

Tribunals and Contempt of Court: A Study

By

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1.1. In a Social Welfare State, innumerable laws are enacted to give effect to various social welfare programmes. These laws which promote the advancement of society and welfare create a number of disputes among individuals inter-se as well between the individual and States. The regular courts established to deal with litigations will have neither the time nor the expertise to deal with the disputes, often of a complex nature involving technicalities. The Constitution has visualized such contingencies and provided for setting up of tribunals for settlement of disputes and adjudication of matters specified therein¹. In *Durga Shanker Mehta's case*,² the apex court elucidated the nature and scope of tribunals in these words, "The expression 'Tribunal' as used in Art 136 of the Constitution, does not mean the same thing as 'court' but includes within its ambit, all adjudicating bodies, provided they are constituted by the State and invested with judicial powers, as distinguished from administrative or executive functions".

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¹ See Articles 323A and 323B inserted by the Constitution 42 Amendment Act, 1976.

² *Durga Shanker Mehata Vs. Raghuraj Singh*, AIR 1954 SC P.520.

1.2. Constituted by the State would mean constituted by an Act of Parliament. Wade & Forsyth³ observe that the following tests are to be applied to determine the legal status of 'Tribunals':-

- i) Every tribunal is constituted by an Act of Parliament (and not by the executive);
- ii) Decisions of tribunals are Judicial and not administrative.
(In other words, tribunals apply law to findings of fact and decide legal questions objectively not on the basis of executive policy)
- iii) Tribunals⁴ not only deal with cases in which Govt., is a party but also between private parties;
- iv) Tribunals are independent.

In other words, they are not subject to administrative interferences. In the matter of adjudication they are not to be dictated by administration as to how and in what manner they should decide; and

- v) Status of a Tribunal is recognized by the Constitution, as an adjudicatory body vested with judicial power of the State under a Statute or Statutory rule⁵. The power to

³ Wade & Forsyth, 'Administrative Law' (2009) P.648-655.

⁴ Tribunals such as Income-tax Appellate Tribunal, Consumer Forums under Consumer Protection Act etc

⁵ See for details Art 136 and Art 227 of the Constitution and also the apex court decision in All Party Hill Leader's Conference Vs. Capt. W.A. Sangma (1977)4 SCC P.161.

adjudicate is derived from Statute. But they are not
'courts'.

1.3. Tribunals deal with complex problems which involves the technique and expertise, which ordinary courts do not possess. They not only take practical view of the cases but also preventive actions which may result in stopping of an evil or violation of law.

1.4. Realistically, Tribunal and courts share a common feature in that both discharge the judicial functions and exercise judicial powers⁶ normally vested in the sovereign authority. However, tribunals powers are limited to special matters which they have to deal dispassionately i.e., with an air of detachment. They are also freed from technicalities which are imposed on the courts.⁷ However, they possess some of the trappings of a court.

1.5. Since judicial review is an integral part of basic structure of the Constitution as laid down in *Re Keshavananda Bharati*, High Courts supremacy over Tribunals is affirmed and upheld.⁸

⁶ Associated Cement Companies Ltd., Vs. P.N.Sharma AIR 1965 SC P.1595.

⁷ Bengal Chemical & Pharmaceuticals Works Ltd., Vs. Employees AIR 1959 SC P.633.

⁸ Chandra Kumar Vs. Union of India, AIR 1997 SC P.1125.

Findings of Tribunals based on no evidence or on mere conjectures and surmises can be set aside by the High Courts or Supreme Court.⁹ Judicial review over Tribunal's decision can be on the following grounds:-

- i) Acting without jurisdiction or excess of jurisdiction; or
- ii) Not observing the procedures laid down by law,
- iii) Acting in violation of principles of natural justice like the tribunal deciding the case without hearing the party concerned or acting on extraneous material¹⁰ and
- iv) Reasons for decision not given¹¹.

1.6. The decisions of tribunals are 'final' though subject to some restriction, in the sense that such decisions are subject to appeal or revision as the case may be or subject to review power of the court. If appealed against and confirmed, it could be final and in judicial review, the courts may uphold the decision. This is the same as that of other regular courts.

2.1. The question of contempt of court has come up in several cases.

This question involved as to whether the tribunals can be considered as

⁹ Pandurang Dattatraya Khandekar Vs. Bar Council of Maharashtra, AIR 1984 SC P.110.

