Journal of Multi-Disciplinary Legal Research

The Indian Tribunals: Complication Eterne

Esha Ghosh
&
Ambika Kashyap

Abstract

The Tribunals are the quasi-judicial bodies that are created to reduce the work load of the courts and provide speedy remedy to the victims in certain cases. The tribunals are not exactly courts, nor do they follow the fundamental hierarchy of the courts. The rules of the courts are somewhat relaxed when it comes to the tribunals. With the amendment brought into the constitution of India, the tribunals have been given the power to settle certain disputes which no longer in the jurisdiction of the district courts. The applet jurisdiction of the of the High Court and the Supreme Courts are sometimes in question specifically when the judicial impression has become such that the tribunals tend to exclude all other jurisdiction and concentrate them to one decision making body. This paper seeks to analyze this concept along with the different reports that have been published in this regard.

In India, the function of dispensing justice is entrusted to regularly establishedCourts on the pattern of Common law system. History of tribunals in India stands reflected dating back to the year 1941[1], when first Tribunal was established in the form of Income-Tax Appellate Tribunal. The Tribunals were however, set up to reduce the workload of courts, to expedite decisions and to provide a forum which would be manned by lawyers and experts in the areas falling under the jurisdiction of the Tribunal. The Constitution (Forty-Second Amendment) Act of 1976 brought about a massive change in the adjudication of disputes in the country. It provided for the insertion of Articles 323-A and 323-B in the Constitution of India, whereby the goal of establishment of Administrative Tribunals by the Parliament as well as the State Legislatures, to adjudicate the matters specified in the sub-clauses is made possible.[2]

There is a distinction between Article 323-A and 323-B as the former gives exclusive power to the Parliament and the latter gives power to the concerned State Legislature which is concurrent in nature by which the Parliament and the State Legislature can by law, constitute Tribunals for the respective subjects specifiedtherein. This is evident from the explanation appended to Article 323-B of the Constitution. The provisions of both these Articles are to be given effect

[1] Walker, David M., Oxford Companion to Law, Oxford University Press, ISBN 0-19-866110-X, 1980 at p.1239.
[2] 6 Supra Note 2 at 271.

irrespective of any other provision of the Constitution or any other law for the time being in force.[3]

Introduction

The judicial system of India is divided into three tiers. The subordinate courts are vested with the original jurisdiction in all matters except those, which are barred either expressly or impliedly. The High courts in general have appellate and provisional jurisdiction in the respective States along with the jurisdiction to issue prerogative writs. Some of the High Courts have original jurisdiction. The High Courts also entertain appeals/writs against the judgments rendered by some of the Tribunals. The Supreme Court has been conferred with original jurisdiction under Article 131 (disputes between two or more States, or between the Government of India and one ormore States, or disputes arising out of the election of the President and Vice-Presidentof India) and advisory jurisdiction under Article 143, where the President of India mayseek the opinion of the Court on a particular issue of fact or law of general public importance. It can issue the prerogative writs under Article 32 of the Constitution and has appellate jurisdiction against the orders passed by the High Courts, Tribunals or theAppellate Tribunals established under various Statutes. The Court also has discretion to entertain Special Leave Petitions under Article 136 on substantial question of law orissues of general public importance.

Due to growing commercial ventures and activities by the Government in different sectors, along with the expansion of Governmental activities in the social andother similar fields, a need has arisen for availing the services of persons having knowledge in specialized fields for effective and speedier dispensation of justice as thetraditional mode of administration of justice by the Courts of law was felt to be unequipped with such expertise to deal with the complex issues arising in the changingscenario.

Swaran Singh Committee Report - 1976

With the acceptance of welfare ideology, there was a mushroom growth of public services and public servants. The Courts, mainly the High Courts were inundated with service cases. Therefore, the Swaran Singh Committee recommended the establishment of administrative Tribunals as a part of adjudicative system under the Constitution. The Committee further recommended the setting up of Tribunals in three broad areas to combat delays in the Indian legal system. It also recommended that the decisions of the Tribunals should be subject to scrutiny by the Supreme Court underArticle 136 of the Constitution. The jurisdiction of all other Courts including the writ jurisdiction of the Supreme Court under Article 32 and the High Courts under Article 226 of the Constitution be barred. The suggestions of the Committee can be summarized as under:

Administrative Tribunals may be set up under the Central Law, bothat the State level and at the Centre to decide cases relating to serviceconditions.

