REPORTABLE

IN THE SUPREMECOURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7208 OF 2012

State of Gujarat & Anr. … Appellants

Versus

Gujarat Revenue Tribunal Bar Association & Anr. … Respondents

J U D G M E N T

Dr. B.S. CHAUHAN, J.:

1. This appeal has been preferred against the impugned judgment and order dated 14.9.2009, passed by the High Court of Gujarat at Ahmedabad in Special Civil Application No.8209 of 1988, by way of which the High Court has allowed the writ petition filed by the respondents striking down Rule 3(1)(iii)(a) of the Gujarat Revenue Tribunal Rules 1982 (hereinafter referred to as 'Rules 1982'), which conferred power upon the State Government to appoint the Secretary to the Government of Gujarat, as President of the Revenue Tribunal (hereinafter referred to as 'Tribunal') constituted under the Bombay

Revenue Tribunal Act, 1957 (hereinafter referred to as the 'Act, 1957').

2. The facts and circumstances giving rise to this appeal are mentioned hereunder :

A. The Government of Gujarat, in exercise of its power under the Act of 1957 and the Rules, 1982 appointed appellant no.2 as the President of the Gujarat Revenue Tribunal vide order dated 16.4.1988. His appointment was challenged by the respondents herein, on the ground that the office of the Chairman, being a "judicial office" could not be usurped by a person who had been an Administrative Officer all his life. The validity of Sections 4 and 20 of the Act 1957 and Rule 3(1)(iii)(a) of the Rules 1982 was challenged. The appellants contested the writ petition, submitting that in exercise of the power conferred under Section 20 of the Act 1957 and the Rules 1982, a notification was issued on 8.2.1983, making the Secretary to the Government eligible for appointment as Chairman of the Revenue Tribunal, and as he had acted as a Revenue Officer while holding the posts of Sub Divisional Officer, District Collector, and Divisional

Commissioner, it could not be held that he was ineligible to hold the said post of President of the Tribunal.

B. During the pendency of the aforementioned writ petition before the High Court, the Government of Gujarat made the appointment of Shri A.D. Desai, a retired I.A.S. Officer on 27.2.2007 to the post of President of the Tribunal, however, the operation of his appointment order was stayed by the High Court. This Court, while entertaining Special Leave Petition (C) No.4924 of 2007, vide order dated 26.3.2007, stayed the operation of the order of the High Court. The said S.L.P. was finally disposed of vide order dated 16.4.2008 observing that, the petition had been filed only against the interim order passed by the High Court. However, the said interim order dated 26.3.2007 passed by this Court, by which it stayed the order of the High Court, as mentioned earlier, would continue till the disposal of the Special Civil Application No.8209 of 1988 by the Gujarat High Court. Subsequently, State of Gujarat vide order dated 29.7.2009, appointed Mr. A.J. Shukla as the President of the Tribunal.

C. The High Court then, vide impugned judgment and order dated 14.9.2009 held that the Tribunal was in the strict sense, a "court" and

that the President, who presides over such Tribunal could therefore, only be a "Judicial Officer", a District Judge etc., for which, concurrence of the High Court is necessary under Article 234 of the Constitution of India. Hence, the present appeal.

3. Shri Preetesh Kapur, learned counsel appearing on behalf of the appellants, submitted that the High Court committed an error by striking down the aforesaid rule, holding that the Secretary to the Government of Gujarat cannot be appointed as President of the Tribunal. It erred in holding that the Tribunal was a court and only a "Judicial Officer", i.e., a Judicial Officer holding such equivalent post as is referred to in Rule 3(iii) of the Rules 1982 can be appointed as President of the said Tribunal. The Secretary to the Government had already worked as a Revenue Officer for a prolonged period of time and, hence, has acquired the requisite experience to deal with all types of revenue matters, in spite of the fact that the Tribunal has the trappings of a court, he is eligible for the said post in terms of qualifications. An Administrative Officer, who is a member of the Tribunal under Rule 3(1)(iii)(g) can still be appointed as the President of the Tribunal as the validity of clause (g) was not under challenge. But on that count there will be no illegality. The Tribunal cannot be

held to be a 'court' within the meaning of the Constitutional provisions. The Act 1957 and Rules 1982, do not even suggest consultation with the High Court, while appointing the President of the Tribunal. Therefore, the appeal deserves to be allowed.

