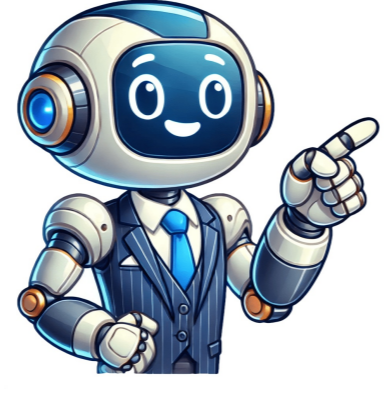


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Association. This was owing to poor adjudication of issues coupled with delays in the administration of justice. ISSUE The main issue in the case of Madras Bar Association vs Union of India revolved around the Constitutional validity of the National Tax Tribunal Act, 2005 and the Constitution (Forty-Second Amendment) Act, 1976. Arguments made by the Petitioner (Madras Bar Association): The main claim made against the Act's impugned provisions was that it was fundamentally overturned earlier court decisions. Arvind Datar, a senior attorney, is in charge of the Madras Bar's arguments. Association argued that the aforementioned Ordinance of her case The Theory of Separation of Powers, a cornerstone of the Indian Constitution that protects the independence of the judiciary. Arguments made by the Respondent (Union of India): The search results do not specifically highlight the respondent's arguments. But it can be assumed that they would have maintained the legality of the National Tax Tribunal Act of 2005 and the 1976 Constitution (42nd Amendment) Act. The case brought up significant issues about the role and operation of tribunals in India as well as the question of whether extra-judicial bodies might take the place of High Courts, which carry out judicial tasks. Judgment The Supreme Court of India rendered its decision in the case of Madras Bar Association v. Union of India on September 25, 2014. The National Tax Tribunal Act of 2005 and its constitutionality were maintained by the court. The 1976 Constitution (42nd Amendment) Act. However, it was also determined that the credentials of Technical Members of NCLT/NCLAT are invalid because they share the same flaw as the one previously upheld. High Courts, which carry out judicial duties, cannot be replaced by lower courts, the court concluded. a non-judicial organisation. It also emphasised the necessity of an adjudicatory authority's independence and fairness. This ruling has had a profound impact on the function and role of tribunals in India. Written by Abdul Rehman an intern under legal vidya. WPC 804/2020 I ITEM NO.2 COURT NO.1 SECTION PIL-W S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS M.A. No.11/2021 In W.P.(C) No.804/2020 MADRAS BAR ASSOCIATION Petitioner(s) VERSUS UNION OF INDIA & ANR. Respondent(s) (With IA No.27/60/2021 - APPLICATION FOR TAKING ON RECORD, IA No. 2754/2/2021 - APPROPRIATE ORDERS/DIRECTIONS, IA No.58960/2021 - APPROPRIATE ORDERS/DIRECTIONS and IA No. 2727/2021 - CLARIFICATION/ DIRECTION) Date : 03-03-2023 These matters were called on for hearing today. CO-AM : HON'BLE THE CHIEF JUSTICE HON'BLE MR. JUSTICE PAMIDIGANTHAM SRI NARASIMHA HON'BLE MR. JUSTICE J. B. PARIWALA For Petitioner(s) Mrs. Anil Kataria, AOR For Respondent(s) Mr. Balbir Singh, ASG Mr. R. Balasubramanian, Sr. Adv. Mr. Chinnmayee Shandil, Adv. Mrs. Shradha Deshpande, Adv. Mr. Shyam Gop, Adv. Mr. Zohra Hussain, Adv. Mr. Ankur Taneer, Adv. Mr. Raj Bahadur Yadav, AOR Mr. Balbir Singh, A.S.G. Mr. R. Bala, Sr. Adv. I O R D E R IA No 2754/2/2021 In W.P.(C) No 804 of 2020 I The applicant is a Member of the Income Tax Appellate Tribunal. 2 On 17 April, 2013, the Union Government issued a circular to fill up 48 vacant posts of Members of the ITAT. The applicant applied in the unreserved 3 category. Interviews were held. Following which a panel of names was prepared for appointment on 31 May 2014. Since the applicant was not included in the panel, she moved the Central Administrative Tribunal. The tribunal rejected her OA2n 9 November 2016. The applicant then moved the High Court of Calcutta. By its judgment dated 28 June 2017, the High Court allowed the petition3n the following terms: "For the reasons discussed above, we set aside the impugned order dated 9thNovember 2016 passed by the learned Tribunal in OA 350/0979/2016 and direct the ACC to consider the petitioner's candidature afresh for appointment to the post of Judicial Member under unreserved category in the Income Tax Appellate Tribunal in the light of the observations made above and to take a final decision and to communicate the same to the petitioner within a period of six weeks from date. It is made clear that the petitioner's candidature should not be rejected on the ground that the petitioner's income tax return for the assessment year 2010-2011 is not available as reported by the Under Secretary to the Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, Till such decision of ACC is communicated to the petitioner and for a week thereafter one post of Judicial Member under unreserved category shall be kept vacant." 3 Following the above judgment of the High Court, a letter of offer was issued to the applicant on 24 December 2017 followed by a letter of appointment dated 19 March 2018. 4 On 20 April 2018, the applicant submitted a representation to the Secretary in the Department of Justice to the effect that her appointment was in pursuance of a vacancy of 2013 which was governed by the parent act, namely, the Income Tax Act 1961. Consequently, the contention of the applicant was that her appointment should operate until the age of 62 years and not for a period of three years as stated in the letter of appointment. 5 On 6 June 2018, vacancies were declared under the 2017 Rules.6 On 13 November 2019, this Court rendered its judgment in Rojer Mathews vs South Indian Bank Limited and Others4. While striking down the 2017 Rules, this Court directed that appointments shall be made in terms of the respective statutes before the enactment of Finance Bill 2017. Subsequently, on 27 November 2020, this Court delivered its judgment in Madras Bar Association vs Union of India and Another5. 