESTATE (REGULATION & DEVELOPMENT)  
ACT, 2016**

**Section 22: Qualifications of Chairperson and Members of**

**Authority:** The Chairperson and other Members of the Authority shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department dealing with Housing and the Law Secretary, in such manner as may be prescribed, from amongst persons having adequate knowledge of and professional experience of at least twenty years in case of the Chairperson and fifteen years in the case of the Members in urban development, housing, real estate development, infrastructure, economics, technical experts from relevant fields, planning, law, commerce, accountancy, industry, management, social service, public affairs or administration: Provided that a person who is, or has been, in the service of the State Government shall not be appointed as a Chairperson unless such person has held the post of Additional Secretary to the Central Government or any equivalent post in the Central Government or State Government: Provided further that a person who is, or has been, in the service of the State Government shall not be appointed as a member unless such person has held the post of Secretary to the State Government or any equivalent post in the State Government or Central Government.

§

TC.



**THE REAL ESTATE (REGULATION & DEVELOPMENT)  
ACT, 2016**

**46. Qualifications for appointment of Chairperson and Members.**—(1) A person shall not be qualified for appointment as the

Chairperson or a Member of the Appellate Tribunal unless he,—

(a) in the case of Chairperson, is or has been a Judge of a High Court; and

(b) in the case of a Judicial Member he has held a judicial office in the territory of India for at least fifteen years or has been a member of the Indian Legal Service and has held the post of Additional Secretary of that service or any equivalent post, or has been an advocate for at least twenty years with experience in dealing with real estate matters; and

(c) in the case of a Technical or Administrative Member, he is a person who is well-versed in the field of urban development, housing, real estate development, infrastructure, economics, planning, law, commerce, accountancy, industry, management, public affairs or administration and possesses experience of at least twenty years in the field or who has held the post in the Central Government or a State Government equivalent to the post of Additional Secretary to the Government of India or an equivalent post in the Central Government or an equivalent post in the State Government.

(2) The Chairperson of the Appellate Tribunal shall be appointed by the appropriate Government in consultation with the Chief Justice of High Court or his nominee.

(3) The Judicial Members and Technical or Administrative Members of the Appellate Tribunal shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of the Chief

32

Justice of the High Court or his nominee, the Secretary of the Department handling Housing and the Law Secretary and in such manner as may be prescribed.

  
TC

ANNEXURE P<sub>3</sub>

33

**THE REAL ESTATE (REGULATION & DEVELOPMENT)  
ACT, 2016**

84. Power of appropriate Government to make rules.—(1) The appropriate Government shall, within a period of six months of the commencement of this Act, by notification, make rules for carrying out the provisions of this Act

TC

**THE NATIONAL CAPITAL TERRITORY OF DELHI REAL  
ESTATE(REGULATION &DEVELOPMENT) RULES,2016**

**17.Selection of Chairperson and other Members of Authority.-**

- (1) As and when vacancies of Chairperson or any other Member in the Authority exist or arise, or are likely to arise, the appropriate Government may make a reference to the Selection Committee in respect of the vacancies to be filled.
- (2) The Selection Committee may, for the purpose of selection of the Chairperson or Member of the Authority, follow such procedure as deemed fit including the appointment of a Search Committee consisting of such persons as the Selection Committee considers appropriate to suggest a panel of names for appointment as Chairperson or Member of the Authority.
- (3) The Selection Committee shall select two persons for each vacancy and recommend the same to the appropriate Government.
- (4) The Selection Committee shall make its recommendation to the appropriate Government within a period of sixty days from the date of reference made under sub-rule (1).
- (5) The appropriate government shall within thirty days from the date of receipt of the recommendation by the Selection Committee, appoint one of the two persons recommended by the Selection Committee for the vacancy of the Chairperson or other Member, as the case may be.

S  
T. C.

