

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

TRANSFER CASE (CIVIL.) NO. 116 OF 2006

SANDEEP GOYAL

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With office report)

WITH T.C.(C) NO. 117 of 2006

(With office report)

T.C.(C) NO. 118 of 2006

(With office report)

T.C.(C) NO. 150 of 2006

(With appln. for c/delay)

Civil Appeal No. 4051 of 2006

(With appln. for exemption from filing c/c of the impugned judgment and with prayer for interim relief and office report)

Civil Appeal NO. 3882 of 2006

(With appln. for exemption from filing c/c of the impugned judgment and with prayer for interim relief and office report)

Civil Appeal NO. 3862 of 2006

(With prayer for interim relief and office report)

Civil Appeal NO. 3881 of 2006

(With prayer for interim relief and office report)

Civil Appeal NO. 4052 of 2006

(With prayer for interim relief and office report)

Civil Appeal NO. 3850 of 2006

(With office report)

Date: 09/01/2007 These Petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.K. THAKKER

HON'BLE MR. JUSTICE R.V. RAVEENDRAN

For Petitioner(s)

in TC 116/06: Mr. K.C. Dua, Adv.
Mr. Y.P. Mahajan, Adv.
Mr. Pankaj Jain, Adv.
Mr. Tarun Dua, Adv.

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in TC 117/06: Mr. Shibashish Misra, Adv.

in TC 118/06: Mr. Rustom B.Hathikhanawala, Adv.

in TC 150/06: Mr. Nikhil Nayyar, Adv.
Mr. Ankit Singhal, Adv.

For Union of India: Mr. Gopal Subramaniam, A.S.G.
Mr. Gaurav Agrawal, Adv.
Mr. T.Srinivasa Murthy, Adv.

Mr. P. Parmeswaran, Adv.

Mr. D.S. Mahra, Adv.

For Bar Council of India:

Mr. Preet Pal Singh, Adv.

Mr. Sumesh Dhawan, Adv.

Mr. Chetan Chopra, Adv.

Mr. Saurabh Sharma, Adv.

Mr. Sanjeev Sachdeva, Adv.

Bar Council of Goa

& Maharashtra:

Mr. A.P. Mayee, Adv.

Mr. Sanjeev Chaudhary, Adv.

For Respondent(s)

in TC 116/06: Mr. Parmanand Gaur, Adv.

in CA 4051/06: Mr. E.R. Kumar, Adv.

Ms. Rukmini, Adv.

for M/S P.H. Parekh & Co., Adv.

in CA 3862/06: Mr. K.C. Dua, Adv.

Mr. Y.P. Mahajan, Adv.

Mr. Pankaj Jain, Adv.

Mr. Tarun Dua, Adv.

in CA 4052/06: Mr. Rustom B. Hathikhanawala, Adv.

UPON hearing counsel the Court made the following

O R D E R

The challenge in these matters is to the constitutional validity of

various provisions of the National Tax Tribunal Act, 2005 (for short, the

Act). Petitions challenging the provisions of the Act have been filed in

various High Courts. Since the points in the petitions were identical, writ

petitions from the High Courts of Madras, Punjab & Haryana, Bombay and

Orissa have been transferred to this Court. Many of the High Courts,

entertaining the writ petitions, have also passed interim orders restraining

the establishment of the National Tax Tribunal under the Act. The special

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leave petitions challenging those orders are also before this Court.

We have heard the learned Additional Solicitor General for the

Union of India and learned counsel for the petitioners for some time. One of

the provisions under challenge is Section 13 of the Act which, inter alia,

permits 'any person duly authorised' to appear before the National Tax

Tribunal. In the affidavit filed in T.C.No.150/2006 on behalf of the Union

of India, it is, inter alia, stated that the Government would make

appropriate amendments in the Act to ensure that only lawyers and

Chartered Accountants and party-in-person are permitted to appear before

the Tribunal. We feel it would be appropriate that the matter is further

heard after amendments in Section 13, as stated in the affidavit, or such

other amendment which the Government may want to make in the Act are in

fact made. We may only note that the petitioners have also challenged

Section 5(5) of the Act which provides that the Central Government may in

consultation with the Chairperson transfer a Member from headquarters of

one Bench in one State to the headquarters of another Bench in another

State or to the headquarters of any other Bench within a State. The stand of

the Union of India is that having regard to the nature of the functions to be

performed by the Tribunal and the constitutional scheme of separation of

power of which independence of judiciary is a basic part, the expression

'consultation' in Section 5(5) of the Act may be construed as 'concurrence'.

Further the challenge is also to Section 7 which stipulates a

selection committee comprising of (a) the Chief Justice of India or a Judge of

the Supreme Court nominated by him; (b) the Secretary in the Ministry of

Law and Justice (Department of Legal Affairs) and (c) the Secretary in the

Ministry of Finance (Department of Revenue). According to the petitioners,

in this multi-member selection committee, it is possible for the two Members

to take a difference view that that of the Chairperson. According to the

Government, however, there is no question of the two Secretaries over-riding

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the opinion of the Chief Justice of India or his nominee since primacy of the

Chairperson is inbuilt in the provision itself.

Likewise, the petitioners have assailed the validity of certain other

provisions of the Act as well. We would, however, examine the matters after

such amendments as the Government may think appropriate are made and

the matters are mentioned.

We reserve the liberty to the Government to mention the matter for

listing after the amendments in the provisions of the Act are made.

(N. Annapurna)

Court Master

(V.P. Tyagi)

Asstt. Registrar