7 The applicant once again submitted a representation on 3 December 2020. It may also be noted at this stage that on 9 March 2021, an interim order was passed by this Court directing the continuation of the applicant as a Member of the ITAT until 17 March 2023. 8 On 14 July 2021, this Court clarified its decision in Madras Bar Association vs Union of India6to the effect that all appointments made before 4 April 2021 would be governed by the parent statutes in terms of the interim orders passed by this Court earlier on 16 July 2018 and 21 August 2018. 9 The issue which arises for determination in the Interlocutory Application is as to whether the applicant would be governed by the provisions contained in the Income Tax Act 1961. Rule 11 of the Income Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules 1963 stipulated that the age of retirement of the Members of the ITAT would be 62 years. In terms of those provisions, the applicant would have been entitled to continue in service until the age of 62 years. 10 The applicant had offered her candidature for appointment in pursuance of the circular of 2013. The selection process which was conducted in pursuance of the circular ended in the grant of letters of appointment to those who were found to be qualified and were selected. The applicant was deprived of the selection at that stage only on the ground that she had not filed her income tax return for the relevant assessment year. The applicant pursued her claim before the Calcutta High Court. 11 In the judgment of the Calcutta High Court dated 28 June 2017, it was held that the candidature of the applicant shall not be rejected on the ground that her income tax return for Assessment Year 2010-2011 was not available, as reported by the Under Secretary to the Government of India, Ministry of Finance, Department of Revenue. This judgment of the Calcutta High Court attained finality. 6,12 Consequently, it is apparent that the only ground which weighed in the rejection of her candidature was found to be untenable by the Division Bench of the Calcutta High Court. Though the appointment letter was issued to the applicant on 19 March 2018 (in pursuance of the letter of offer dated 24 October 2017), the appointment of the applicant was pursuant to the selection process which had been initiated with the circular of 17 April 2013. It is not in dispute that other persons who were selected in pursuance of that process were issued with letters of appointment much before the 2017 Rules came into effect. The clear position on the facts of this case is that the right of the applicant to appointment had been crystallized even before the 2017 Rules. Therefore, the appointment of the applicant would be governed by the position as it existed prior to the 2017 Rules. In other words, her tenure shall be extended until she attains the age of 62 years. 13 The Interlocutory Application is accordingly disposed of. (CHETAN KUMAR) (SAROJ KUMARI GAUR) A.R.-cum-P.S. Assistant Registrar This article is written by Trisha Prasad. The article analyses the pivotal Supreme Court judgement of Madras Bar Association vs. Union of India (2014) which forms a part of a series of judgements that discuss the concept of tribunals and tribunal reforms. This article discusses the significance of the judgement in the context of the basic structure doctrine, power of judicial review and separation of powers. The Supreme Court, in the case of Madras Bar Association vs. Union of India (2014), decided on 25th September 2014 to declare the National Tax Tribunal Act, 2005 (the '2005 Act'), which established a National Tax Tribunal, unconstitutional and struck it down. This case forms a part of a series of cases (all titled, "Madras Bar Association vs. Union of India" in the years 2014, 2015, 2020 and 2021) initiated by the Madras Bar Association, challenging all attempts made to create an executive-dominated tribunal system on the grounds that it impedes the independence and integrity of the judiciary and system of justice as well as the concept of separation of power in India. The 2005 Act was enacted with the aim of streamlining the adjudication process in relation to tax disputes and reducing the burden on the High Courts in India. However, the Apex Court found various provisions of this Act from the establishment of the National Tax Tribunal to its composition and appointment process to be unconstitutional and hence invalid in the eyes of law. The court declared that the main provisions of the Act were infringing on the jurisdiction of the High Court as well as providing more powers, concentrated in the hands of the executive, thereby violating the principle of separation of powers as well as the independence of the judiciary. The basic structure of the constitution was held to be violated by the provisions of the 2005 Act which was in effect struck down by the Apex Court's decision in this case. This article will analyse the judgement of the Supreme Court in this case while also examining and providing an overview of the concept of separation of powers, judicial review and the basic structure doctrine. Parties: Petitioner: Madras Bar Association Respondent: Union of India Case no: Transferred Case (Civil) No. 150 of 2006 Equivalent citations: AIR 2015 SC 1571, 2015 AIR SCW 1270, AIR 2015 SC (Civil) 1154 Court: The Supreme Court of India Bench: Justice R.M Lodha (former Chief Justice of India), Justice Jagdish Singh Khengar, Justice Chelameswar, Justice A.K. Sikri, Justice Rohinton Fali Nariman Decided on: 25th September, 2014 Statutes/Laws involved: The National Tax Tribunal Act, 2005 The Constitution of India, 1950 The National Tax Tribunal Act, 2005 was enacted by the Parliament as a part of the government's effort to streamline the