TC

**THE NATIONAL CAPITAL TERRITORY OF DELHI REAL  
ESTATE(REGULATION &DEVELOPMENT) RULES,2016**

**18.Salary and allowances payable and other terms and  
conditions of service of Chairperson and other Members of  
Authority.-**

- 1) The salaries and allowances payable to the Chairperson and other Members of the Authority shall be as follows-
  - (a) The Chairperson shall be paid a consolidated monthly salary of two lakh fifty thousand rupees and shall not be entitled to any allowance relating to house and vehicle;
  - (b) The Member shall be paid a consolidated monthly salary of two lakh rupees and shall not be entitled to any allowance relating to house and vehicle.
- (2) The Chairperson and other Member shall be entitled to thirty days of earned leave for every completed year of service.
- (3) The other allowances and conditions of service of the Chairperson and the Members shall be such as may be determined by the appropriate Government from time to time.

TC

**THE NATIONAL CAPITAL TERRITORY OF DELHI REAL  
ESTATE(REGULATION &DEVELOPMENT) RULES,2016**

**25. Selection of Members of Appellate Tribunal.-**

- (1) As and when vacancies of a Member in the Appellate Tribunal exist or arise, or are likely to arise, the appropriate Government may make a reference to the Selection Committee in respect of the vacancies to be filled.
- (2) The Selection Committee may, for the purpose of selection of the Member of the Appellate Tribunal, follow such procedure as deemed fit including the appointment of a Search Committee consisting of such persons as the Selection Committee considers appropriate to suggest a panel of names for appointment as Member of the Appellate Tribunal.
- (3) The Selection Committee shall select two persons for each vacancy and recommend the same to the appropriate Government.
- (4) The Selection Committee shall make its recommendation to the appropriate Government within a period of sixty days from the date of reference made under sub-rule (1).
- (5) The appropriate Government shall within thirty days from the date of the receipt of the recommendation by the Selection Committee,

ANNEXURE P7

37

appoint one of the two persons recommended by the Selection Committee for the vacancy of the Member.

TC

**THE NATIONAL CAPITAL TERRITORY OF DELHI REAL  
ESTATE(REGULATION &DEVELOPMENT) RULES,2016**

**26.Salary and allowances payable and other terms and conditions of service of Chairperson and Members of Appellate Tribunal.-** (1) The salaries and allowances payable to the Chairperson and Members of the Appellate Tribunal shall be as follows,-

(a) the Chairperson shall be paid a monthly salary equivalent to the last drawn salary by such person, as a Judge of a High Court;

(b) the Member shall be paid a monthly salary equivalent to the salary drawn at the maximum of the scale of pay of Additional Secretary to the Government of India:

Provided that any person who has held a post with the Government, senior than that of Additional Secretary to the Government of India, prior to becoming a Member, he shall be paid a monthly salary corresponding to the post at which he retired.

TC

**GOVERNMENT OF NCT OF DELHI  
LAND & BUILDING DEPARTMENT  
B-Block: Vikas Bhawan : New Delhi-110002**

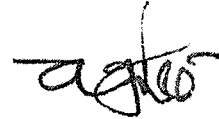
No. F.12 (143)/2018/L&B/RERA/ 23

Dated: 24/05/21

**Selection to the post of Chairperson/One Member for Real Estate Regulatory  
Authority for NCT of Delhi and UT of Chandigarh**

Applications are invited from interested persons/officers for selection to the post of Chairperson/One Member for the Real Estate Regulatory Authority for NCT of Delhi and UT of Chandigarh under the provisions of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016) and Rules framed thereunder. The eligibility conditions and proforma of application for the post of Chairperson/Member are available at the website [www.land.delhigovt.nic.in](http://www.land.delhigovt.nic.in) of the Land & Building Department, Government of NCT of Delhi.

Interested persons/officers who qualify the eligibility conditions may submit their application either through email ID [rera.delhi@gov.in](mailto:rera.delhi@gov.in) or postal address to Deputy Secretary (RERA), Land & Building Department, GNCTD, Ground Floor, B-Block, Vikas Bhawan, New Delhi-110002 as per the proforma prescribed. The closing date and time for submission of the application is 05:00 PM on 30 June, 2021. Clarifications, if any, may be obtained from the office of Deputy Secretary (RERA), Land & Building Department over Phone No. 011-23378755 only on working days.



