

IN THE HIGH COURT OF JUDICATURE AT MADRAS

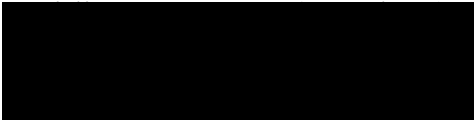
DATED : 08.02.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Petition No. 31852 of 2017
and
WMP.Nos.35007 and 35008 of 2017

R. Rajesh
Advocate



.. Petitioner

Versus

1. Union of India
represented by its
Ministry of Corporate Affairs
Shastri Bhawan
Dr. Rajendra Prasad Road
New Delhi - 110 001
2. The Registrar
National Company Law Board
6th Floor, Block - 3
CGO Complex, Lodhi Road
New Delhi - 110 003

3. Bar Council of India
21, Rouse Avenue Institutional Area
Near Bal Bhawan
New Delhi - 110 002

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration to declare that the impugned order of the second respondent dated 14.11.2017 in file No. 25/02/2017 - NCLT as ultra vires, null and void and quash the same as illegal, arbitrary and devoid of merits.

For Appellants : Mr. Rajesh
Petitioner - in - person

For Respondents : Dr. V. Venkatesan for R1
Mr. S.R. Raghunathan for R3

ORDER

(Order of the Court was made by R. MAHADEVAN, J)

We have heard the petitioner as party-in-person and the learned counsel for the first respondent as well as the learned counsel for the third respondent and perused the materials placed.

2.The petitioner is an advocate practicing in the Courts and Tribunals at Chennai, including the second respondent/Tribunal. He is also a member of the Institute of Company Secretaries of India. He has come forward with this

Public Interest Litigation for a writ of declaration to declare the Order dated 14.11.2017 passed by the second respondent, insofar as it relates to imposition of dress code for advocates for appearance before the Tribunal. For ready reference, the order dated 14.11.2017, which is impugned in this writ petition, is extracted below:

"In addition to the dress code already approved vide order dated 02.08.2016, wearing of gown would be necessary w.e.f. 20th November 2017 in all the benches of NCLT for Hon'ble President, Members and Advocates.

2. The dress code for other Authorised Representatives and parties in person shall remain same as issued vide Order dated 02.08.2016."

3.(i) According to the petitioner, the National Company Law Tribunal ("the Tribunal or NCLT") and the National Company Law Appellate Tribunal ("NCLAT or the Appellate Tribunal") were constituted under the Companies Act, 2013 and the Tribunal started functioning from 01.06.2016. Hitherto, Company Law Tribunal (CLB) was in existence from 1991 to 2016 until the constitution of the Tribunal on 01.06.2016. Upon constitution, the Tribunal exercises similar powers as that of the CLB in addition to the powers as conferred under the Insolvency and Bankruptcy Code, 2016 (IBC). It is further stated by the petitioner that the Central Government constituted the Tribunal with an objective to dispose of cases relating to company matters expeditiously and to replace the erstwhile CLB and Board for Industrial and Financial

Resconstruction (BIFR) besides the powers that were exercised by this Court under the Company Law jurisdiction. Thus, after the constitution of the Tribunal, CLB was dissolved and all the matters pending before the CLB were transferred to the Tribunal. Consequently, the judicial members from legal profession and technical members from other professions like Chartered Accountants, Company Secretaries etc. have been appointed and hence, the Tribunal is a quasi judicial authority administered by judicial and technical members. Above all, as per Section 427 of the Companies Act, 2013, the President, Members, Officers and other employees of the Tribunal shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code. Similarly, the Chairperson, Members, Officers and other employees of the Appellate Tribunal are also deemed to be public servants.