adjudication of tax-related disputes, eliminate delay in the disposal of such disputes and reduce the burden on the court, which would in turn reduce the pendency of cases before the High Courts. Prior to the enactment of the National Tax Tribunal Act,2005, the power to decide appeals from any decision of the Appellate tribunal set up under the Income Tax Act,1961, Central Excise Act, 1944 and Customs Act,1962, vested exclusively in the High Courts, provided that there was a substantial question of Law involved. Section 260A of the Income Tax Act, Section 35C of the Central Excise Act and Section 130 of the Customs Act, all of which provided the High Court with the abovementioned appellate powers were amended by the 2005 Act, transferring the same appellate powers to the National Tax Tribunal which was sought to be established under the Act. The necessity of establishing a national tribunal for taxes was first suggested in the 12th report of the Law Commission. This recommendation was however not accepted and the existing appellate tribunal under the Income Tax Act continued to function. A similar suggestion was made once again in 1970 by a Direct Tax Inquiry Committee (Wanchoo Committee) set up by the government. This committee recommended the establishment of tax benches in the High Courts, to be preceded by a retired judge. At this stage, there already were a large number of tax cases pending before the judiciary. Subsequently, another Direct Tax Inquiry Committee (Choksi Committee) that was set up in 1977 suggested the establishment of a Central Tax Court. This recommendation too never saw the light of day. Finally, in the early 1990s, a similar recommendation was made leading to the issue of the National Tax Tribunal Ordinance, 2003 which subsequently led to the enactment of the National Tax Tribunal Act, 2005 after the bill for the same was deliberated in the parliament in 2004. This case brought before the Supreme Court by the Madras Bar Association was a culmination of various petitions and transferred cases (as mentioned below) which were all brought before various Indian courts by different petitioners. These petitions and cases that challenged the validity of the National Tax Tribunal were consolidated and disposed of by this court's decisions in the present case of Madras Bar Association vs. Union of India. Transferred Case (civil) Nos. 150,116,117 and 118 of 2006 Civil Appeal nos. 3850,3862,3881,3882, 4051 and 4052 of 2006 Writ Petitions Nos. 621 and 697 of 2007 These cases primarily challenged the validity of the National Tax Tribunal Act, of 2005. Simultaneously, the 42nd Constitutional Amendment Act,1976 was challenged on the ground that it violated the basic structure of the Indian Constitution, specifically highlighting the concept of Judicial Review and separation of powers. This issue arose as the National Tax Tribunal that was to be established under the National Tax Tribunal Act was vested with powers to hear and decide appeals against any substantial question of law that arises from decisions of appellate tribunals established under three statutes including Income Tax Act,1961, Central Excise Act, 1944 and Customs Act,1962. Additionally, Article 323-B which was inserted by the 42nd Constitutional Amendment was alleged to be unconstitutional on the grounds that it violated the principles of separation of powers, rule of law and the powers of judicial review by an independent judiciary which constitute a part of the basic structure of the constitution. The second argument put forth by the petitioner was in relation to the appellate powers that were vested in the National Tax Tribunal by the 2005 Act, effectively taking away the powers that were previously vested in the High Courts. The petitioner argued that the legislature did not have the power to abrogate or divest the superior courts of this appellate jurisdiction and the transfer of such power to the tribunal was liable to be set aside. Additionally, the petitioner also argued that the 2005 Act, violated the High Court's power of judicial review under Articles 226 and 227 of the Constitution. The original jurisdiction of the High Courts under Articles 226 and 227 which includes the power to issue writs, direction and orders for the protection of the rights of individuals as well as the right of superintendence over all courts and tribunals instituted or established within its own territorial jurisdiction, were contended to be disturbed by the introduction of the 2005 Act which effectively took away and transferred the powers that were earlier vested in the High Courts by the Constitution. The petitioner also argued that decisions in relation to any substantial question of law even in specialised matters must be determined by a superior court like the High Courts of the Supreme Court. The petitioner specifically challenged Sections 5,6,7,8 and 13 of the 2005 Act on the grounds that the said provisions hindered the independence of the adjudicatory process of the Tribunal. This contention was wholly based on the fact that the central government had the sole authority in relation to the establishment, composition, constitution and appointments of the tribunal and its officers. The Central Government was the sole authority for establishing the Tribunal under Section 3 of the 2005 Act. Determination of the composition of the tribunal, the number of members to be appointed to the tribunal and the number of benches as well as the jurisdiction and location of these benches of the tribunal were all exclusive powers of the central government under Sections 4 and 5 of the Act. Furthermore, the decision requirements of the members of the proposed tribunal and the potential overburdening of the Supreme Court. However, the