Provision may be made for setting up an All-India Labour AppellateTribunal to decide appeals from Labour Courts and Industrial Tribunals.

[3] Stebbings, Chantal, Legal Foundations of Tribunals in Nineteenth Century England, Cambridge University Press, New York, 1 st edn., 2006 at p. 3.

Disputes relating to revenue, land reforms, ceiling of urban property, procurement and distribution of food grains and other essentialcommodities shall be decided by the Tribunals.

Appeals to High Courts and the Supreme Court

The establishment of Tribunals is oriented towards the promotion of social goals which aims at dispensing collective justice to a large segment of the general public with the expertise in Administrative Law/principles. It is therefore imperative that a provision for judicial review of decisions of the Tribunal is there to determine whether the Tribunal met the minimum standards of rationality. The Law Commission of India in its 162nd Report identified the need for a fair balance betweenthe interests of State and the interests of individuals. It was observed that Courts can interfere with the jurisdiction of a Tribunal to the extent permitted by 'science of administrative law' because the paramount concern of Administrative Law is to protectthe citizen from abuse of official power.[4]

It is a settled legal proposition that the higher judiciary alone has the function of determining authoritatively the meaning of statutory enactment and to lay down the frontiers of jurisprudence of anybody or Tribunal constituted under the Act. A Tribunalhas to function under the Statute, whereas the higher judiciary is a Constitutional authority, which is entrusted not only with the task of interpreting the laws and the Constitution, but also to exercise supervisory control over the Tribunals. This positionis contemplated under the Constitution and also pronounced by the Court in order to preserve the independence of judiciary while discharging sovereign functions ofdispensing justice. By creating Tribunals, this position cannot be diluted by a law madeby the Parliament or State Legislatures.[5]

The judicial hierarchy of Indian Legal System is distinct as compared to that under the American and the Canadian Constitution. The American Constitution confersall powers on the State except the specified subjects which are exclusively meant for the Federal Government. However, under the Canadian Constitution, only specified subjects and powers are given to the constituent states and all residuary powers are leftwith the Federal Government

In common law countries, the administrative adjudication operates under the judicial supervision unlike the French System which has established *Counseil d'Etat*. In India and various other common law countries, the judicial review of decisions is allowed on a few legal grounds like denial of principles of natural justice, failure to observe prescribed procedure, want or abuse of jurisdiction, error of law, *ultra vires* decision etc. Indian Administrative Law has adopted the second control mechanismi.e., judicial review of administrative agencies. In the United Kingdom, the Tribunal system is divided into two tiers with 'first tier Tribunal' and the appellate 'upper Tribunal'. Appeal from the upper tribunal is heard by the court of appeal and further appeal goes to the Supreme Court of United Kingdom. The purpose of this system is toguarantee the independence of judiciary, that is why the Tribunals are considered as 'machinery of adjudication' rather than the 'machinery of administration.'

In common law, every Tribunal with a limited jurisdiction is subject to control by the High Court on various grounds like when Tribunal exceeds its jurisdiction, acts contrary to the principles of natural justice, fails to perform statutoryduty, fails to exercise its jurisdiction or

[4] Supra Note 7.

[5] Jain, M.P., Jain, S.N., Principles of Administrative Law 1989, Lexis Nexis, India, 7 th edn., 2011 at p. 1996.

commits an error of law. In the Supreme Courts of other jurisdictions, the cases decided by them are few and are of Constitutional and national importance. In those jurisdictions, the subordinate Courtsdecide the cases finally to avoid overloading of the Supreme Courts. The Supreme Courts of other jurisdictions such as the United States, the United Kingdom, Canada, Australia and South Africa sit either *en banc*, i.e., of its full strength, or in large benchesof five or more judges considering the importance of the case.

The Supreme Court, as the Apex Court in the country, was meant to deal with important issues like Constitutional questions, questions of law of general importanceor where grave injustice had been done. If the Supreme Court goes on entertaining all and sundry kinds of cases, it will be flooded and there will be huge backlog obstructingit to deal with the cases, for which it was really meant. After all, the Supreme Court has limited time at its disposal and it cannot be expected to hear every kind of dispute.