(ii) The petitioner as party-in-person further stated that the constitution of the Tribunal / Appellate Tribunal was challenged before this Court in WP No. 2198 of 2003 (Madras Bar Association v. Union of India, (2004) 59 CLA 417) and it went upto the Hon'ble Supreme Court and in ***Union of India v. R. Gandhi, President, Madras Bar Association [(2010) 96 CLA 222 (SC)]***, the Hon'ble Supreme Court uphold the decision of the Madras High Court that the creation of National Company Law Tribunal and 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 and that, declared that Parts IB and IC of the Companies Act as presently structured, are unconstitutional, but the same may be made operational by making suitable amendments.

(iii) While that being so, the second respondent passed the impugned order dated 14.11.2017 which is in direct conflict with the Advocates Act, 1961 and the rules framed under Section 49 (1) (gg) of the Advocates Act, 1961, in particular, the rules pertaining to form of dresses or robes to be worn by Advocates. In the impugned circular, reference was made to the earlier notification dated 02.08.2016 issued by the second respondent, in exercise of power conferred by Rule 51 of the National Company Law Tribunal Rules, 2016 to the effect that "every authorised representative as provided in Section 432 of the Act shall appear before the Tribunal in his/her professional dress, if any". The petitioner has no qualm or quarrel over the earlier notification dated 02.08.2016 inasmuch as an Advocate, who is a professional, will have to adhere to whatever dress code prescribed by the Bar Council of India, the Advocates Act and the Rules made thereunder. On the other hand, the second respondent invoked the power under Rule 51 of the NCLT Rules, which is exercisable only to regulate the procedures required to administer the Tribunal. It is also stated that the manner in which the second respondent has to

function, has been enumerated under Rule 17 of the NCLT Rules, 2016 and none of the powers prescribed therein empowers the second respondent to issue the impugned order to regulate the dress code to be worn by the advocates. Even assuming such a power exists, the second respondent is statutorily barred from issuing directions to wear a particular dress as it is in conflict with the statutory rules framed by the Bar Council of India in consonance with the Advocates Act and the Rules made thereunder and therefore, the impugned order has to be set aside.

(iv) To buttress his submission, the petitioner placed reliance on the decision of the Kerala High Court in *Jose v. State of Kerala [1990 (1) KLT 483]*, wherein, it had an occasion to consider the correctness of an order passed by the Joint Commissioner of Excise, Trivandrum, directing the petitioner therein, an advocate by profession, to appear before him by wearing appropriate robes, else he will not be heard. The Kerala High Court ultimately held that the insistence of a particular dress code by the Joint Commissioner of Excise, Trivandrum is misconceived and uncalled for. The relevant passage of the said decision is profitably quoted below:

"7. A reading of the rules framed by the Bar Council of India shows that a black coat of the type mentioned, (with white shirt and white collar, stiff or soft, in cases falling under Rule 1 (b), chapkan, achkan or

black sherwani, is essential in the case of male advocates appearing before tribunal and authorities. They should also wear white bands or a black tie. Advocates' gown is not obligatory. Male Advocates are properly robed for appearance before Tribunals and authorities, if they are dressed as above.

8. *So far as lady advocates are concerned, they need conform to the general dress regulations prescribed in Rule 2, (read with the proviso regarding Gown, bands and black tie). They need not wear Advocates' gown before tribunals and authorities.*

9. *The proper dress for advocates for appearance before Tribunals and authorities is as stated above. Insistence on wearing of bands only (instead of tie) and Advocates' Gown, is misconceived and uncalled for".*

(v) The petitioner also relied on the decision of the Hon'ble Supreme Court in ***Ex.Captain Harish Uppal v. Union of India and another [(2003) 2 Supreme Court Cases 45]*** and contended that insofar as the code of conduct in Courts can only be within the domain of the Courts. Section 34 of the Advocates Act gives the High Court the power to frame rules, including rules on which a person (including an advocate) can practice in High Court and Subordinate Courts and such rule framed by the Courts would be valid and binding on every one.

