

ITEM NO.2

COURT NO.2

SECTION PIL

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).    267/2012

MADRAS BAR ASSOCIATION

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.  
(with office report)  
(For Final Disposal)

Respondent(s)

WITH

SLP(C) No. 35248/2012

(With appln.(s) for substitution and Interim Relief and Office  
Report)

W.P.(C) No. 1072/2013

(With appln.(s) for stay and appln.(s) for amendment of the  
petition and appln.(s) for directions and Office Report)

SLP(C) No. 7219/2014

(With appln.(s) for directions and appln.(s) for exemption from  
filing c/c and appln.(s) for directions and appln.(s) for  
exemption from filing c/c and Interim Relief)

Date : 18/02/2015 These petitions were called on for hearing  
today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR  
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN  
HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Petitioner(s)

MR.    Arvind P.Datar, Sr. Adv.  
MR.    Dhananjay Baijal, Adv.  
MS.    Akansha, Adv.

Signature Not Verified

Mr.    N.Sai, Adv.

Digitally signed by

Mr.    Nikhil Nayyar, Adv.

Shashi Sareen

Date: 2015.02.19

07:33:00 IST

Reason:

Mr. Garvesh Kabra, Adv.

Mr. B. V. Balaram Das, Adv.

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For Respondent(s)

Mr.    Mukul Rohtagi, AG,  
Ms.    Madhvi Diwan, Adv.  
Mr.    Ashok Srivastava, adv.  
Ms.    V.Mohana, Adv.  
Ms.    Binu Tamta, Adv.  
Ms.    Rekha Pandey, Adv.  
Ms.    Sushma Suri, Adv.

Mr. Sanjay Kapur, Adv.  
Mr. Anmol Chandan, Adv.

Ms. Priyanka Das, Adv.

Ms. Aishwarya Bhati, Adv.  
Mr. Gopal, Adv.  
Mr. Anshuman, Adv.  
MS. Neha Meena, Adv.  
MS. Madhurina Ghosh, Adv.  
Mr. Hemendra Sharma, Adv.

Mr. Sonal Jain, Adv.  
Mr. Rajiv M. Brahma, Adv.

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

Constitutional validity of Parts I-B and I-C  
of The Companies Act 1956 inserted by Companies Second  
Amendment Act of 2002 was examined by a Constitution  
Bench in Union of India Vs. R. Gandhi, President, Madras  
Bar Association 2010 (11) SCC 1 The operative part of  
the order passed in the said case was to the following  
effect:

"We, therefore dispose of these appeals,  
partly allowing them, as follows:

i) We uphold the decision of the High  
Court that the creation of the National Company  
Law Tribunal and the National Company Law  
Appellate Tribunal and vesting in them, the  
powers and jurisdiction exercised by the High  
Court in regard to company law matters, are not  
unconstitutional.

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ii) We declare that Parts I-B and I-C of the Act  
as presently structured, are unconstitutional  
for the reasons stated in the preceding  
paragraph. However, Parts I-B and I-C of the  
Act, may be made operational by making suitable  
amendments, as indicated above, in addition to  
what the Union Government has already agreed to  
in pursuance of the impugned order of the High  
Court."

The Parliament has subsequent to the above judgment

enacted The Companies Act, 2013 by which Companies Act,  
1956 has been repealed. Besides Chapter XXVII of the new  
Act envisages establishment of National Company Law  
Tribunal and National Company Law Appellate Tribunal sought  
in the manner and on the terms set out in the said chapter.  
Constitutional validity of Chapter XXVII comprising  
Sections 407 to 434 have been assailed by the

petitioner-association in Writ Petition (C) No. 1072 of

2013 as ammended. In conencted Writ Petition (C) No. 267

of 2012 the petitioner has prayed for a mandamus directing  
implemентаion of the directions issued by the Cosntitution  
Bench in R.Gandhi's case supra.

Having heard Mr. Arvind P.Datar, learned senior  
counsel and Mr. Mukul Rohtagi, learend A.G. at some length  
we are of the view that substantial questions of law  
involving interpretation of the provisions of the  
constitution falls for determination. That apart since an  
analogous challenge in the earlier round of litigation

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had been examined by a Constitution Bench of this Court, we  
see no reason why the present writ petitions should also  
not be referred to a larger Bench for an authoratative  
pronouncement on the questions that have been raised. We  
accordingly refer these writ petitions to be placed before  
a Constitution Bench for final hearing and disposal.  
Additional paper books shall be filed by the petitioners  
within two weeks. The papers shall be placed before  
Hon'ble the Chief Justice of India for constituting a  
larger Bench.

SLP(C) Nos. 7219 of 2014 and 35248 of 2012:

De-tagged. To be listed separately after four  
weeks.

(Shashi Sareen)  
Court Master

(Renu Diwan)  
Court Master