4. On the contrary, Shri Yashank Pravin Adhyaru, learned Senior counsel appearing on behalf of the respondents has vehemently opposed the appeal contending that, no error can be found with the impugned judgment and order of the High Court. This is because the earlier Acts, which stood repealed by the Act of 1957, did not contain any provision enabling the State Government to appoint an Administrative Officer as the President of the Tribunal. Under the old Act, the person who is eligible to hold such post was a retired Judge of the High Court. Moreover, Rule 3(iii) of the Rules 1982 enables the State Government to appoint a Judicial Officer, a District Judge, the President of the Court of Small Causes, Bombay and the Principal Judge of the City Civil Court to the aforementioned post. In case they are still in service, the question of their appointment as President of the Revenue Tribunal, would never arise, without the effective consultation/concurrence of the High Court. The provisions of Articles 233 to 236 of the Constitution of India are attracted. In fact,

this is the ratio of the impugned judgment. In the facts and circumstances of the case, no interference is warranted. The appeal lacks merit and is liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

6. The High Court itself has taken note of the previous statutory provisions, observing that the Bombay Revenue Tribunal Act, 1939 (hereinafter referred to the 'Act 1939'), did not provide for the post of President as such, and that this power was conferred upon the rule making authority. Rule 4(1) of the Bombay Revenue Tribunal Rules 1939, (hereinafter referred to 'Rules 1939') prescribed the qualifications for the post of President, as a person who has officiated as a Judge of the High Court, or has served as such, or has exercised the powers of, a District Judge, or the Chief Judge of the Court of Small Causes, Bombay, for a period of not less than 10 years and has retired from service of the Crown in India.

7. In the year 1941, Rule 4(1) of the Rules 1939 was amended vide Notifications dated 5.12.1940 and 22.9.1941. As per the amended Rules, the President could be a person who had either

officiated as a Judge of the High Court, or had served as, or exercised the powers of a District Judge, or of the Chief Judge of the Court of Small Causes, Bombay, for a period of not less than 10 years, and had retired from the service of the Government of India or the Government of any State. In 1957, Rule 4(1) was substituted, enabling the rule making authority, *inter-alia*, to appoint the Secretary to the Government of Bombay, Legal Department and the Legal Remembrancer of Legal Affairs as President of the Tribunal. Later, the Act of 1939 was substituted by the Act, 1957.

Relevant Statutory Provisions :

8. Section 3(2) of the Act 1957, provides for the appointment of the President and Members of the Tribunal. Section 9 thereof, provides for the jurisdiction of the Tribunal to entertain and decide appeals from, and revise decisions and orders in respect of cases arising under the provisions of the enactments specified in the First Schedule. Schedule 1 includes the Bombay Land Revenue Code, 1879, the Bombay Land Revenue Code, 1874 as extended to the Kutch area of State of Bombay, the Indian Forest Act, 1927 etc.

Section 9(4) of the Act reads as under:

"Notwithstanding anything contained in any other law for the time being in force, when the Tribunal has jurisdiction to entertain and decide appeals from and revise decisions and orders of, any person, officer or authority to any matter aforesaid, no other person, officer or authority shall have jurisdiction to entertain and decide appeals from and revise decisions or orders of such person, officer or authority in that matter."

Section 13(1) of the Act reads as under:

"In exercising the jurisdiction conferred upon it by or under this Act, the Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath, affirmation or affidavit, of summoning and enforcing the attendance of witnesses, of compelling discovery and the production of documents and material objects, requisitioning any public record or any copy thereof from any Court or office, issuing commissions for the examination of witnesses or documents, and for such other purposes as may be prescribed and the Tribunal shall be deemed to be a Civil Court for all the purposes of sections 195, 480 and 482 of the Code of Criminal Procedure, 1898, and its proceedings shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 229 of the Indian Penal Code."