reservations and concerns raised by the select committee were not taken into consideration by the parliament and the 2005 Act was enacted without incorporating any of the recommendations of the committee. The central government, portrays the advantage that the central government will have in the selection or appointment process. These provisions of the Act clearly violated the necessity of ensuring the separation of powers between the executive and the judiciary which has been given importance in order to protect the rights of individuals and secure justice for all. Lastly, the petitioners challenged the constitutionality of Article 323B of the Indian constitution to the extent that it violated the principles of separation of powers, rule of law and the power of judicial review that were argued to constitute, among others, the basic structure of the Indian Constitution. The petitioners also specifically prayed for striking down Article 323B(4) of the Constitution, a non-obstacle clause which in effect allows Article 323B to have an overriding effect over any other conflicting provision or law in force. The petitioner put forth arguments challenging the constitutional validity of the 2005 Act in its entirety as well as the 42nd Amendment Act on the grounds that the basic structure of the constitution had been violated as the power of judicial review of the High Courts had been infringed. Alternatively, in the event that the above-mentioned prayers were not agreed upon by this Apex Court, the petitioners challenged the Constitutional validity of specific provisions or Sections of the 2005 Act (Sections 5,6,7,8 and 13) that established and governed the institution and basic functioning of the National Tax Tribunal. The respondent countered the petitioner's arguments by attempting to justify the reason for setting up the National Tax Tribunals as well as the powers of the parliament to make and enact the 2005 Act. The council also firmly refuted the claims that the establishment of the tribunal was not in violation of the principles of separation of powers and judicial review. The respondent backed this argument by discussing the alarming number of pending tax disputes and the general burden on the judiciary as well as reasons for prolonged litigation in relation to tax disputes. The respondent also specifically attributed the pendency to the lack of clarity in law for tax litigation with additional emphasis on the situation of conflicting opinions and multiplicity of proceedings due to the existence of multiple appellate levels and the role of the High Courts. In response to the second contention of the petitioner, the respondent emphasised that a statutory right to appeal to the Apex Court has been provided under the Act and that the Judicial review powers of the High Courts under Articles 226 and 227 and that of the Supreme Court under Articles 32 and Article 136 have not been hampered. The counsel for the respondents argued that the grounds of challenge cited by the petitioner were misconceived, fallacious and hence unacceptable. However, despite these contentions that were put forth by the respondents, the then Attorney General of India, Mukul Rohatgi, was willing to positively view any suggestions that were made by the Supreme Court in this matter and bring about changes to the provisions of the 2005 Act that were challenged by the petitioners. The basic structure doctrine can be simply understood as referring to certain features, principles and provisions that form the core of the Indian Constitution. These features are intrinsic to the very basic structure and objective of the Indian Constitution and hence cannot be altered, amended or removed from the Constitution. The initial judicial evolution of the basic structure doctrine can be traced back to the judgements pronounced in the cases of Sankari Prasad Singh Deo vs. Union of India (1951), Saini Singh vs. State of Rajasthan (1964) and I.C Golaknath & Ors. vs. State of Punjab (1967) until the primary and basic foundation of the doctrine was laid down in the Kesavananda Bharati vs. State of Kerala (1973) case. There have been a number of cases that subsequently reaffirmed and strengthened the decision that was delivered in the Kesavananda Bharati Case. It has been determined that the basic structure of the Constitution includes the following principles and provisions: Supremacy of the Constitution; Preamble and all concepts and features included in the preamble; Rule of law; Independence of the judiciary; Separation of powers; Judicial Review; Fundamental Rights; Directive Principles of State Policy (balanced with the fundamental rights). The present case of Madras Bar Association vs. Union of India specifically discussed the basic structure doctrine in the context of separation of powers, judicial review and rule of law. The doctrine of separation of powers refers to the division of duties or functions among different branches or organs of the government (executive, legislature and judiciary) in a manner that limits each organ or branch to the functions that are allotted to it and prevents unnecessary overlapping of duties. As introduced by Montesquieu and further enhanced by modern governance systems, separation of power is based on three main features: A person who forms a part of one organ cannot form a part of another organ; An organ should not exercise the functions that are vested in another organ; An organ should not interfere with the functioning of another organ. In the Indian context, while the doctrine of separation of power is a critical constituent of the basic structure of the Constitution, it is not followed as strictly as in countries like the United States of America. India follows a system of checks and