Judicial Impression

In *S.G. Chemical and Dyes Trading Employees Union* v. *S.G. Chemicals and Dyes Trading Ltd.*, it was observed: *'Today, when the dockets of this Court are over- crowded,may almost choked, with the flood, or rather the avalanche, of work pouring into the Court, threatening to sweep away the present system of administration of justice itself, the Court should be extremely vigilant in exercising its discretion under Article 136.*

Justice K.K. Mathew, referred to the opinion of Justice Frankfurter, in his article, observing: *'The function of the Supreme Court, according to JusticeFrankfurter, was to expound and stabilize principles of law, to pass upon constitutional and other important questions of law for the public benefit and to preserve uniformity of decision among the intermediate courts of appeal.'*

A question cannot be said to be of public importance unless it is important throughout the State and not a single geographical area. The matters of public importance may mean matters relating to Governmental action or inactions which arouse something in the nature of a nationwide crisis of confidence. It may include indiscriminate dumping of municipal waste, noise and solid waste pollution, protectionof wildlife etc. The conduct of an individual may assume such a dangerous proportionand may so prejudicially affect or threaten to affect the public well-being as to make such conduct a definite matter of public importance. When it is alleged that a Minister has acquired vast wealth for himself, his relations and friends, by abuse of hisofficial position, there can be no question that the matter is of public importance. It is of public importance that public men failing in their duty should be called upon to face the consequences. It is certainly a matter of importance to the public that lapses on thepart of Ministers should be exposed. The cleanliness of public life in which the peopleshould be vitally interested, must be a matter of public importance. The people are entitled to know whether they have entrusted their affairs to an unworthy man.Allegations may very well raise questions of great public importance.[6]

The Supreme Court, through its appellate jurisdiction supervises the functioning of administrative bodies, and can impose discipline over these bodies for the progress of Administrative Law and promotion of the Rule of Law in India. Thepurpose of conferring

[6] Basu, Durga Das, Commentary on the Constitution of India, Lexis Nexis, New Delhi, 8 th edn., 2011 at p. 10650; See also, State of West Bengal v. Kamal Sengupta, (2008) 8 SCC 612.

supervisory jurisdiction and power of judicial review on the Constitutional Courts is to keep the Tribunals within their legal binds/authority. In fact, the powers of the High Courts under Article 227 are revision in nature, while jurisdiction under Article 226 is considered as an exercise of original jurisdiction.

When a Statute gives a right of appeal from Tribunal to a Court of law, it is ordinarily confined to on a point of law but questions of law must be distinguished from questions of fact. On every question involving legal interpretation which arisesonly after the establishment of primary facts, an appeal on a point of law should be available. An Appeal is a continuity of suit proceedings, and a right to enter into a superior Court. It is re-hearing of a case while judicially examining the case and reviewing/revising the decision of the subordinate court. The Supreme Court does not usually entertain appeals against an order of a Tribunal unless appellant has exhausted the alternative remedies provided by the relevant law.

A Tribunal created under a Statute is not empowered to examine the Constitutional validity of a law under which it is created because this function is entrusted to the High Courts and the Supreme Court. In the event of conflict between the State(s) and the Parliament with regard to the power to enact a law on a subject which otherwise falls within the domain of the State Legislature, the High Courts and the Supreme Court alone can go into the question of validity of such law.

In *State of Tamil Nadu* v. *State of Karnataka,* the Supreme Court held that itholds the jurisdiction to decide the parameters of the jurisdiction of the Tribunal whichdepends upon an interpretation of the Constitution or the Statute as the power of the Courts to sit in judgment over the merits of the decisions of the Tribunals is excluded.

In *Waryam Singh* v. *Amarnath,* it was held that the power of superintendenceof High Court under Article 227 of the constitution is not only confined to the administrative superintendence but it also includes within its ambit the power of judicial review. The High Court can call for the records from the Tribunal and can quash the complaint to prevent the abuse of the process of law to ensure that the administration of justice remains clean and pure. In *Shalini Shyam Shetty* v. *Rajendra Shankar Patil*, the Supreme Court explained the scope of jurisdiction of the High Court under Article 227 of the Constitution observing that the High Court caninterfere only to keep the Tribunals and Courts sub-ordinate to it, 'within the bounds of their authority'. In order to ensure that law is followed by such Tribunals and Courtsby exercising jurisdiction which is vested in them and by not declining to exercise thejurisdiction which is vested in them. The main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory. The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute.

A writ of *certiorari* does not lie against decision of the Tribunal as it involves consideration of merits of the case regarding the existence and non-existence of the jurisdiction of the Tribunal, legality or illegality of decision and manifest error of law or an error on the face of record in exercise of its jurisdictional power.