Section 15 empowers the Tribunal to entertain question of interpretation regarding laws of public importance which can only be decided after hearing the State Government on the matter. Section 16 provides that no appeal shall lie to the State Government against the

order passed by the Tribunal. Section 17 of the Act confers upon the Tribunal the power to review its own decision, on grounds similar to the ones mentioned in Order 47 Rule 1 CPC. Such review application may be filed before it within a period of 90 days from the date of the said decision of the Tribunal. The Tribunal has further been given the power to condone delay in making applications for review.

Section 20 reads as under:

> "20(1) The State Government may, by notification in the Official Gazette, make rules consistent with the provisions of this Act for carrying into effect the purposes of this Act.
> (2) In particular and without prejudice to the generality of the foregoing provision, such rules may provide for the following matters, namely:-
> **(a) the qualifications of the President and other members of the Tribunal;**
> (b) the period of office and the terms and conditions of service of the President and other members of the Tribunal;
> (c) the qualifications of the Registrar and Deputy Registrars;
> (d) any other powers of a Civil Court which may be vested in the Tribunal."
>
> (Emphasis added)

Rule 3 of the Rules 1982 reads as under :

> **"3. Qualification of President and members of Tribunal-**

(1) The President shall be a person who has not attained the age of 65 years, and

(i) Who is or has been a judge of a High Court, or

(ii)Who is an advocate qualified to be a judge of a High Court, or

(iii) Who has, for a period of not less than three years, held the office, or as the case may be, exercised the powers of –

(a) **The Secretary to the Government of Gujarat**;

(b) The Principal Judge of the City Civil Court, Ahmedabad;

(c) A District Judge;

(d) The Chief Judge, Small Cause Court, Ahmedabad;

(e) A member of the Industrial Court constituted under the Bombay Industrial Relations Act, 1946;

(f) A member of the Industrial Tribunal constituted under the Industrial Disputes Act, 1957; or

(g) A member of the Gujarat Revenue Tribunal constituted under the Bombay Revenue Tribunal Act, 1957." (Emphasis added)

(2) A member shall be a person who has not attained the age of 65 years and-

(a) Who is holding or has held an office not lower in rank than that of -

(i) A Collector;

(ii) A Deputy Secretary to the Government of Gujarat;

(iii) A District Judge;

(iv) An Assistant Judge, or a Civil Judge (Senior Division) appointed under the Bombay Civil Courts Act, 1869, or a Civil Judge holding an equivalent office under any other law for the time being in force; or

(b) Who is an advocate or attorney of the High Court, or a legal practitioner entitled to practice before courts other than

> the High Court under any law relating to legal practitioners for the time being in force in this State, has practiced for not less than five years in any Civil Courts or before the Tribunal, and is, in the opinion of the State Government, well versed in revenue and tenancy laws."

9. Although, term 'court' has not been defined under the Act, it is indisputable that courts belong to the judicial hierarchy and constitute the country's judiciary as distinct from the executive or legislative branches of the State. Judicial functions involve the decision of rights and liabilities of the parties. An enquiry and investigation into facts is a material part of judicial function. The legislature, in its wisdom has created tribunals and transferred the work which was regularly done by the civil courts to them, as it was found necessary to do so in order to provide efficacious remedy and also to reduce the burden on the civil courts and further, also to save the aggrieved person from bearing the burden of heavy court fees etc. Thus, the system of tribunals was created as a machinery for the speedy disposal of claims arising under a particular Statute/Act. Most of the Tribunals have been given the power to lay down their own procedure. In some cases, the procedure may be adopted by the Tribunal and the same may require the approval of the competent authority/government. However, in each case, the principles of natural justice are required to be observed.