balances which allows for review of the action or permits imposition of some limitations by one organ on the other, like judicial review and a no-confidence motion, in order to ensure that the principles of the Constitution are followed. Judicial review is the process by which the judiciary (Supreme Court under Article 32 or High Courts under Article 226) determines the constitutionality of any legislative action or law that is passed by the parliament. It also includes the power to examine the constitutionality of executive actions or actions by the administrative bodies of the government. Section 5 provided for the constitution as well as the jurisdiction of the National Tax Tribunal that was sought to be established under this Act. According to this Section, the jurisdiction of the tribunal, its seat, the number of required benches and the transfer of members from one bench to another bench will be determined by the Central Government in consultation with the Chairperson who is appointed by the Central Government. Section 6 lays down the qualifications required to be fulfilled by any person being appointed as the Chairperson or member of the tribunal. According to this Section, any person who has been the Chief Justice of a High Court or a judge of the Supreme Court is qualified to be appointed as the chairperson of the tribunal. The Section further states that, in order to be qualified to be appointed as a member of the tribunal, the concerned person must fulfil one of the two below-mentioned criteria: The person is or has been a member of the Income Tax Appellate Tribunal or Customs, Excise and Service Tax Appellate Tribunal, Section 7 contains the procedure to be followed for the appointment of a chairperson and members of the tribunal. According to this Section, the central government appoints the chairperson or member on the recommendation of a selection committee consisting of the Chief Justice of India (or any Supreme Court judge) and two secretaries of central government ministries (Ministry of Law and Justice and Ministry of Finance). However, an appointment made in the absence of any of the abovementioned selection committee members is also considered valid. Section 8 specifies the term of office of any chairperson or member of the tribunal. The member or chairperson serves a term of 5 years and is eligible to be reelected for another 5-year term. Section 13 states that a person may be represented before the tribunal either by a legal practitioner or a Chartered Accountant. Article 323B was inserted in the Constitution by the 42nd Amendment Act in 1976. This article permits the legislature to set up specialised tribunals for adjudicating disputes related to specific matters including taxation, foreign exchange, industry and labour disputes, land reforms, elections, etc. Article 226 conferred on the High Courts, the power to issue writs, directions and orders for protecting and enforcing the fundamental and legal rights of individuals as guaranteed by the Indian Constitution. Article 227 of the Constitution gives the High Courts the power of superintendence over other courts and tribunals that function within the territorial jurisdiction of the concerned High Court. Article 32 allows individuals to approach the Supreme Court for the purpose of enforcing the Fundamental Rights that are guaranteed to them. Similar to Article 226, the Supreme Court can issue writs, orders and directions to enforce its fundamental rights. The meaning of the term "substantial question of law" was determined in this case. According to the Apex Court in this case, in order to permit the High Court to entertain a substantial question of law, it must first be determined if it is a matter of general public importance or significantly affects the rights of the parties. The question of law must be either not decided by the superior courts or of such a complex nature that it is open to multiple interpretations. If at all the question of law that is brought before the court is already decided by the superior courts or is related to established principles of law, the concerned question would not be classified as "substantial". The landmark case of Kesavananda Bharati vs. the State of Kerala (1973) is an important case that must be analysed while dealing with matters related to the basic structure doctrine. This case was brought before the court, challenging the 24th Constitutional Amendment Act, 1971 and the 25th Constitutional Amendment Act, 1971. This case was instrumental in the establishment of the concept of the basic structure of the Constitution. The power of judicial review that is vested in the superior courts by the Constitution as well as the concept of separation of powers, among others, were held to be essential components of the Constitution's basic structure. It was also firmly observed that the basic structure of the Indian Constitution cannot be altered by the parliament in the exercise of its power to amend under Article 368 of the Constitution. The constitutionality of the 39th Constitutional Amendment (1975) was analysed in this case. The amendment had, among other provisions, added Article 329A (now repealed) which removed the question of the validity of the election of a prime minister or speaker of the parliament from the purview of judicial review. In this context, while also affirming the decision given by the court in the case of Kesavananda Bharati vs. State of Kerala (1973), the 5-judge-bench held the above-mentioned provision to be violative of both judicial review powers as well as the principle of separation of powers. The bench also emphasised that the term "amendment" under Article 368 cannot be used in a manner that alters, destroys or undermines the basic structure of