(vi) That apart, the petitioner referred to the decision of the Allahabad High Court in ***Prayag Das v. Civil Judge, Bulandshahr and others [AIR 1974 ALL 133]*** and submitted that the High Court is the appropriate authority to make rules in terms of Section 34 (1) of the Advocates Act and the second respondent has no jurisdiction to pass the impugned order imposing dress code.

(vii) Ultimately, the petitioner stated that on 08.12.2017, when this writ petition was listed for hearing, this Court granted an order of interim stay. Notwithstanding the order of interim stay, the Tribunal issued an order dated 05.11.2018 stating that "all the advocates are expected to wear the gown before the Benches of National Company Law Tribunal at New Delhi w.e.f. 12.11.2018". According to the petitioner, the order dated 05.11.2018 is *per se* contemptuous and in violation of the interim order dated 08.12.2017 granted by this Court. Therefore, the petitioner issued a notice dated 16.11.2018 to the second respondent requiring the third respondent to withdraw the order dated 05.11.2018 from the NCLT website. In response, the third respondent passed an Office order dated 27.11.2018 stating as follows:

"Order No.25/02/2018-NCLT dated 5th November 2018 issued by this office regarding wearing of gown by the advocates before the Benches of NCLT at Delhi w.e.f. 12th November 2018 stands withdrawn.

The wearing of gown is discretionary.

This issues with the approval of Hon'ble President, NCLT."

Thus, the subsequent order dated 05.11.2018 issued by the second respondent, imposing dress code, has been withdrawn. However, the order dated 14.11.2017 issued by the second respondent is still in force. Therefore, the petitioner prayed for allowing the writ petition and thereby setting aside the order dated 14.11.2017 passed by the second respondent.

4. Upon considering the pleadings and submissions made by the parties, we deem it fit and appropriate to delve into the issue involved herein.

5. For regulating and streamlining the various activities of the legal practitioners, including a uniform dress code, the Advocates Act was enacted in the year 1961. Under Chapter IV of the Bar Council of India Rules, the form of Dresses or Robes to be worn by Advocates is enumerated and the same is usefully extracted below:

*"Form of dresses or robes to be worn by advocates
(Rules under Section 49 (1) (gg) of the Act)*

I. Advocates

(a) A black buttoned up coat, chapkan, achkan, black sherwani and white badns with Advocates' Gowns.

(b) A black open breast coat, white shirt, white collar, stiff or soft, and white bands with Advocates' Gowns

In either case wear long trousers (white, black ,striped or grey) Dhoti excluding jeans

Provided further that in courts other than the Supreme Court, High Courts, District Courts, Sessions Courts or City Civil Courts, a black tie may be worn instead of bands.

II. Lady Advocates

(a) Black full sleeve jacket or blouse, white collar stiff or soft, with white bands and Advocates' Gowns.

White blouse, with or without collar, with white bands and with a black open breast coat

Or

(b) Sarees or long skirts (white or black or any mellow or subdued colour without any print or design) or flare (white, balck or black stripped or grey), or Punjabi dress Churidar Kurta or Salwar Kurta with or without dupatta (white or black) or traditional dress with black coat and bands

III. Wearing of Advocates' gown shall be optional except when appearing in the Supreme Court or in High Courts.

IV. Except in Supreme Court and High Courts during summer wearing of black coat is not mandatory."

6. The form of dress or in other words, the dress code to be adhered by advocates, both male and female, before various Courts, Tribunals and forums, is explicit. The mandatory compliance required before the High Courts or Supreme Court has not been prescribed for other forums. There is a clear distinction. That apart, it is obvious from Section 34 of the Advocates Act, 1961, extracted below, that it is only the High Court which has powers to frame rules laying down the conditions for practice, which undoubtedly includes the dress code:

"Section 34

Power of High Courts to make rules.—

(1) The High Court may make rules laying down the conditions subject to which an advocate shall be permitted to practise in the High Court and the courts subordinate thereto.

....."

7. It will be useful to refer to the provisions under the Companies Act and NCLT Rules, that have been relied by the Tribunal to issue such instruction.

