

Madras Bar Association v. Union of India and Another

Writ Petition (Civil) No. 1018 of 2021 / Writ Petition (Civil) No. 626 of 2021

2025 INSC 1330 | 2025-11-19

Whether the Tribunals Reforms Act, 2021 constitutionally cured or merely re-enacted tribunal appointment and service provisions previously invalidated; whether a larger-Bench reference was necessary; and how pre-existing selection processes and delayed appointments, including the specified ITAT members, should be protected.

252A

Two-judge bench | B.R. Gavai, CJI | K. Vinod Chandran, J.

Assessment years: See the source-scope notes; no year inferred.

01 FACTS OF THE CASE

Madras Bar Association's Writ Petition (Civil) No. 1018 of 2021, heard with Writ Petition (Civil) No. 626 of 2021, challenged the tribunal-governance provisions of the Tribunals Reforms Act, 2021. The dispute followed successive constitutional decisions and attempts to prescribe common appointment and service conditions for tribunals. It was an institutional constitutional challenge, not an appeal concerning an assessee's income, an assessment year, a tax demand or an ITAT assessment order (paragraphs 1-17).

The challenged framework authorised Central Government rule-making and appointments on Search-cum-Selection Committee recommendations, excluded candidates below fifty, required two names for each vacancy, and made action within three months only preferable. It prescribed four-year terms, subject to the earlier of age seventy for Chairpersons and sixty-seven for Members, with a transitional proviso capped at five years. It also dealt with removal, reappointment and executive-linked salary, allowances and housing. Separately, the enactment amended numerous parent Acts, abolished certain other appellate bodies and provided for transfers of their business (paragraphs 4-12). These distinct parts of the statutory scheme must not be conflated with the ITAT service-condition issue.

The tax-law connection is substantive. Section 11 of the 2021 Act amended section 252A of the Income-tax Act, 1961 by replacing the Finance Act, 2017 reference with Chapter II of the 2021 Act; ITAT is item 2 of the First Schedule. These are independently checked statutory links, not section numbers expressly construed in the judgment. ITAT is different from the Authority for Advance Rulings, which appears in the Second Schedule and in the exception to the pending-proceeding transfer provision described in paragraph 12. The Gazette records assent on 13 August 2021, but section 1(2) deems commencement to be 4 April 2021, also the notified date under section 2(c). Assent and deemed commencement therefore must not be substituted for one another when applying the transitional relief.

For the ITAT members specifically examined, the SCSC made recommendations on 21 September 2019, which were placed before the Appointments Committee of the Cabinet on 16 October 2019. Rojer Mathew was decided on 13 November 2019. The Court held that appointments of those recommended and approved ought to have followed that judgment promptly, consistently with the Attorney General's earlier assurance that the old Acts and Rules would govern. Instead, appointment orders were issued only on 11 September and 1 October 2021 and applied the new provisions, including the new tenure. Paragraph 148 expressly treats ITAT as an example of a problem that could also affect other tribunals (paragraphs 143-148).

The petitioners challenged executive influence, age and tenure restrictions, non-compliance with binding decisions and the lack of an independent National Tribunals Commission. The Union defended Parliament's policy-making authority, disputed judicial power to prescribe legislative content and urged that legislation could not be invalidated merely for departing from earlier directions. It also sought reference to a larger Bench during the substantially advanced hearing (paragraphs 15-16 and 105-109).