Where a statutory right to file an appeal has been provided for, the High Courtis not to entertain a petition under Article 227 of the Constitution. In cases where an appeal has not been provided, the remedy available to the aggrieved person is to file arevision before the High Court under

Section 115 of the Code of Civil Procedure, 1908but where filing a revision before the High Court has been expressly barred, a petitionunder Article 227 of the Constitution would lie.

Exclusion of Jurisdiction of all Courts by an Alternative Mechanism and Access to Justice

Access to justice in our Constitution is placed on a higher pedestal of fundamental rights. Access to Justice is synonymous with Access to Courts. It is inbuiltunder Article 14 of the Constitution which guarantees equality before law and equal protection of laws. With a view to increase the access to justice for an individual at grassroots level, Tribunals have emerged to adjudicate in a time bound manner. The right to justice is an integral and inherent part of the basic structure of the Constitution.According to *Cappelletti*, "Effective access to justice can thus be seen as the most basicrequirement - the most basic human right of a system purports to guarantee legal rights."

While interpreting the provisions of section 340(1) of the Code of CriminalProcedure, 1898, the Supreme Court, in *Tara Singh* v. *State of Punjab,* and *JanardanReddy* v. *State of Hyderabad,* recognized the right of the accused to have legal aid but did not record that the trial stood vitiated for want of the same, in the facts of thosecases. In *Bashira* v. *State of UP,* the Supreme Court held that conviction of the accused under section 302 of the Indian Penal Code, 1860, for murder was void on theground that the sufficient time was not granted to the *amicus curiae* to prepare the defense.

It was in view of the above judgments that section 304 was added in theCode of Criminal Procedure, 1973. The Supreme Court in subsequent cases has consistently held that non availability of counsel to the accused or counsels' ineffectiveness in conducting a trial may in a particular case amount to denial of right of access to justice. In view of the provisions of section 304 Cr. PC and Article 22(1) of the Constitution, the legal aid must be provided in a substantial and meaningful manner. The law requires the Court to inform the accused of his right to obtain freelegal aid.

By Constitution (Forty-Second Amendment) Act, 1976, Article 39-A was included as a part of "Directive Principles of State Policy", and as a consequence theLegal Services Authority Act, 1987 was enacted to ensure that opportunities for securing justice are not denied to any citizen by reason of any disability on his part. The right to Access to Justice flows from Articles 21 and 22(1) of the Constitution.

The actual meaning of Access to Justice on the ground level is succinctlydescribed in a Report on 'Access to Justice 2016' the relevant part of which provides that, "Access to justice is meaningful when each citizen has a ready access to court andthis will be possible only if the number of courts is increased. As a starting point it is necessary that a court of first instance is available to each citizen within a radius of 50 kilometers from his residence or within a maximum traveling time of half a day." 178Access to justice should not be understood to be, reaching out in geographical termsonly. In *Bhavabhai Bhadabhai Maru v. Dhandhuka Nagar Panchayat*, the Court held that effective access to judicial process is a dynamic realism of the Rule of Law, observing: *"Access to justice, Civil Criminal and other, must be democratized, humanized and the doors of all be kept ajarfor the citizenry, without the janitors of legal justice blocking the way and hampering the entry, initially and at higher levels, using various constraints."*

The Supreme Court has consistently held that access to justice is not only a fundamental right but it is as well a human right and a valuable right. The Constitutional remedies are always available to a litigant even if no other remedy is provided under the Statute as it would violate the philosophy enshrined in legal maxim'*ubi jus ibi remedium'* (wherever there is a right, there is a remedy) meaning thereby, aperson cannot be rendered remedy less.

As a general rule, the statutory remedy should be exhausted before approaching the Writ Court. However, the writ court may entertain a petition if substantial injustice has ensued or is likely to ensue or there has been a breach of fundamental principle of justice. The existence of an equally efficacious, adequate andsuitable legal remedy is a point of consideration in the matter of granting writs. Underthe rule of self-imposed restraint, the writ court may refuse to entertain a petition if it is satisfied that parties must be relegated to the court of appeal or revision or asked to set right mere errors of law which do not occasion injustice in a broad and general sense, unless the order is totally erroneous or raises issues of jurisdiction or of infringement of fundamental right of the petitioner. In *State of Himachal Pradesh v. Raja Mahendra Pal*, the Apex court held that the court is not debarred "*from granting the appropriate relief to a citizen in peculiar and special facts notwithstanding the existence of alternative efficacious remedy. The existence of special circumstances is required to be noticed before issuance of the direction by the High Court while invoking the jurisdiction under the said Article*."