Section 432. Right To Legal Representation.

“A party to any proceeding or appeal before the Tribunal or the Appellate Tribunal as the case may be, may either appear in person or authorise one or more chartered accounts or company secretaries or cost accountants or legal practitioners or any other person to present his case before the Tribunal or the Appellate Tribunal, as the case may be.”

Rule 16 of the National Tribunal Rules,2016

*“16. Functions of the President.
(f) perform the functions entrusted to the President under these rules and such other powers as may be relevant to carry out his duties as head of the Tribunal while exercising the general superintendence and control over the administrative functions of the Members, Registrar, Secretary and other staff of the Tribunal.”*

Rule 51.

“51. Power to regulate the procedure.-The Tribunal may regulate its own procedure in accordance with the rules of natural justice and equity, for the purpose of discharging its functions under the Act.”

Rule 124. Professional dress for the authorised representatives.-

“While appearing before the Tribunal, the authorised representatives shall wear the same professional dress as prescribed in their Code of Conduct”.

8. In the challenge to the constitutional validity of Part I-B and I-C of the Companies Act, providing for the Constitution of the National Company Law Tribunal and National Company Law Appellate Tribunal, the Hon’ble Supreme Court, in ***Union of India v. Madras Bar Assn., [(2010) 11 SCC 1 : 2010 SCC OnLine SC 608]*** while explaining the scope of the term “Tribunal”, held as follows:

“Difference between courts and tribunals

38. *The term “courts” refers to places where justice is administered or refers to Judges who exercise judicial functions. Courts are established by the State for administration of justice that is for exercise of the judicial power of the State to maintain and uphold the rights, to punish wrongs and to adjudicate upon disputes. Tribunals on the other hand are special alternative institutional mechanisms, usually brought into existence by or under a statute to decide disputes arising with reference to that particular statute, or to determine controversies arising out of any administrative law. Courts refer to civil courts, criminal courts and the High Courts. Tribunals can be either private tribunals (Arbitral Tribunals), or tribunals constituted under the Constitution (Speaker or the Chairman acting under Para 6(1) of the Tenth Schedule) or tribunals authorised by the Constitution (Administrative Tribunals under Article 323-A and tribunals for other matters under Article 323-B) or statutory tribunals which are created under a statute (Motor Accidents Claims Tribunal, Debt Recovery Tribunals and Consumer Fora). Some Tribunals are manned exclusively by Judicial Officers (Rent Tribunals, Motor Accidents Claims Tribunal, Labour Courts and Industrial Tribunals). Other statutory tribunals have judicial and technical members (Administrative Tribunals, Tdsat, Competition Appellate Tribunal, Consumer Fora, Cyber Appellate Tribunal, etc.)*

.....

106. *We may summarise the position as follows:*

(a) A legislature can enact a law transferring the jurisdiction exercised by courts in regard to any specified subject (other than those which are vested in courts by express provisions of the Constitution) to any tribunal.

(b) All courts are tribunals. Any tribunal to which any existing jurisdiction of courts is transferred should also be a judicial tribunal. This means that such tribunal should have as members, persons of a rank, capacity and status as nearly as possible equal to the rank, status and capacity of the court which was till then dealing with such matters and the members of the tribunal should have the independence and security of tenure associated with judicial tribunals.

(c) Whenever there is need for “tribunals”, there is no presumption that there should be technical members in the tribunals. When any jurisdiction is shifted from courts to tribunals, on the ground of pendency and delay in courts, and the jurisdiction so transferred does not involve any technical aspects requiring the assistance of experts, the tribunals should normally have only judicial members. Only where the exercise of jurisdiction involves inquiry and decisions into technical or special aspects, where presence of

technical members will be useful and necessary, tribunals should have technical members. Indiscriminate appointment of technical members in all tribunals will dilute and adversely affect the independence of the judiciary.