01 FACTS OF THE CASE

Source: [official signed judgment / paragraphs 1-17 / PDF pages 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 / judgment](#); [official signed judgment / paragraphs 143-148 / PDF pages 129, 130, 131, 132 / judgment](#); [official historical statute / paragraphs Sections 1\(2\), 2\(c\), 11; First Schedule item 2; section 33 and Second Schedule / PDF pages 1, 2, 6, 15, 16, 17 / historical statute](#)

02 DISCUSSION BY THE HON'BLE COURT

The Hon'ble Court placed the ITAT protection within the constitutional law governing all affected tribunals. It traced S.P. Sampath Kumar, R.K. Jain and L. Chandra Kumar: tribunals exercising judicial functions require appropriate competence and independence, but cannot displace the constitutionally protected judicial review of the High Courts and Supreme Court. L. Chandra Kumar's supplementary, rather than exclusive substitutive, conception of tribunals is distinguished from the earlier treatment of exclusion of High Court review in Sampath Kumar. The account of an umbrella supervisory body forms part of this wider concern for institutional autonomy (paragraphs 18-30).

The Court then examined the three earlier Madras Bar Association constitutional decisions. MBA (I), Union of India v. R. Gandhi, (2010) 11 SCC 1, concerned NCLT/NCLAT under the Companies Act, 1956 and required judicially appropriate qualifications, selection, tenure, expertise and insulation from sponsoring ministries. MBA (II), (2014) 10 SCC 1, concerned the National Tax Tribunal, which was intended to exercise the High Courts' substantial-question-of-law jurisdiction; its constitutional defects included executive influence and inappropriate membership and reappointment arrangements. That National Tax Tribunal is not ITAT. MBA (III), (2015) 8 SCC 583, applied the 2010 safeguards to the Companies Act, 2013 and invalidated departures in technical-member qualifications and selection committee composition. These case-specific structures and qualifications are not converted into a single new ITAT eligibility rule (paragraphs 31-48).

Roger Mathew, (2020) 6 SCC 1, dealt with the Finance Act, 2017 and the 2017 tribunal Rules. Its majority upheld section 184's rule-making framework while striking down the 2017 Rules; it directed interim appointments and conditions under the earlier parent statutes. The 2025 judgment separately recounts the opinions of D.Y. Chandrachud and Deepak Gupta JJ. on delegation and an independent commission. Their view that qualifications could not be delegated is not presented as the majority's holding invalidating section 184 (paragraphs 49-60).

MBA (IV), (2021) 7 SCC 369, concerned the 2020 Rules. As recounted and later continued by this judgment, it required judicial primacy in selection, a non-voting sponsoring-department Secretary, one recommended candidate for each post with an additional waitlisted candidate, and completion of appointments within three months. It required a five-year term, with Chairpersons/Presidents subject to age seventy and other members to age sixty-seven, whichever occurred earlier; eligibility for reappointment and preference for prior service were part of the framework. Advocates with at least ten years' practice were to be eligible, subject to relevant experience and specialisation. Indian Legal Service candidates were to satisfy the criteria applicable to advocates and suitability assessment. The Court also recounted finality of the committee's disciplinary recommendations and adequate accommodation or specified enhanced HRA. These are the prior controlling directions, not a fresh unconditional appointment or reappointment entitlement for every applicant (paragraphs 61-80, particularly the directions reproduced in paragraph 79).

02 DISCUSSION BY THE HON'BLE COURT

The historical temporal protections are important. MBA (IV) rejected retrospective operation of the 2020 Rules from 26 May 2017; they were to apply prospectively from 12 February 2020, subject to judicial modifications. Earlier appointments, including appointments protected during Rojer Mathew, remained governed by the applicable parent enactments and earlier Rules. Specified appointments and completed selections under the 2020 Rules were saved from challenge merely because their selection committees preceded the judicial modifications. Enhanced HRA was directed from 1 January 2021, not from an invented common commencement date for all service conditions (paragraphs 70 and 76-79).

MBA (V), (2022) 12 SCC 455, addressed the 2021 Ordinance's amendments to section 184 of the Finance Act, 2017. The majority rejected reintroduction of the fifty-year threshold, two-name recommendation, merely preferable three-month decision period, four-year term and allowance arrangements inconsistent with earlier binding directions. The 2025 judgment recounts the 30 June 2021 HRA amendment as satisfying the earlier housing direction, and distinguishes the permissible retrospectivity of the protective proviso to section 184(11) from interference with appointments protected by judicial orders. It recalls the 2018 Kudrat Sandhu orders protecting ITAT and CESTAT appointments under the old regime, including the then stated ages of sixty-two for Members and sixty-five for Presidents. Those historical protections cannot be replaced by a blanket five-year cap for the saved appointees (paragraphs 81-93 and 143-146).

The 2025 Court separately describes S. Ravindra Bhat J.'s concurrence in MBA (V), including Article 14, the lack of justification for excluding younger qualified candidates, the difference between civil-service status and adjudicatory suitability, and the protection of judicially secured tenure. It also records Hemant Gupta J.'s dissent defending legislative freedom. That dissent is not the rule adopted in the present unanimous decision. The earlier opinion's ITAT membership statistics are historical material, not findings about the Tribunal's composition in 2025 or 2026 (paragraphs 94-104).

The request for a larger Bench was rejected. Article 145(3) did not require a fresh reference where the relevant constitutional questions had already been settled by larger Benches; no new unresolved question or compelling reason was demonstrated. The late request also raised procedural fairness concerns and would prolong uncertainty affecting members, vacancies and access to justice. The two-judge Bench expressly treated itself as bound by the larger-Bench tribunal jurisprudence (paragraphs 104-109).

On legislative power, the Court held that India's governing principle is constitutional supremacy. Parliament may change the law, including retrospectively within constitutional limits, and remove the basis of a judgment by genuinely curing the identified defect. It cannot merely reproduce an unconstitutional provision or neutralise binding constitutional directions through a non-obstante clause. Drawing on constitutional-supremacy authorities and the validation principles discussed in NHPC and Dr. Jaya Thakur, the Court rejected the suggestion that Parliament could simply ignore its decisions. It accepted that courts cannot

02 DISCUSSION BY THE HON'BLE COURT

dictate the text of legislation or a policy choice, but distinguished that prohibition from the indispensable duty to review enacted laws (paragraphs 110-123).

Separation of powers and judicial independence were held to be enforceable constitutional requirements embedded in the Constitution's scheme, including Articles 14, 32, 136, 141, 226, 227, 323-A and 323-B, rather than free-floating policy preferences. Tribunals form part of the justice system, so executive dominance, arbitrary curtailment of tenure and weakened autonomy invite constitutional scrutiny. The judgment does not establish that any ordinary statute can be invalidated merely by invoking an abstract basic-structure objection; it relates these principles to the constitutional guarantees and institutional arrangements engaged by tribunal legislation (paragraphs 124-134, read with paragraph 37).

Comparing the Ordinance and Act, including the two-column table in paragraph 135, the Court found that shifting the challenged age, tenure, selection and allowance provisions into sections 3, 5 and 7 of a stand-alone Act had not cured the constitutional defects. It also described repeated amendments to other parent statutes and the transfer of functions of certain abolished bodies. The decisive reasoning was that the re-enacted service framework and the Union's defence repeated what had already been rejected. Paragraph 142 strikes down the 'impugned provisions' as unconstitutional. It does not supply a separate, exhaustive section-by-section severability order resolving every consequential amendment or directing restoration of every abolished appellate body (paragraphs 135-142).

Stability of tenure and protection of vested rights were treated as elements of judicial independence. Although the Attorney General made no equivalent fresh assurance in these proceedings, the earlier protection could not be discarded. The delayed ITAT appointments were inconsistent with the assurance recorded on 9 February 2018. K. Vinod Chandran J.'s short, unnumbered concurrence on the final page expressly agrees with the reasoning and directions; it adds no separate qualification or contrary relief (paragraphs 143-148; final-page concurrence).

Source: [official signed judgment / paragraphs 18-30 / PDF pages 17, 18, 19, 20, 21, 22, 23, 24, 25 / judgment](#); [official signed judgment / paragraphs 31-48 / PDF pages 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 / judgment](#); [official signed judgment / paragraphs 49-60 / PDF pages 40, 41, 42, 43, 44, 45, 46, 47, 48 / judgment](#); [official signed judgment / paragraphs 61-80 / PDF pages 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67 / judgment](#); [official signed judgment / paragraphs 81-104 / PDF pages 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94 / judgment discussing prior authorities](#); [official signed judgment / paragraphs 104-109 / PDF pages 93, 94, 95, 96 / judgment](#); [official signed judgment / paragraphs 110-123 / PDF pages 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109 / judgment](#); [official signed judgment / paragraphs 124-134 / PDF pages 109, 110, 111, 112, 113, 114, 115 / judgment](#); [official signed judgment / paragraphs 135-142 / PDF pages 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128 / judgment](#); [official signed judgment / paragraphs 143-148; unnumbered concurrence / PDF pages 129, 130, 131, 132, 137 / judgment](#)

03 JUDICIAL DECISION

The Court declared the impugned tribunal provisions unconstitutional for repeating the defects identified in the prior decisions without curing them (paragraph 142). It rejected the Union's application for a larger-Bench reference (paragraph 109).

The operative directions were: (1) until the identified constitutional concerns are cured and appropriate legislation giving effect to them is enacted, MBA (IV) and MBA (V) continue as the controlling framework for appointment, qualifications, tenure, service conditions and allied matters of tribunal members and chairpersons; (2) the Union was granted four months from the judgment to establish an independent National Tribunals Commission consistent with the earlier principles, including professional expertise, transparency and oversight; (3) the service conditions of the ITAT members appointed by orders dated 11 September and 1 October 2021 must be governed by the old Act and old Rules; and (4) across tribunals, appointments for which selection or SCSC recommendation was completed before commencement of the 2021 Act, but formal notification followed commencement, are protected under the parent statutes and the conditions laid down in MBA (IV)/(V), rather than the shortened tenure and altered conditions in the impugned framework (paragraphs 151-155).

The writ petitions and pending applications were disposed of in those terms (paragraphs 156-157). No tax assessment was restored, annulled or remanded; no tax amount or annual assessment year was adjudicated. The judgment contains no separate costs direction. The main opinion and K. Vinod Chandran J.'s express concurrence form one decision. The four-month commission direction is reported as the order made on 19 November 2025; compliance, extensions, later legislation and present tenure entitlements have not been certified.

Source: [official signed judgment / paragraphs 109; 142; 151-157; unnumbered concurrence / PDF pages 96, 128, 134, 135, 136, 137 / judgment](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Petitioners and protected tribunal appointees on the constitutional challenge and service-condition relief; not an assessee-versus-Revenue merits result

Impugned provisions struck down; larger-Bench request rejected; prior tribunal framework continued pending constitutionally compliant legislation; National Tribunals Commission directed within four months; specified ITAT and wider transitional appointment protections; writ petitions and applications disposed of

Constitutional and service-protection questions decided on merits; no tax assessment issue adjudicated

Specific ITAT protection in paragraph 154 must be read with the selection-history findings; paragraph 155 protects the wider defined pre-commencement selection class. No present-law, later-treatment, universal retirement-age or automatic tribunal-revival certificate.

Source: [official signed judgment / paragraphs 109; 142; 151-157 / PDF pages 96, 128, 134, 135, 136 / judgment](#)

05 AKHB REVIEW POINT

Treat this as a tribunal-independence and ITAT service-protection authority within the Income-tax Act, 1961 collection. For an individual appointment, obtain the advertisement, completed selection/SCSC recommendation, any Cabinet approval, appointment order and applicable historical parent statute/Rules. Separate the expressly named ITAT cohorts in paragraph 154 from paragraph 155's wider class; the date of formal appointment alone does not determine the protected regime. Record the 2019 recommendation chronology where applicable, and distinguish the 2021 Act's deemed commencement on 4 April from its assent on 13 August.

Do not blend the old-regime ITAT age protection recalled in paragraph 145 with the five-year/70-or-67 framework discussed for other appointment cohorts, or with the invalidated four-year provisions. The service Rules are also distinct from the Income-tax (Appellate Tribunal) Rules governing appeal procedure. This judgment does not decide an assessee's tax liability, automatically invalidate tax orders made by the Tribunal, guarantee reappointment to an individual, or itself establish that every abolished tribunal was restored. Section 252A supplies a verified statutory connection, not a separately reasoned numbered-section interpretation in the judgment.

Before advising on a current vacancy, retirement, allowance or challenge to tribunal composition, verify subsequent legislation, orders, implementation and later judicial treatment. A historical four-month direction is not proof that a National Tribunals Commission was or was not established. This note makes no automatic mapping to the Income-tax Act, 2025 and no certification of tenure or service conditions in 2026.

Source: [official signed judgment / paragraphs 76-79; 91-92; 143-155 / PDF pages 61, 62, 63, 64, 65, 66, 67, 75, 76, 77, 78, 129, 130, 131, 132, 133, 134, 135, 136 / editorial synthesis; official historical statute / paragraphs Sections 1\(2\), 2\(c\), 11; First Schedule item 2 / PDF pages 1, 2, 6, 16 / historical statute](#)

PROVISION-SPECIFIC SCOPE

1.

Act: Income-tax Act, 1961

Section: 252A

Role: institutional statutory linkage not separate section holding

Basis: Section 11 of the Tribunals Reforms Act, 2021 substitutes the reference to Chapter II of that Act in section 252A. The judgment itself does not identify or separately construe section 252A by number.

Source url: [Open cited source](#)

2.

Act: Tribunals Reforms Act, 2021

Section: 3(1) proviso; 3(7); 5; 7(1)

Role: challenged service framework

Basis: Specific age, recommendation/timing, tenure and allowance features compared in paragraph 135 and held unconstitutional in paragraphs 139-142. Paragraph 142 uses impugned provisions without a separately enumerated severability decree.

3.

Act: Tribunals Reforms Act, 2021

Section: 1(2); 2(c); 11; First Schedule item 2

Role: independently checked historical statutory context

Basis: Deemed commencement/notified date 4 April 2021; Income-tax Act link; ITAT inclusion.

4.

Act: Tribunals Reforms Act, 2021

Section: 33; Second Schedule item 2

Role: background distinct from ITAT

Basis: Authority for Advance Rulings and transfer exception are not ITAT; not a distinct tax-liability holding.

5.

Act: Finance Act, 2017

Section: 183; 184; 186(2)

Role: historical legislation and prior case discussion

Basis: Historical 2017 regime and 2021 Ordinance amendments, not independently construed 1961 Act provisions.

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

B.R. Gavai, CJI

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

CONSTITUTIONAL PROVISIONS CONSIDERED

14; 32; 136; 141; 142; 145(3); 226; 227; 323-A; 323-B

SOURCE & VERIFICATION

[Hon'ble Supreme Court source PDF \(official signed judgment\)](#)

Identified source rendition: 137 PDF pages; SHA-256

b76e8aa00c43fed53f514a10090bb6a49d7c6d0f5bd0c3df576aebcf93c0337e. Original bytes preserved.

Physical PDF pages 2-137 contain the judgment, paragraphs 1-158 and terminal unnumbered concurrence; page 1 is cover and judicial contents index, not an editorial headnote. Paragraph 1 starts on page 3 after the opening quotation.

[Open cited source rendition](#)

The preserved source is the 137-page official judgment, not a 94-page SCR rendition. Its physical page numbers are used throughout; no SCR pagination is inferred from the asset identifier.

The opening quotation begins on physical page 2; numbered paragraph 1 starts on page 3. The main opinion ends on page 137, followed on that same page by K. Vinod Chandran J.'s unnumbered express concurrence. No neighbouring judgment or separate decision is included.

The two-column comparison at paragraph 135 spans physical pages 116-123 and was visually inspected rather than treated as a simple linear statute extract. It is a comparison within the judgment, not a substitute for the enacted text. The table abbreviates the section 4 extract; the Gazette and paragraph 6 preserve its hearing safeguard.

Paragraph 142 strikes down the impugned provisions without a separately enumerated section-by-section severability decree. The note preserves its wording and the service-framework reasoning without declaring every consequential amendment void or every abolished body revived.

ITAT under First Schedule item 2 and the Authority for Advance Rulings under Second Schedule item 2 are distinct. The AAR reference in paragraph 12 is statutory background, not an ITAT abolition order.

Section 252A is verified through section 11 of the 2021 Act; the judgment does not itself expressly number or separately interpret section 252A. It is labelled an institutional statutory linkage.

MBA numbering differs between the present judgment and quotations from MBA (V). Footnotes 23, 25 and 26 explain that the earlier judgment omitted the 2015 Companies Act decision from its numbering. The note consistently uses the present judgment's MBA (I)-(V) convention.

The 2018 ITAT superannuation order is introduced as 16 July 2018 in paragraph 145. The CESTAT quotation in paragraph 146 refers to an ITAT clarification dated 20 March 2018. The quoted dates are not silently reconciled or used to alter the clearly stated 2021 appointment cohorts.

Historical ITAT statistics and views of prior concurring/dissenting judges are source-attributed. Rojer Mathew's majority upheld section 184 while invalidating the 2017 Rules; the differing excessive-delegation opinions are not relabelled the majority result.

The Court recounts 62/65 old-regime ages and 5-year/70-or-67 later-framework terms in different contexts. Neither is presented as a universal current retirement rule; the impugned 4-year terms are not reported as the relief.

The 2021 Act received assent on 13 August 2021 but was deemed effective from 4 April 2021. Paragraph 155's commencement test is preserved rather than silently changed to the assent date.

Poppler reported bad annotation-destination warnings. These did not change readable page content: all 137 database pages match direct extraction after whitespace normalisation, and the relevant visual pages are legible. Cryptographic signature verification was not performed.

Independent checks of the earlier full judgments, all subordinate-rule amendments, later treatment and commission implementation are not represented as completed. Earlier cases are analysed as discussed and applied in this decision.

Neutral citation visually verified on the official cover. The asset identifier encodes an SCR range, but this preserved source is a 137-page official original; no SCR printed-page pinpoints or uninspected reported citation are supplied.

No assessment year applies to this constitutional tribunal-governance litigation; no taxpayer assessment or tax demand is adjudicated.

Lead and connected petitions appear together on the official cover. One common final decision includes the brief express concurrence on physical page 137.

STATUTORY SCOPE

Historical 2017/2020/2021 frameworks as examined in the full judgment; 2021 Act Gazette independently checked for challenged provisions, commencement, section 11/252A link and schedules. No comprehensive audit of all historical subordinate-rule amendments or present legislation.

No automatic mapping to the Income-tax Act, 2025; no certification of 2026 tenure, allowances, vacancies or compliance with the National Tribunals Commission direction.

LATER TREATMENT

Source checked 2026-10-04. Subsequent review proceedings, clarifications, stays, implementation, amendments and later judicial treatment have not been comprehensively checked. This is not a citator or current-law certificate.

IDENTIFIED SOURCE LINKS

[official signed judgment - Physical PDF page 1; signatures/date and express concurrence on physical page 137 - PDF pages: 137](#)

SHA-256: b76e8aa00c43fed53f514a10090bb6a49d7c6d0f5bd0c3df576aebcf93c0337e

[official historical statute - Gazette physical pages 1-4, 6 and 14-17 - PDF pages: 17](#)

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