

ITEM NO.2

COURT NO.4

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

Writ Petition(s)(Civil) No(s).1018/2021

MADRAS BAR ASSOCIATION

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

(WITH IA No. 135683/2021 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 4761/2022 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 133763/2021 - CLARIFICATION/DIRECTION, IA No. 36823/2022 - CLARIFICATION/DIRECTION, IA No. 42933/2022 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 42931/2022 - INTERVENTION APPLICATION, IA No. 133748/2021 - INTERVENTION APPLICATION, IA No. 124863/2021 - INTERVENTION APPLICATION, IA No. 44873/2022 - INTERVENTION APPLICATION, IA No. 36816/2022 - INTERVENTION/IMPLEADMENT, IA No. 4754/2022 - INTERVENTION/IMPLEADMENT, IA No. 146970/2021 - INTERVENTION/IMPLEADMENT, IA No. 135688/2021 - INTERVENTION/IMPLEADMENT, IA No. 113945/2021 - STAY APPLICATION)

Date : 04-05-2022 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Petitioner(s) Mr. Arvind P. Datar, Sr. Adv.
Mr. Rahul Unnikrishnan, Adv.
Mr. Naveen Hegde, Adv.
Mr. T. V. S. Raghavendra Sreyas, AOR
Mrs. Gayatri Gulati Sreyas, Adv.
Mr. Siddharth Vasudev, Adv.

For Respondent(s) Mr. K.K. Venugopal, Sr. Adv.
Mr. Tushar Mehta, SG
Mr. K.M. Nataraj, ASG
Mr. Balbir Singh, ASG
Mr. Rajat Nair, Adv.
Mr. Kanu Agrawal, Adv.
Mr. Saurabh Mishra, Adv.
Ms. Vanshaja Shukla, Adv.
Ms. Suhasini Sen, Adv.
Mr. Raj Bahadur Yadav, AOR
Mr. Zoheb Hossain, Adv.
Mr. Ankur Talwar, Adv.
Ms. Priyanka Das, Adv.
Ms. Shraddha Deshmukh, Adv.

Ms. Chinmayee Chandra, Adv.
Mr. Sidhant Kohli, Adv.

Mr. Sidharth Luthra, Sr. Adv.
Ms. Sakshi Kakkar, AOR
Mr. Anmol Khera, Adv.
Mr. Lakshay Mehta, Adv.
Mr. Karanvir Gogia, Adv.
Mr. Shakti Singh, Adv.

Mr. Jasmeet Singh, AOR

Mr. P.S. Patwalia, Sr. Adv.
Mr. Rupesh Kumar, AOR
Ms. Pankhuri Shrivastava, Adv.
Ms. Neelam Sharma, Adv.
Mr. Ninad Laud, Adv.
Mr. Rajeev Sharma, Adv.

Mr. S.K. Verma, Adv.
Mr. Tarun Gupta, AOR
Mr. Abhishek Sharma, Adv.

Mr. Anil Kumar Sangal, Sr. Adv.
Mr. Siddharth Sangal, AOR
Mr. Rajiv Aggarwal, Adv.
Ms. Nilanjani Tandon, Adv.

Ms. Garima Bajaj, AOR

Mr. Vikas Singh, Sr. Adv.
Mr. Kartik Seth, Adv.
Ms. Shriya Gilhotra, Adv.
Ms. Garima Saxena, Adv.
Mr. Sahil Nagpal, Adv.
for M/S. Chambers Of Kartik Seth, AOR

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

IA No 42931 of 2022 in WP(C) No 1018 of 2021

- 1 The applicant was working as an Accountant Member in the Income Tax Appellate Tribunal (ITAT) and retired in the month of March 2022. Pursuant to a notification which was issued on 20 May 2020 for the appointment of Members to two vacant positions of the Telecom Disputes Settlement and Appellate Tribunal (TDSAT), the name of the applicant was recommended by the Supreme

Court Search-cum-Selection Committee (SCSC). Pursuant to this, one post was filled up by appointment on 11 September 2021. The applicant was not appointed. Thereafter, a subsequent vacancy notification has been issued on 9 November 2021, in pursuance of which, the SCSC made its recommendation on 2 March 2022.

