

W.P.Nos.18309, 18310 of 2020

THE HON'BLE CHIEF JUSTICE

and

P.D.AUDIKEVALU, J.

(made by the Hon'ble Chief Justice)

These matters bring to light the attempt at the Registry in this Court to sometimes discharge judicial functions, which the Registry, quite obviously, does not possess.

2. The petitioners here have challenged one or more orders passed by the Central Government in exercise of the Central Government's authority under Sections 230 to 232 of the Company's Act, 2013. In connection with challenging the impugned orders, the petitioners also question the validity of a 2017 notification issued under Section 462 of the Act. By such notification, matters pertaining to amalgamation and de-merger of Government companies have been excluded from the purview of the authority of the National Company Law Tribunal and the Central Government has been assigned such role. In essence, Section 462 of the Act permits the Central Government to make certain provisions of the Act applicable or not applicable to certain classes of companies with or without modifications. Indeed, the petitioners also assail the constitutional

validity of such perceived excessive delegation, though there may not be much merit in such contention.

3. It appears that when combined petitions to assail the orders passed by the Central Government together with challenging the validity of the notification of June 13, 2017 and the propriety of Section 462 of the Act were filed, the Registry deemed it appropriate to advise the petitioners that the petitions had to be segregated such that the challenge to the vires of the statute and the validity of the notification had to be placed before a Division Bench and the challenge to the orders impugned had to go before a Single Bench. This was utterly ridiculous and and completely devoid of any element of sense.

4. When a challenge is made to the validity of a statute or a rule, there must be a context in which the challenge is made. Ordinarily, it would involve the challenge to an order or the applicability of a rule or any notice issued in such regard which prompts the challenge to the rule or the statutory provision which enables the order or notice to be made. In other words, there must be an immediate action which is challenged and the validity of any provision is questioned as a part of such challenge. A statutory provision or a rule may not be challenged

in vacuum without there being a sequitur thereto. Courts do not take up provisions of statute and academically decide on the validity thereof without first ascertaining the relevance of such decision in the context of the *lis*.

5. The Registry should restrain itself and not delve into judicial acts or require the ridiculous separation of the immediate challenge from the challenge to the validity of any statutory provision or rule. It is just like a declaration cannot be issued in a civil suit without there being a relief for a consequential injunction; or, like a reference cannot be made without there being a matter in which the result of the reference would be applied. There have, also, been instances recently in this Court where the matter has been disposed of but the legal issue has been referred to a larger Bench, which is equally fallacious because the answer to the reference cannot be applied to any matter and no reference may be taken up for any academic purpose.

6. At the same time, as has been noticed in other matters, adjudicating authorities and even arbitrators and arbitral tribunals are needlessly impleaded when there is no attack in the petitions except to the orders or awards passed by the adjudicating bodies or arbitrators.

Unless allegations are levelled against the adjudicating authority qua the conduct of the adjudication or against an arbitrator or the arbitral tribunal on grounds of personal misconduct, adjudicating authorities and arbitrators or arbitral tribunals are utterly unnecessary - and imminently avoidable - parties whose names ought to be struck off at the receiving stage of the petitions unless it is indicated that personal allegations have been levelled against them.

7. The Registrar-General will ensure that the receiving personnel at the Registry are made aware of the elementary principles recorded herein and a training programme in such regard may be conducted at the judicial academy as expeditiously as possible so that such mistakes are not repeated.

8. In the light of the above, the connected writ petitions separately filed before the Single Bench otherwise having determination, being W.P.Nos.19454 of 2020 and 13907 of 2021, should appear along with these petitions and be tagged with the respective writ petitions herein for appropriate orders to be passed on the present petitions in the light of the real issues between the parties which are covered in the petitions listed before the Single Bench. For

the judicial purpose, the petition challenging the validity of the provision and the notification along with the petition assailing the relevant order, will be treated as a composite petition, since no adjudication is called for on the petition challenging the validity of the provision and the notification when divorced from the challenge to the relevant order.

9. Counter-affidavits be filed in W.P.Nos.19454 of 2020 and 13907 of 2021 within three weeks. The petitioners in W.P.Nos.19454 of 2020 and 13907 of 2021 will immediately file second copies of such petitions. List the matters four weeks hence.

10. List on 17.09.2021 at 2.15 pm.

(S.B., CJ.) (P.D.A., J.)

06.08.2021

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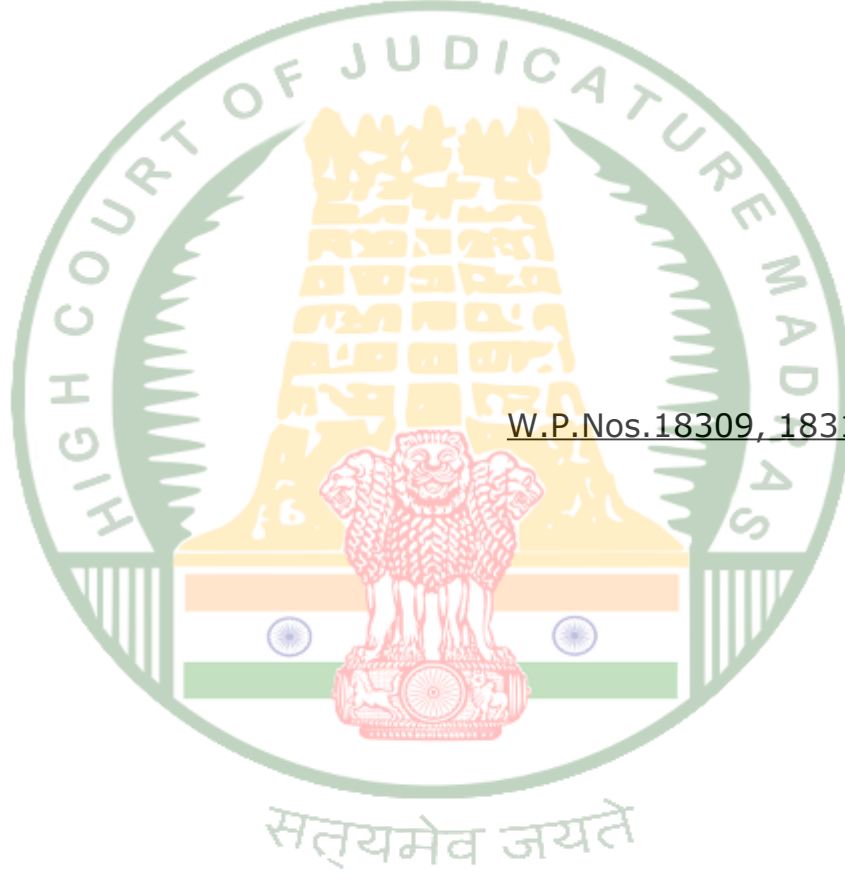
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