the Constitution. The provision of the 42nd Constitutional Amendment that permitted the exclusion, from judicial review, of any law that was enacted in furtherance of the Directive Principles of State Policy (DPSP), even if it is in violation of the Fundamental Rights, was challenged in this case. Following the decision of this case it is now a well-settled position of law that the power of judicial review is an essential part of the basic structure of the Indian Constitution and no law or amendment made by the parliament can effectively take away or undermine this power that is vested in the superior courts. It was also observed during the course of the proceedings that it is permissible for the parliament to set up alternative institutional mechanisms or similar arrangements for the exercise of judicial review, separate from the High Courts and Supreme Court. However, the alternative must be an absolute substitute, effective and efficient in conforming with the principles and requirements of the Constitution. The court had in this case struck down Article 323A and Article 323B that were added by the 42nd Amendment (1976) to the Constitution to the extent that it completely excluded the powers of judicial review available to the superior courts under Articles 226,227,32 and 136. The impugned provisions in this case permitted the parliament to withdraw the power of judicial review from all courts except for the Supreme Court under Article 136. The Apex Court also addressed the question as to whether any tribunal established under Articles 323A and 323B are effective substitute to exercise the power of judicial review vested in the High Courts. In this regard, the court observed that while the powers vested in the High Courts and Supreme Courts are an indispensable part of the basic structure of the constitution, tribunals or other courts may be set up to perform a supplementary role in the discharge of the powers vested under Article 226, 227 and 32. These decisions will however be subject to scrutiny of a division bench of the High Court and the tribunals will continue to function as the courts of first instance in relation to matters that fall within the ambit of their specialised subject matter jurisdiction. In this case, Chapters 1B and 1C of the Companies Act,1956 which provided for the creation of the National Company Law Tribunal and National Company Law Appellate Tribunal respectively were challenged. The impugned provisions sought to replace the company's board with a tribunal with original jurisdiction and an appellate tribunal. The bench in this case, while analysing the concept of independence of judiciary and separation of powers, observed that apart from the powers and functions specified in the Constitution, other powers and functions of the High Courts can be determined by legislative action. Any power to hear any matter or an appeal that is conferred on High Courts by specific legislations can be taken away by repealing the concerned provisions. At the same time, it was also observed that the Constitution permits the parliament to establish tribunals and transfer or confer powers to determine disputes to these tribunals and hence, parliament has the power to transfer certain judicial functions to tribunals and other courts. However, the parliament must ensure that the independence of the judiciary as well as the principle of separation of powers are maintained. It was also emphasised that in order to maintain the independence of the judiciary, any issue that involves the government must be dealt with by judges who are independent of the government. (The court in the present case of Madras Bar Association vs. Union of India dismissed the reliance on the R. Gandhi case as the latter dealt with the substitution of one tribunal by another while the former dealt with the substitution of the High Court by a Tribunal) The 5-judge bench of the Supreme Court in its judgement broadly observed and declared the following: The parliament has the power to establish new courts and tribunals or transfer powers that were earlier vested in the High Courts to such other courts and tribunals without it being deemed to violate the basic structure of the Constitution. However, care must be taken to ensure that the alternative court or tribunal conforms with the basic characteristics and standards of the court that it wishes to replace. Sections 5,6,7,8 and 13 of the 2005 Act are unconstitutional and thereby invalid. These provisions formed the foundation of the 2005 Act and without these provisions, the Act will be ineffective. Hence, the 2005 Act as a whole was deemed to be unconstitutional. The rationale behind the judgement passed by the Apex Court can be understood under the following two heads: The Apex Court examined the relation between and impact of the 2005 Act on the concept of judicial review and the separation of powers in order to determine whether the basic structure of the constitution has been violated by the Act. Subsequent to the analysis of the independence of judiciary and separation of powers, the court concluded that the basic structure doctrine, the court observed that the basic characteristics and standards of the tribunal were not in line with the High Court that it sought to replace. Furthermore, in order to determine whether the transfer of adjudicatory function to the tribunal was constitutional, the court first attempted to determine whether the power that was transferred was a core judicial appellate function that was traditionally vested in the High Courts. The Apex Court analysed the historical perspective of tax-related legislation and determined that appeals-related taxes in cases where a substantial question of law was present have traditionally been