

CASE NO.:
Appeal (civil) 3067 of 2004

PETITIONER:
Union of India

RESPONDENT:
R. Gandhi

DATE OF JUDGMENT: 18/05/2007

BENCH:
K.G. BALAKRISHNAN, D.K. JAIN & V.S. SIRPURKAR

JUDGMENT:
JUDGMENT

O R D E R

WITH
CIVIL APPEAL NO. 3717 OF 2005
Madras Bar Association \005 Appellant
Versus
Union of India \005 Respondent

The challenge in these appeals is to the validity of the provisions of Companies Act, 1956 as amended by the Companies (Second Amendment) Act, 2002, which provides for setting up of National Company Law Tribunal and National Company Law Appellate Tribunal. Barring the jurisdiction exercised under Articles 226 and 227, almost all jurisdictions hitherto exercised by the High Courts in regard to the company matters would be transferred and exercised by the proposed Tribunal and Appellate Tribunal.

2. We have heard Mr. Gopal Subramaniam learned Additional Solicitor General of India and Mr. A.P. Datar learned Senior Counsel appearing for the Madras Bar Association, at some length.

3. Law relating to the legislative competence to establish Tribunals has been enunciated in several judgments of this court, including L. Chandra Kumar Vs. Union of India and Ors (1997) 3 SCC 261; Union of India & Anr. Vs. Delhi High Court Bar Association & Ors. (2002) 4 SCC 275 and State of Karnataka Vs. Vishwabharathi House Building Cooperative Society & Ors. (2003) 2 SCC 412. It has been held that under Entries 77, 78, 95 of List I, Entry 65 of List II and Entry 11A of List III, the Parliament and State Legislatures possess legislative competence to effect changes in the original jurisdiction of the Supreme Court and the High Courts.

4. However, in none of the decisions rendered so far the question as to what extent such powers of High Court can be transferred to Tribunals, excepting judicial review under Articles 226/227 has not been considered. There is as yet no demarcating line to show that, except for powers exercised under Article 226 & 227, the Parliament has the legislative competence to vest intrinsic judicial functions, traditionally performed by Courts in any Tribunal or Authority, outside the judiciary. The question to be determined is whether such 'wholesale transfer of powers' as contemplated by the Companies (Second Amendment) Act, 2002 would offend the constitutional scheme of separation of powers and independence of judiciary, so as to aggrandize one branch over

the other.

5. Since the issues raised in the appeals are of seminal importance and are likely to have serious impact on the very structure and independence of the judicial system, we are of the view that the issue with regard to the constitution of the Tribunals and the areas of their jurisdiction needs to be given a fresh look and therefore, the matter deserves to be heard by a Constitution Bench.

JUDIS