Conclusions and Recommendations

One of the compelling reasons for establishing the Tribunals had been pendency of large number of cases and delay in disposal of cases in the Courts. As a remedy thereof, quasi-judicial institutions in the name of Administrative Tribunalswere established so as to work as an independent and specialized Forum. The Tribunals would provide speedy justice in cost-effective manner. The judicialfunctions discharged by the Tribunals can be distinguished from purely administrative or executive functions in view of the doctrine of 'separation of powers' which forms part of the basic structure of the Constitution. The Administrative Tribunals Act of 1985, was enacted to give effect to the Swaran Singh Committee Report (1976) which provided that against the order of theTribunal, a party may approach the Supreme Court under Article 136 and excludedthe jurisdiction of the High Court under Articles 226 and 227 of the Constitution. The Choksi Committee (1977) expressed the desirability of constituting Special TaxBenches in High Courts to deal with the large number of pending Tax cases.

The Law Commission of India persistently suggested that the power of judicialreview of the High Courts against a judgment of the Tribunal is not only time consuming, but also expensive and there is always a possibility of various High Courtsinterpreting the same statutory provision differently. In 215th Report (2008), the Commission made an unwarranted remark that the power of judicial review of High Court cannot be as inviolable as that of the Supreme Court. No reason or explanation has been given in support of such observation and no foundation has been laid for making such remark. In fact, neither any Court nor the Legislature has ever expressed such opinion. Such observations are admittedly contrary to the law laid down by the seven Judge Bench in *L.Chandra Kumar* (Supra).

The Supreme Court in earlier judicial pronouncements had held that the Tribunals are substitutes of the High Courts. Therefore, the manner of appointment, eligibility, tenure and other protections and privileges of persons manning such Tribunals must be the same as that of the High Court judges. Such persons must have the complete independence as required

under the 'principle of Independence of Judiciary' which is a basic feature of the Constitution. It must be further noted that, since reappointment has a strong bearing on the independence of the institution, it should be kept out of the influence of the executive. Therefore, to ensure independence,reappointment must be the exception and not the rule.

On the other hand, in some other cases, the Supreme Court concluded that the Tribunals can neither be alternative nor substitutes of the High Courts. A person manning the Tribunal cannot claim parity or privileges at par with the High Court judges. However, a seven judge Bench in *L Chandra Kumar (Supra)* in crystal clear words held that the Tribunals are supplemental to High Courts and not their substitutes.

The selection of the members should be done in an impartial manner. Therefore,the selection committee must not be headed by a Secretary to the Government of Indiawho is always a party to every litigation before the Tribunal. Re-appointment of Members except in the case of Members appointed from the Bar is unwarranted as it compromises with the independence of judiciary. More so, the involvement of Government agencies in selection making process should be minimal for the reason that Government is litigant in every case.

The Power of judicial review conferred on the High Courts is same as that of the Supreme Court which is a basic feature of the Constitution and tinkered with only by amending of the Constitution. The Government may put in place a mechanism whichtakes care of all matters regarding appointment of persons manning the Tribunals and in providing their service conditions. The jurisdiction of High Court should notgenerally be bypassed merely by making a provision to approach the Supreme Court against an order of a Tribunal under Article 136 for the reason that the said Article doesnot provide for an appeal but confers discretion on the Supreme Court to grant leave ornot. The Special Leave Petitions are considered on certain fixed parameters laid down by the Supreme Court from time to time. More so, providing for approaching the Supreme Court directly and excluding the jurisdiction of High Court, tantamount to violation of the fundamental right of the citizens of access to justice.

The Commission while discussing the appointment criteria, took note of the factthat the present system does not have uniformity in the qualifications, tenure and serviceconditions of Chairman, Vice-Chairman and other members and it is thereby felt that achange in system is needed because lack of uniformity is causing a major concern in the effective working of present Tribunal system.

In Tribunals, the Technical Members should be appointed only and only when service/advice of an expert on technical or special aspect is required. The Tribunal should be manned by persons qualified in law, having judicial training and adequate experience with proven ability and integrity.