**(AJAY KUMAR GUPTA)  
SPECIAL SECRETARY (L&B)**



**Terms and Conditions**

**GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI**  
**LAND & BUILDING DEPARTMENT**  
**B-Block, Vikas Bhawan, New Delhi-110002**

39

No. F. 12(143)/2018/L&B/RERA/23

Dated: 24.05.2024

**Sub:- Appointment to the post of Chairperson/One Member in the Real Estate Regulatory Authority for NCT of Delhi and UT of Chandigarh.**

As per the provisions of the Real Estate (Regulation & Development) Act, 2016, applications have been sought for post of Chairperson and One post of Member in Real Estate Regulatory Authority for NCT of Delhi and UT of Chandigarh. The service conditions, powers, appointment even working as well as the removal from post will be provided in Chapter-V of Real Estate (Regulation & Development) Act, 2016 as well as Chapter-VI of the Real Estate (Regulation & Development) (General Rules), 2016.

2. As per Section 22 of the Real Estate (Regulation & Development) Act, 2016, the qualifications of Chairperson and Member of the Authority are as follows:-

2.1 The Chairperson and other Member of the Authority shall be appointed from amongst persons having adequate knowledge of and professional experience of at least twenty years in case of the Chairperson and fifteen years in the case of the Members in urban development, housing, real estate development, infrastructure, economics, technical experts from relevant fields, planning, law, commerce, accountancy, industry, management, social service, public affairs or administration.

2.2 Further, a person who is, or has been, in the service of the State Government shall not be appointed as a Chairperson unless such person has held the post of Additional Secretary to the Central Government or any equivalent post in the Central Government or State Government.

2.3 Further, a person who is, or has been, in the service of the State Government shall not be appointed as a member unless such person has held the post of Secretary to the State Government or any equivalent post in the State Government or Central Government.

3. The Chairperson and the Member of the Real Estate Regulatory Authority for NCT of Delhi and UT of Chandigarh shall hold the office for a period of five years or up to sixty-five years of age, whichever is earlier and shall not be eligible for re-appointment. Moreover, before appointing any person as a Chairperson or Member, the appropriate Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such Member. As per provisions of sub section (1) of Section 24 of the Act and as per Rule 18 of the National Capital Territory of Delhi Real Estate (Regulation & Development) (General), Rules 2016, Chairperson and Member are governed by those terms and conditions of service and shall be entitled for payment of salary and allowances.

4. The interested officers/persons may apply as per the enclosed proforma. The applicants who are in Government service at present/those who have retired during last Six months may send their applications only through proper channel. Incomplete applications will not be accepted and each applicant should have filled up the self declaration as a part of the proforma which is mandatory.

5. All details of eligibility, as given in the application, should be in conformity with the provisions of Chapter V of Real Estate (Regulations & Development) Act, 2016 and Chapter VI of National Capital Territory of Delhi Real Estate (Regulation & Development) (General), Rules 2016. Copy of Real Estate (Regulations & Development) Act, 2016 and National Capital Territory of Delhi Real Estate (Regulation & Development) (General), Rules 2016 has been hosted at [www.land.delhigovt.nic.in](http://www.land.delhigovt.nic.in).

  
(Tapan Jha)  
Deputy Secretary (RERA)

T.C

41

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A.NO. OF 2021

WRIT PETITION (C) NO. 906 OF 2021

D. No 18516 of 2021

IN THE MATTER OF:

DELHI BAR ASSOCIATION

PETITIONER

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS

APPLICATION FOR EXEMPTION FROM FILING CERTIFIED  
COPY OF THE DOCUMENTS/ ANNEXURES.

TO

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

MOST RESPECTFULLY SHOWETH:

1. The Petitioner is filing the captioned Petition under Article 32 of the Constitution of India, challenging the constitutional validity of provisions of the Real estate(Regulation & Development)Act,2016 & the Real estate(Regulation & Development)Act,2016 & the notification bearing no. F.129143)/2018/L&B/RERA/23 dated 24.05.2021 inviting application for appointment on the post of Chairman & one member of the Real Estate Regulatory Authority

42

at Delhi & Chandigarh issued by the Land & Building Department, Government of NCT of Delhi i.e. the Respondent No.2

2. That under the rule of this Hon'ble Court the Petitioners are required to file certified copy of the Impugned documents/annexures, however, the petitioner is filing the downloaded copy of the same from the official site of the respondents.
3. The Petitioner undertake to file the Certified Copy of the Impugned annexures in this Hon'ble Court, as and when received.