a power vested in the High Courts. The first adjudicatory authority has traditionally been an executive appellate adjudicatory authority like the Income Tax Appellate Tribunal or the Customs, Excise and Service Tax Appellate Tribunal. The power to hear appeals from these appellate tribunals has always been vested in the High Courts. Hence we concluded that the core adjudicatory function determining any question of law in tax dispute, has been uninterruptedly vested in the High Courts. It was held that the National Tax Tribunal has to an extent encroached on the exclusive jurisdiction of superior courts and is hence unconstitutional. The 2005 Act which aimed at establishing the National Tax Tribunal was enacted pursuant to the parliament's powers under Article 323B of the Indian Constitution which was also challenged by the petitioner in this case. In relation to the challenge to Article 323B of the Constitution, the court observed that a detailed analysis or determination of the same is not required as the matter was already clarified by the Apex Court in the earlier case of L. Chandra Kumar vs. Union of India. The aforementioned case was specifically decided in relation to the Administrative Tribunal established under the Administrative Tribunals Act,1985, enacted pursuant to Article 323A. The Supreme Court scrutinised the provision of Article 323A and 323B as well as Section 6(5) of the Administrative Tribunals Act which in effect excluded the supervisory and appellate jurisdiction of the court in relation to matters that were heard by the tribunals. The jurisdiction of the High Courts was reaffirmed in the case of L. Chandra Kumar vs. Union of India which was also regarded as a precedent by the court in the instant judgement of Madras Bar Association vs. Union of India. Sections 5,6,7,8 and 13 were declared as unconstitutional and struck down and since the remaining provisions of the Act cannot be made effective without the above-mentioned provisions, the entire Act was declared to be ineffective and unconstitutional. As previously mentioned, it is necessary for the parliament in the present case to ensure that the features and functioning of the tribunal are in a manner that is in conformity with the High Courts that are effectively being replaced as appellate authorities for tax-related matters. The Supreme Court made various observations in relation to Section 5 of the 2005 Act. Firstly, the court observed, on the basis of the petitioner's argument regarding the inconvenience that may be faced by aggrieved persons, that instituting the Tribunal in the National Capital Territory of Delhi will create a situation where the option of seeking redressal will not be available at the same level of convenience and expediency that was earlier available. Secondly, the Apex Court determined the role of the Central Government in determining the location, jurisdiction and composition of the bench to be inappropriate and violative of the independence of the judiciary owing to the fact that the Central Government will inevitably be a stakeholder in each and every case that may be brought before the tribunal. The court observed that the qualifications for the composition of the tribunal as provided under Section 6 of the Act allowed for technical members of the Income Tax Appellate Tribunal or the customs, excise and service tax Appellate tribunals with at least 5 years of experience to be eligible to be appointed as members of the National Tax Tribunal. It was observed that these members lacked the legal expertise or knowledge that members of the National Tax Tribunal would be faced with while adjudicating tax disputes. In this regard, the Apex Court expressly held Section 6(2)(b) to be unconstitutional and invalid. Further, while invalidating Section 7, the court observed that one of the parties to any matter that is heard by the tribunal will inevitably represent the interests of the Central Government. It would hence not be fair to follow the procedure of appointment of members or chairperson of the tribunal as provided under Section 7 which requires the involvement of the Secretaries of the Ministry of Finance and the Ministry of Law and Justice. Lastly, Section 8 was invalidated on the grounds that it permitted for the re-appointment of the chairperson or member of the tribunal after the completion of their 5-year term. It was held that such a provision for re-appointment would hamper the ability of the chairperson or member to act in an independent manner, thereby undermining the fairness and independence of the said member or chairperson of the tribunal. Section 13 of the Act was held to be unconstitutional to the extent that it permitted parties to be represented before the tribunal by Chartered Accountants on the grounds that they lacked legal expertise beyond the area of accounts and basic company-ruled laws. In cases where other laws including family laws, civil laws or property laws may arise, Chartered Accountants would not have the necessary knowledge and expertise to deal with the disputes and effectively represent the parties. The observations made by the Supreme Court in this case aptly promote the need for a transparent process of appointment of members to any tribunal and highlight the need to ensure that there are sufficient safeguards against undue influence of the government in the appointment process. Hence, the fact that a majority of the members of the selection committee for appointment of the chairperson and members of the tribunal as provided for under the 2005 Act were representatives of the government was frowned upon by the bench and dismissed as being unconstitutional. The judgement in this case also sheds light on the necessity to structure a tribunal in a