(d) The legislature can reorganise the jurisdictions of judicial tribunals. For example, it can provide that a specified category of cases tried by a higher court can be tried by a lower court or vice versa (a standard example is the variation of pecuniary limits of the courts). Similarly while constituting tribunals, the legislature can prescribe the qualifications/eligibility criteria. The same is however subject to judicial review. If the court in exercise of judicial review is of the view that such tribunalisation would adversely affect the independence of the judiciary or the standards of the judiciary, the court may interfere to preserve the independence and standards of the judiciary. Such an exercise will be part of the checks and balances measures to maintain the separation of powers and to prevent any encroachment, intentional or unintentional, by either the legislature or by the executive.”

9. The Hon’ble Apex Court, in ***Harish Uppal (Ex-Capt.) v. Union of India [(2003) 2 SCC 45 : 2002 SCC OnLine SC 1218]***, while dealing with the strike and boycott by lawyers, has held as follows:

“34. One last thing which must be mentioned is that the right of appearance in courts is still within the control and jurisdiction of courts. Section 30 of the Advocates Act has not been brought into force and rightly so. Control of conduct in court can only be within the domain of courts. Thus Article 145 of the Constitution of India gives to the Supreme Court and Section 34 of the Advocates Act gives to the High Court power to frame rules including rules regarding condition on which a person (including an advocate) can practise in the Supreme Court and/or in the High Court and courts subordinate thereto. Many courts have framed rules in this behalf... ..”

10. Further, it is settled law that the High Courts can exercise their powers under Article 226 of the Constitution of India or the supervisory jurisdiction under Article 227 of the Constitution of India over the Tribunals, which exercise judicial or administrative functions. In a recent judgment ***in Madhya Pradesh High Court Advocate Bar Association and Another v.***

Union of India & Others [2022 SCC Online SC 639], the Hon'ble Apex Court

held as follows:

“19. Insofar as the contention of the petitioners that there is ouster of jurisdiction of the High Courts under Article 226 and 227 of the Constitution because of Sections 14 & 22 of the NGT Act, it must be recalled that in L.Chandra Kumar v. Union of India [(1997) 3 SCC 261 : 1997 SCC (L&S) 577], it has been categorically declared that the power of judicial review under Articles 226, 227, and 32 are part of the basic structure of our constitution and the same is inviolable. The following pertinent opinion rendered by the 7 Judges' bench of this Court must be remembered on this aspect:—

“78..... We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

79. We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided.”

20. Apart from the clear enunciation on legal position to the effect that the NGT is within the purview of Article 226 and 227 jurisdiction of the High Courts, the learned Attorney General on behalf of the Union of India has also made submissions consistent with L. Chandra Kumar [supra] and conceded the legal position.

21. It can further be noted that in terms of the above ratio in L. Chandra Kumar [supra], the High Courts have been entertaining petitions under Article 226 and 227 of the Constitution against orders of the NGT. While exercising such jurisdiction, the Courts necessarily exercise due discretion on whether to entertain or to reject the petition, as per the test broadly laid down in Whirlpool Corpn. v. Registrar of Trade Marks, Mumbai;

“14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the

enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

22. It is also noteworthy that nothing contained in the NGT Act either impliedly or explicitly, ousts the jurisdiction of the High Courts under Article 226 and 227 and the power of judicial review remains intact and unaffected by the NGT Act. The prerogative of writ jurisdiction of High Courts is neither taken away nor it can be ousted, as without any doubt, it is definitely a part of the basic structure of the Constitution. The High Courts exercise their discretion in tandem with the law depending on the facts of each particular case. Since the High Courts' jurisdiction remain unaffected, the first question is answered in the negative, against the petitioners.

....