Such tribunals therefore, basically perform quasi-judicial functions. The system of tribunals is hence, unlike that of the regularly constituted courts under the hierarchy of judicial system, which are not authorised to devise their own procedure for dealing with cases. Under certain statutes Tribunals have been authorised to exercise certain powers conferred under some provisions of the Code of Civil Procedure (hereinafter referred to as the 'CPC') or the Code of Criminal Procedure (hereinafter referred to as the 'Cr.P.C.'), but not under the whole Code, be it Civil or Criminal. However, in a regular court, the said Codes, in their entirety, civil as well as criminal, must be strictly adhered to. Therefore, from the above, it is evident that the terms 'court' and 'Tribunal' are not inter-changeable.

A Tribunal may not necessarily be a court, in spite of the fact that it may be presided over by a judicial officer, as other qualified persons may also possibly be appointed to perform such duty. One of the tests to determine whether a tribunal is a court or not, is to check whether the High Court has revisional jurisdiction so far as the judgments and orders passed by the Tribunal are concerned. Supervisory or revisional jurisdiction is considered to be a power vesting in any superior court or Tribunal, enabling it to satisfy itself as

regards the correctness of the orders of the inferior Tribunal. This is the basic difference between appellate and supervisory jurisdiction. Appellate jurisdiction confers a right upon the aggrieved person to complain in the prescribed manner, to a higher forum whereas, supervisory/revisional power has a different object and purpose altogether as it confers the right and responsibility upon the higher forum to keep the subordinate Tribunals within the limits of the law. It is for this reason that revisional power can be exercised by the competent authority/court *suo motu,* in order to see that subordinate Tribunals do not transgress the rules of law and are kept within the framework of powers conferred upon them. Such revisional powers have to be exercised sparingly, only as a discretion in order to prevent gross injustice and the same cannot be claimed, as a matter of right by any party. Even if the person heading the Tribunal is otherwise a "judicial officer", he may merely be *persona designata,* but not a court, despite the fact that he is expected to act in a quasi-judicial manner. In the generic sense, a court is also a Tribunal, however, courts are only such Tribunals as have been created by the concerned statute and belong to the judicial department of the State as opposed to the executive branch of the said State. The expression 'court' is

understood in the context of its normally accepted connotation, as an adjudicating body, which performs judicial functions of rendering definitive judgments having a sense of finality and authoritativeness to bind the parties litigating before it. Secondly, it should be in the course of exercise of the sovereign judicial power transferred to it by the State. Any Tribunal or authority therefore, that possesses these attributes, may be categorized as a court.

10. Tribunals have primarily been constituted to deal with cases under special laws and to hence provide for specialised adjudication alongside the courts. Therefore, a particular Act/set of Rules will determine whether the functions of a particular Tribunal are akin to those of the courts, which provide for the basic administration of justice. Where there is a lis between two contesting parties and a statutory authority is required to decide such dispute between them, such an authority may be called as a quasi-judicial authority, i.e., a situation where, (a) a statutory authority is empowered under a statute to do any act (b) the order of such authority would adversely affect the subject and (c) although there is no lis or two contending parties, and the contest is between the authority and the subject and (d) the statutory authority is required to act judicially under the statute, the

decision of the said authority is a quasi judicial decision. An authority may be described as a quasi-judicial authority when it possesses certain attributes or trappings of a 'court', but not all. In case certain powers under C.P.C. or Cr.P.C. have been conferred upon an authority, but it has not been entrusted with the judicial powers of the State, it cannot be held to be a court.

(See : **The Bharat Bank Ltd., Delhi v. The Employees of Bharat Bank & Anr.,** AIR 1950 SC 188; **Virindar Kumar Satyawadi v. The State of Punjab,** AIR 1956 SC 153; **Engineering Mazdoor Sabha & Anr. v. Hind Cycles Ltd.,** AIR 1963 SC 874; **Associated Cement Companies Ltd. v. P.N. Sharma & Anr.,** AIR 1965 SC 1595; **Ramrao & Anr. v. Narayan & Anr.,** AIR 1969 SC 724; **State of Himachal Pradesh & Ors. v. Raja Mahendra Pal & Anr.,** AIR 1999 SC 1786; **Keshab Narayan Banerjee v. State of Bihar & Ors.**, AIR 2000 SC 485; **Indian National Congress (I) v. Institute of Social Welfare & Ors.,** AIR 2002 SC 2158; **K. Shamrao & Ors. v. Assistant Charity Commissioner,** (2003) 3 SCC 563; **Trans Mediterranean Airways v. Universal Exports,** (2011)