manner that reflects the fairness and impartiality standards that are expected from traditional courts that the tribunal seeks to replace. The judgement given by the 5-judge bench of the Apex Court on 25th September 2014 not only reaffirms the basic structure doctrine while emphasising the importance and scope of both judicial review and separation of powers but also played an important role in the series of cases in relation to the ongoing debate on tribunal reforms. The judgement has contributed to the existing tribunal reforms jurisprudence by clarifying the constitutional limits of the legislature that must be adhered to while setting up tribunals. It is apparent that while judicial reforms are encouraged, the judiciary's role in ensuring constitutionality and protection of rights throughout the process of reform must be upheld. By declaring the National Tax Tribunal Act,2005 to be unconstitutional and ineffective, the Supreme Court established that while the parliament has the authority to establish specialised tribunals to deal with specific subject matters with the aim of effectively delivering justice, these bodies must maintain the independence and characteristics that are consistent with judicial body or court that it aims effectively replace. The decision of the court, in this case, highlights the judiciary's commitment towards maintaining the basic principles enshrined in the Indian Constitution. The importance of ensuring an independent judiciary that is free from unnecessary external influence for the purpose of effective justice delivery has been reinforced. Pursuant to this judgement, it can be concluded that it is not concluded that in order to avoid any issues or challenges raised against ongoing reforms, sufficient efforts must be made to ensure a transparent appointment process, the clear establishment of jurisdictions of tribunals on one hand and superior courts on the other, establishment of adequate safeguards against government interference in the judicial process and conscious adherence to enforcements with the established principles of the Indian Constitution. In conclusion, the judgement delivered in the case of the Madras Bar Association vs. Union of India (2014) is a landmark decision that fortifies the basic structure of the Indian Constitution, reaffirming the various principles laid down in this regard by the judiciary through its past decisions. The Supreme Court struck down various provisions of the 2005 Act in order to ensure and protect the principles of separation of powers, judicial review and independence of the judiciary. The court, by way of this judgement, reasserted the necessity for any legislation that may encroach upon the core functions of the judiciary to be modelled in a manner that upholds the strict impartiality of judicial processes and maintains the integrity of the justice mechanism. A tribunal is a quasi-judicial body that is established to adjudicate specific disputes, based on a specific subject matter or industry within its designated jurisdiction. Tribunals are specialised forums, generally established with the aim of ensuring efficiency and speed in resolving disputes, especially in cases where subject matter expertise is required. These bodies generally play an important role in reducing the burden on traditional courts. Tribunals that are currently functioning in India include: Income Tax Appellate Tribunal National Green Tribunal Securities Appellate Tribunal National Company Law Tribunal and National Company Law Appellate Tribunal Telecom Dispute Settlement and Appellate Tribunal Debt Recovery Tribunal, etc. Articles 323A and 323B were inserted by the 42nd Constitutional Amendment Act. Article 323A specifically provides for the establishment of administrative tribunals by the parliament to adjudicate disputes related to the appointment and conditions of service of those people who are appointed to the central or state public services. Article 323B provides further powers to the parliament to establish any other tribunal other than the administrative tribunals. This Article specifically provides examples of some areas for which disputes tribunals may be established including taxation, foreign exchange, industrial and labour issues, elections, etc. The principles that have been established and reaffirmed in this case are broad in nature and can be made applicable to other tribunals that may be established under other statutes, regardless of the subject matter that the tribunal deals with. The border principles and concepts of basic structure doctrine, judicial review, separation of powers and rule of law as discussed in this case have important implications under the field of Constitutional Law. Any statute that is enacted within the Indian territory must be in conformity with the Indian Constitution. The principles discussed and reaffirmed in this case will be applicable to any other tribunal or similar statute that is in force or may be enacted in the future. It is pertinent to note that since the main issue discussed in this case is the establishment and validity of a national tribunal (national tax tribunal), this case serves as a direct precedent for other cases that have come up or may be filed in the future throughout the process of tribunal reforms in the country. Students of LawSikho courses regularly produce writing assignments and work on practical exercises as a part of their coursework and develop themselves in real-life practical skills. LawSikho has created a telegram group for exchanging legal knowledge, referrals, and various opportunities. You can click on this link and join: Follow us on Instagram and subscribe to our YouTube channel for more amazing legal content. Serato DJ Crack 2025Serato DJ PRO Crack