¹⁰ State of Haryana Vs. Rattan Singh, AIR 1977 SC P.1512.

¹¹ M.P. Industries Ltd., Vs. Union of India, AIR 1966 SC P.677. In this case the apex court observed: "A reserved order is a desirable condition of judicial disposal" and it is also considered as the essence of justice.

‘courts’. In Thakur Jugal Krishna Sinha’s case,. The apex court considered the Asst. Registrar of Co-operation Society adjudicating a co-operative dispute as ‘court’ and must have the same power of the court to punish for contempt of its authority.¹² In J.B.Chopra’s case, the apex court ruled that an administrative tribunal has authority to decide the constitutional validity or otherwise of a Statute, rules, regulations and notification.¹³

2.2. The Contempt of Courts Act, 1971 does not define the term ‘court’ but the “court under that Act means the authority which has the legal power to give Judgment, which, if confirmed by some authority would be definitive. The court has the power to regulate legal rights by the delivery of definitive Judgments and to enforce its orders by legal sanctions and if its procedure is judicial in character in such matters as the taking of evidence and the administration of oaths, then it is a court”¹⁴. Thus, the essential of what constitutes a court may be stated thus:-

- i) Legal power to give a Judgment, which if confirmed by some other authority would be definitive;

¹² Thakur Jugal Krishna Sinha’s case, AIR 1967 SC P.1494.

¹³ J.B.Chopra Vs. Union of India AIR 1987 SC P.357.

¹⁴ Subramanian Swamy Vs. Arun Showrie AIR 2014 SC P.3020. (See para 25 of the Judgment).

- ii) Power to regulate legal rights by the delivery of definitive Judgments;
- iii) Power to enforce its orders by legal sanctions; and
- iv) Procedure followed must be judicial in character in such matters as the taking of evidence and the administration of oaths.

In order to put all matters of controversy with regard to the definition of court, it may be necessary to define court in Sec 2 of the contempt of courts Act, 1971 by inserting the above essentials.

2.3. Applying the criteria laid down in Re Subramanian Swamy's case,¹⁵ it can be stated that tribunals¹⁶ in generality possess the following essentials:-

- i) They are constituted by Statute;
- ii) They follow the procedure laid down by the Act or rules;
- iii) They act judicially;
- iv) They possess some of the trappings of the court and apply the law and also principles of justice, equity and good conscience¹⁷;
- v) They are vested with the powers of a civil court;
- vi) They can enforce attendance of any person and examine him on oath;

¹⁵ Ibid.

¹⁶ Industrial Tribunal, Income Tax Appellate Tribunal Etc.

¹⁷ Nirmala Textile Furnishing Mills Ltd., Vs. Second Punjab Tribunal AIR 1957 SC P.329.

- vii) They can compel the production of documents;
- viii) They can issue commission for examination of witnesses;
- ix) The enquiry and investigation done by them are treated as judicial proceeding within the meaning of Sec 193 and 228 of the Indian Penal Code;
- x) Every member of the tribunal shall be deemed to be a ‘public servant’ within the meaning of Sec 21 IPC;
- xi) They should keep in view that they have to deal with only special types of disputes envisaged by the Act creating them;
- xii) They can order prosecution of persons who produce false evidence or fabricate evidence and
- xiii) They can take appropriate actions for contempt committed against them.

2.4. The most important determinant factor to consider an entity as ‘court’ relates its power to give a definitive Judgment i.e., binding and authoritative.¹⁸

Hence, a tribunal as an adjudicatory body having judicial powers and clothed with the powers of a court, has powers to give a decision which is binding and authoritative or if confirmed by some authority, it would be definitive can no doubt fall squarely within the definition of “court”.

¹⁸ In Re Brajnandan Sinha AIR 1956 SC P.66.

3. It may be suggested that the Contempt of Court Act, through an amendment, define “court” in terms of the norms laid down by the apex court and to include in the said definition ‘tribunals’ so that it can effectively deal with contempt of itself, otherwise the authority and dignity which is deemed to be a court will get unduly harmed without an effective remedy. It is immaterial whether a retired or sitting Judge is in the tribunal dealing with specialized matters to be adjudicated.