*31. The petitioners have also pleaded that instead of appeal to the Supreme Court under Section 22 from the orders passed by the NGT, an appeal mechanism as a matter of right should also be provided before the concerned High Courts. According to them, appeal to the Supreme Court is inadequate and unaffordable and therefore inaccessible. On this aspect it needs to be observed that even when a direct appeal to the Supreme Court is provided by a statute against the decision of a tribunal, the remedy under Article 226 or 227 before the High Court remains unextinguished. Moreover, the Appeal under Section 22 of the NGT Act, is limited to the grounds under Section 100 of the CPC and the Supreme Court does not function as a regular first appellate Court. However, under Article 226 or 227, remedies on issues of jurisdiction and also under the principles set out in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation*, are available for an aggrieved party. Subject to discretion being exercised, the affected litigants can move High Court under Article 226 or 227 and in such cases, a SLP under Article 136 of the Constitution could also be maintained to the Supreme Court from the High Court's verdict.*

.....

Conclusions

38. *In consequence of the above analysis, our conclusions are,*
A. *The National Green Tribunal under Section 14 & 22 of the NGT Act does not oust the High Court's jurisdiction under Article 226 & 227 as the same is a part of the basic structure of the Constitution.....”*

11. A conspectus of the above judgments would lead us to the natural conclusion that the impugned order is without jurisdiction and authority, and has no basis in law. It is trite legal position that the orders of the Tribunals, either judicial or administrative, are subject to judicial review of the High Courts, as they are subordinate to it. From the conjoint reading of Section 34 of the Advocates Act and the Bar Council of India Rules, extracted above, it is clear that only the High Courts can frame rules for dress code for the appearance of the Advocates before it, the courts and Tribunals, subordinate to it. In absentia, the rules in chapter IV of the Bar Council of India Rules shall prevail and the Tribunals have no authority to issue any instructions determining the dress code for the appearance of the advocates before it. When there are statutory rules framed by the competent authority and when the statute has conferred the powers on the High Court with reference to prescription of the dress code, any instruction, direction, advisory by the Tribunal, especially when it runs contrary to the statutory rules, is ultravires the Act, and without there being any source of power for issuance of such

directions.

12. Thus, it could be inferred from the reading of the above-stated legal provisions that the wearing of “gown” is only optional and not mandatory before any courts other than the Supreme Court or the High Courts. The judgment of the Kerala High Court referred to above by the Petitioner is also on the point. Further, the power conferred under Rule 51 of the NCLT Rules, is for the purpose of discharging its functions under the Act in accordance with the principles of natural justice and equity and is not an enabling provision to be read along with Section 432 of the Companies Act, 2013, which deals only with right to legal representation, and cannot be meant to confer upon it the power to prescribe the dress code, more so when it is contrary to the Bar Council of India rules. Similarly, the words ‘such other powers’ used in Rule 16 (f) of the NCLT Rules, 2016 has to be read keeping in mind the later part of the rule dealing with the administrative power of the President as head of the Tribunal, while dealing with the staff, and cannot be stretched to mean to include the power to frame any rule or issue any instruction, in the nature of the one impugned, to prescribe the dress code for the advocates. Such instruction, in fact also runs contrary to Rule 124 of the NCLT Rules, which states that the professionals shall follow the dress code prescribed in their code

of conduct. Therefore, the impugned proceedings in file No. 25/02/2017 dated 14.11.2017 is without authority and is hence illegal.

13. At this juncture, it was brought to our knowledge that the proceedings dated 27.01.2023 has been issued by the NCLT, by which ,the order impugned herein has been modified, with the effect of superseding the earlier instruction with regard to dress code for advocates, and the present order merely follows the Bar Council of India Rules. The proceedings dated 27.01.2023 is taken on record. However, the impugned order, though withdrawn, will stand quashed on the basis of the reasoning as adumbrated hereinbefore.

14. Accordingly, this writ petition stands allowed as prayed for. No costs. Consequently, connected miscellaneous petitions are closed.

(R.M.D., J.) (M.S.Q., J.)
08.02.2023

Speaking / Non-speaking Order
Index : Yes/ No
Internet: Yes/ No

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