### **PRAYER**

In the premises, it is prayed that this Hon'ble Court be pleased to grant exemption from filing certified copy of the provisions of Section 20, 46(b) of the Real estate (Regulation & Development) Act, 2016 & the Real estate (Regulation & Development) Rules, 2016 & the notification bearing no. F.129143)/2018/L&B/RERA/23 dated 24.05.2021 inviting application for appointment on the post of Chairman & one member of the Real Estate Regulatory Authority at Delhi & Chandigarh issued by the Land & Building Department, Government of NCT of Delhi i.e. the Respondent No.2 and to pass such further and other orders as to Your Lordships may deem just and proper.

ADVOCATE FOR THE PETITIONER.

Filed on: .08.2021/New Delhi

43

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A.NO. 100308 OF 2021

IN

WRIT PETITION (CIVIL) NO. 906 OF 2021  
D. No. 18516 of 2021

IN THE MATTER OF:-

DELHI BAR ASSOCIATION

.....PETITIONER

VERSUS

UNION OF INDIA & ANR

...RESPONDENTS

APPLICATION FOR INTERIM DIRECTIONS

TO

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

THE HUMBLE APPLICATION OF THE PETITIONER ABOVE  
NAMED:-

MOST RESPECTFULLY SHOWETH:-

1. The Petitioner has filed the caption petition under 32 of the constitution of India seeking quashing of the Section 22 & 46(a) (b) of the Real Estate(Regulation & Development) Act,2016 & provision of Rule

44

17(3), 18,25(3), 26(b) of the National Capital Territory of Delhi Real Estate(Regulation & Development) Rules,2016 being arbitrary, discriminatory, illegal and unconstitutional and accordingly may please kindly be set aside.

2. The Petitioner has filed the caption petition under 32 of the constitution of India to issue appropriate Writ(s) and/or any other order(s) and/or directions to declare notification bearing no. F.129143)/2018/L&B/RERA/23 dated 24.05.2021 inviting application for appointment on the post of Chairman & one member of the Real Estate Regulatory Authority at Delhi & Chandigarh issued by the Land & Building Department, Government of NCT of Delhi i.ee the Respondent No.2 in terms of Section 22 of the Real Estate(Regulation & Development) Act,2016 , being arbitrary, illegal and unconstitutional and accordingly may please kindly be set aside;
3. That the petitioner has good prima facia case on merits and also in view of the judgment by this Hon'ble Court in the matter of Madras Bar Association Versus UOI decided on 27.11.2021.
4. That an irreparable loss to the advocates concerned, those of found eligible on the similar lines of other Tribunals/Appellate Tribunals, in

45

case the respondent proceed to make appointment for the post of Chairman/Members for RERA and its Appellate Tribunal.

**5. PRAYERS:-**

It is therefore, most respectfully prayed that Hon'ble Court may gracefully be pleased to:-

- i. Stay the further action of the respondents in terms of notification bearing no. F.129143)/2018/L&B/RERA/23 dated 24.05.2021 inviting application for appointment on the post of Chairman & one member of the Real Estate Regulatory Authority at Delhi & Chandigarh till the decision of the Present writ and/or alternatively;
- ii. Consider the "advocates" for the Post of Chairman and Member for RERA & RERA Appellate Tribunal, having ten years with substantial experience in litigation in matters as required;
- iii. Pass any such other(s) and further orders as this Hon'ble Court may deem fit and proper;

46

AND FOR THIS ACT OF KINDNESS AND JUSTICE, PETITIONERS  
AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY:-  
SHYAMAL KUMAR  
ADVOCATE FOR THE PETITIONER .

FILED ON: // .08.2021

PLACE: NEW DELHI