- 2 The note submitted by Mr K K Venugopal, learned Attorney General indicates that the matter is pending before the Appointments Committee of the Cabinet (ACC) which has a period of three months, namely, until 2 June 2022 in terms of Section 3(7) of the Tribunals Reforms Act 2021 to make the appointment.
- 3 At this stage, the Court must be apprised of the reasons which weighed with the Government in not appointing the applicant in pursuance of the vacancy notification of 20 May 2020 despite the recommendation which was made by the SCSC. The relevant files shall be produced before the Court on the next date of listing. We also grant time to the Union Government to file a counter affidavit in that regard.
- 4 List the Interlocutory Application on 11 May 2022.

IA Nos 135688 and 135683 of 2021, IA Nos 4754 and 4761 of 2022 and IA Nos 36816 and 36823/2022

- 1 The IAs pertain to the tenure of appointment of six persons to the post of Member (Judicial) in the CESTAT. The order of appointment dated 11 April 2018 states that the tenure of the six members shall be five years or till attaining the age of 62 years, whichever is earlier, "in terms of the Hon'ble Supreme Court Order dated 20.03.2018 in the matter of Kudrat Sandhu Vs Union of India & Anr in WP(C) No. 279/2017".
- 2 The Court has been apprised of the fact that out of six persons who were appointed by the Union Government on 11 April 2018, only four persons

assumed the office of the the Member (Judicial) of CESTAT.

- 3 The submission which has been urged on behalf of the applicants is that the above clause in the order dated 11 April 2018 is a mis-reading of the interim order of this Court dated 20 March 2018. Moreover, reliance has been placed by the applicants on the interim orders dated 9 February 2018 and 21 August 2018 as well as on the final judgment of this Court reported in 2021 SCC Online 463.
- 4 The learned Attorney General has, on the other hand, relied on the provisions of Section 5 of the Tribunals Reforms Act 2021.
- 5 Since the term of office of the applicants who have moved the IAs as Members (Judicial) of the CESTAT is continuing until 10 April 2023, it would be appropriate if, instead of taking up the IAs, at this stage, the main challenge to the Tribunals Reforms Act 2021 is addressed at an early date so as to resolve the issue pertaining to its constitutional validity which forms the subject matter of the petition under Article 32.
- 6 However, we clarify that if, for any reason, bearing on the exigencies of judicial work, the petition cannot be taken up, the IAs will be dealt with independently without awaiting the outcome of the writ proceedings.
- 7 The Registry shall list the petition for hearing and final disposal on 26 July 2022.

IA No 133763 of 2021

- 1 The applicant is an advocate practising before the the Tribunals and the High Courts, including the CESTAT and had worked as Assistant Registrar, CESTAT. It is submitted that the term of the President of the CESTAT stands completed on 6 June 2021 and his continuance thereafter cannot be sustained.

- 2 On the other hand, learned Attorney General has relied on the provisions of
Section 5 of the Tribunals Reforms Act 2021 in terms of which the President of
CESTAT would be entitled to hold office for a term of four years from 1 October
2018, that is, till 1 October 2022.
- 3 Mr S K Verma, who appears in person, states that he is moving the IA in public
interest.
- 4 There is no element of public interest in the IA so as to enable the applicant to
seek such reliefs, that too in an IA in the pending writ petition. Without
expressing any opinion on the validity of the Tribunals Reforms Act 2021, which
is pending consideration in the petition under Article 32 of the Constitution, we
see no reason to entertain the IA.
- 5 The IA is accordingly dismissed.
- 6 IA No 133748 of 2021 for intervention is disposed of.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER