

# Act and friction

A national commission is essential to make appointments to tribunals

Recent developments have demonstrated the Union government's implacable determination to undermine the autonomy of the various tribunals in the country. It recently got Parliament to enact the Tribunals Reforms Act, which contained provisions that had been struck down by the Supreme Court in an ordinance issued earlier. After being sharply questioned by the Supreme Court on the unusual delay in filling up vacancies among judicial and administrative members, it released a set of appointments this week. The Court found that there was cherry-picking among the names chosen by the various Selection Committees. Instead of exhausting the selection list put together by panels of judges and officials, the Government had waded into the waiting list to exercise its choice. In another development, the Government cut short the tenure of the Acting Chairperson of the National Company Law Appellate Tribunal (NCLAT), Justice A.I.S. Cheema, by 10 days. Mr. Cheema was set to deliver in some matters on which the NCLAT had reserved judgment before retiring on September 20. The Government's justification was that it was going by its latest law, under which the Acting Chairperson's four-year tenure would end on September 10 and that Justice M. Venugopal had already been appointed in his place. However, a Bench headed by the Chief Justice of India, N.V. Ramana, was of the strong opinion that he should be allowed to complete his tenure, and even remarked that the Court would not hesitate to stay the operation of the Act on its own motion. Fortunately, the matter was resolved quickly, with the Government backing down and agreeing that Justice Venugopal would go on leave until Justice Cheema finished his stint on September 20.

The issue of tribunals has been a source of considerable friction between the Government and the Court. They have often disagreed on the eligibility criteria and conditions of service and a series of judgments have gone against the Government. Clauses introducing changes to the conditions of service of members of the various Tribunals have often been subjected to judicial view. Courts want to ensure that a reasonable tenure was available to the appointees, and do not allow criteria related to age and experience to be used to undermine their independence. Tribunals have always been seen as institutions that were a rung lower in independence as regular courts, even though there is wide agreement that administrative tribunals are required for quicker and more focused adjudication of cases that required specialisation and domain expertise. As several laws now provide for such adjudicative bodies, the executive does have an interest in retaining some leverage over their members. The Supreme Court has repeatedly called for the establishment of a national tribunals commission to make suitable appointments and evaluate the functioning of tribunals. If the Government has been dragging its feet on this, it is only because there is a method to its mulishness.