

## **The Tribunal Reforms (Rationalization and Conditions of Service) Ordinance, 2021**

On 04 April 2021, the President of India promulgated the Tribunal Reforms (Rationalization and Conditions of Service) Ordinance, 2021 (“**Ordinance**”). The said Ordinance is of significance for two reasons.

- (i) The Ordinance has done away with nine tribunals previously constituted under various legislations and has vested their jurisdiction before the High Courts; and
- (ii) The Ordinance has substituted the erstwhile Section 184 of the Finance Act, 2017 with a new Section 184 laying down revised qualifications for appointment as a Chairperson/Member of a Tribunal.

### **Overview of Changes Introduced**

#### *(i) Vesting of Jurisdiction of Tribunals with High Court/Commercial Court*

The jurisdiction of the following Tribunals stand transferred by way of this Ordinance:

- The Film Certification Appellate Tribunal under the Cinematograph Act, 1952 which heard appeals from decisions of the Central Board of Film Certification (popularly known as Censor Board) has been scrapped. Appeals from the decisions of the Board shall directly lie before the High Court.
- The Ordinance has substituted the powers vested upon the Intellectual Property Appellate Board (“**IPAB**”) under Sections 6, 19A, 23, 31, 31A – 31D, 32, 32A, 33A, 53, 54 of the Copyright Act, 1957 now stand vested with the Commercial Court as constituted under Sections 3 and 4 of the Commercial Courts Act, 2015. However, the powers with the IPAB under Section 50 of the Copyright Act stand transferred to the High Court. Section 72 of the Copyright Act as amended by the Ordinance, now states that all appeals against orders and decisions of the Registrar of Copyrights, shall lie before the High Court.
- The Authority for Advance Rulings constituted under Section 245O of the Income Tax Act, 1961 which had been given powers to hear appeals against orders of the Customs Authority for Advance Rulings under the Customs Act, 1962 now stand transferred to the jurisdictional High Court.
- The Ordinance has abolished the powers of the IPAB under the Patents Act, 1970 which allowed it to hear appeals against all orders and decisions of the Controller General of Patents, Designs, and Trade Marks or the Central Government and has conferred the said appellate powers on the High Court.
- The Airport Appellate Tribunal under the Airports Authority of India Act, 1994 is abolished and its powers are conferred on the High Court. Consequently, the powers of the Airport Appellate Tribunal under the Control of National Highways (Land And Traffic) Act, 2002 are now vested with the principal civil court of original jurisdiction (including High Courts which exercise ordinary civil jurisdiction) to hear appeals against orders of the Highway Administration.

- In a series of amendments to the Trade Marks Act, 1999, the Ordinance has abolished the IPAB and has vested the erstwhile appellate powers exercised by the IPAB on the High Court. Similarly, the Appellate Board under the Geographical Indication of Goods (Registration and Protection) Act, 1999 is replaced by the High Court.
- The Plant Varieties Protection Tribunal under Section 54 of the Protection of Plant Varieties And Farmers' Rights Act, 2001 has been abolished and its powers and functions stand transferred to the High Court.

(ii) *Substitution of Section 184 of the Finance Act, 2017*

Section 184 deals with the Qualifications, appointment, etc., of Chairperson and Members of Tribunals. The said section has been amended to ensure compliance with the directions of the Hon'ble Supreme Court in *Madras Bar Association (supra)*. The significant changes introduced *inter alia* are:

- No person shall be eligible for appointment as a Member or Chairperson unless they have completed fifty years of age;
- Appointments to a Tribunal shall be made by a Search – cum – Selection Committee comprising of the Chief Justice of India or his nominee (Chairperson), two secretaries nominated by the Government (members), one member (in case of appointment of Chairperson of a Tribunal shall be the outgoing Chairperson of the said Tribunal, in case of appointment of Member, it shall be the sitting Chairperson and in case of a Chairperson seeking reappointment, it shall be a retired judge of the Supreme Court or a retired Chief Justice of a High Court), one Member Secretary of the Ministry under which the Tribunal is constituted.
- In the case of the Industrial Tribunal, Debt Recovery and Debt Recovery and Appellate Tribunals, and other Tribunals where the outgoing chairperson is not a retired Judge of the Supreme Court or a Chief Justice of the High Court, the member in the search and selection Committee shall always be a retired Judge of the Supreme Court or a retired Chief Justice of a High Court.
- The new Section 184 also states that the Chairperson/Member shall hold office for a term of four years or till such person attains the age of 75 in case of a Chairperson and 67 in case of a Member, whichever is earlier.

The aforesaid Ordinance was promulgated in the backdrop of the question regarding the regulation and administration of tribunals, which has been a question of considerable debate, especially since the Finance Act 2017 introduced sweeping reforms to the administration of tribunals in the country.

In *Rojer Mathew v. South Indian Bank*, (2020) 6 SCC 1 while the Supreme Court had upheld the substantial provisions of the Act, it had struck down the rules notified under Section 184 of the Act which prescribed the conditions of service and manner of appointment of personnel to tribunals for violating the principles relating to the independence of the judiciary and for not being in consonance with earlier decisions of the Hon'ble Supreme Court. In *Rojer Mathew*,

the Supreme Court has referred the question regarding whether the Finance Act, 2017 could have been passed as Money Bill to a larger – bench of 7 Judges and is currently pending. Subsequently, the Central Government notified a fresh set of rules under Section 184 of the Finance Act which also came to be challenged before the Hon'ble Supreme Court in the case of *Madras Bar Association v. Union of India*, 2020 SCC OnLine SC 962. The Hon'ble Supreme Court therein laid down detailed guidelines regarding the appointments and regulation of conditions of service of personnel running the Tribunal and directed the Central Government to notify its rules in consonance with the said directions.