10 SCC 316 at page 338; and **Namit Sharma v. Union of India,** JT 2012 (9) SC 166).

11. In **Harinagar Sugar Mills Ltd. v. Shyam Sundar Jhunjunwala & Ors.,** AIR 1961 SC 1669, Hidayatullah, J. (as His Lordship then was) made a distinction between a "court" and a "Tribunal" as is explained hereunder:

> *".....These Tribunals have the authority of law to pronounce upon valuable rights; they act in a judicial manner and even on evidence on oath,* ***but they are not part of the ordinary Courts of Civil Judicature.*** *They share the exercise of the judicial power of the State, but they are brought into existence to implement some administrative policy or to determine controversies arising out of some administrative law.* ***They are very similar to Courts, but are not Courts.*** *When the Constitution speaks of ' Courts' in Art. 136, 227 or 228 or in Arts. 233 to 237 or in the Lists, it contemplates Courts of Civil Judicature but not Tribunals other than such Courts. This is the reason for using both the expressions in Arts. 136 and 227. By "Courts" is meant Courts of Civil Judicature and by "Tribunals", those bodies of men* ***who are appointed to decide controversies arising under certain special laws.*** *Among the powers of the State is included the power to decide such controversies. This is undoubtedly one of the attributes of the State, and is aptly called the judicial power of the State. In the exercise of this power, a clear division is*

thus noticeable. Broadly speaking, certain special matters go before Tribunals, and the residue goes before the ordinary Courts of Civil Judicature."

(Emphasis added)

To explain the distinction between a Court and Tribunal, His Lordship further relied upon the judgment in the case of **Shell Co. of Australia v. Federal Commissioner of Taxation,** (1931) A.C. 275, wherein it has been observed as under:

".....In that connection it may be useful to enumerate some negative propositions on this subject: 1. A Tribunal is not necessarily a Court in this strict sense because it gives a final decision. 2. Nor because it hears witnesses on oath. 3. Nor because two or more contending parties appear before it between whom it has to decide. 4. Nor because it gives decisions which affect the rights of subjects. 5. Nor because there is an appeal to a Court. 6. Nor because it is a body to which a matter is referred by another body……"

12. The present case is also required to be examined in the context of Article 227 of the Constitution of India, with specific reference to the 42nd Constitutional Amendment Act 1976, where the expression 'court' stood by itself, and not in juxtaposition with the other expression used therein, namely, 'Tribunal'. The power of the High

Court of judicial superintendence over the Tribunals, under the amended Article 227 stood obliterated. By way of the amendment in the sub-article, the words, "and Tribunals" stood deleted and the words "subject to its appellate jurisdiction" have been substituted after the words, "all courts". In other words, this amendment purports to take away the High Court's power of superintendence over Tribunals. Moreover, the High Court's power has been restricted to have judicial superintendence only over judgments of inferior courts, i.e. judgments in cases where against the same, appeal or revision lies with the High Court. A question does arise as regards whether the expression 'courts' as it appears in the amended Article 227, is confined only to the regular civil or criminal courts that have been constituted under the hierarchy of courts and whether all Tribunals have in fact been excluded from the purview of the High Court's superintendence. Undoubtedly, all courts are Tribunals but all Tribunals are not courts.

13. The High Court's power of judicial superintendence, even under the amended provisions of Article 227 is applicable, provided that two conditions are fulfilled; firstly, such Tribunal, body or authority must perform judicial functions of rendering definitive judgments having finality, which bind the parties in respect of their

rights, in the exercise of the sovereign judicial power transferred to it by the State, and secondly such Tribunal, body or authority should be the subject to the High Court's appellate or revisional jurisdiction.

14. In **S.P. Sampath Kumar v. Union of India**, AIR 1987 SC 346, this Court held that, in the Central Administrative Tribunal (hereinafter referred to as the 'CAT'), the presence of a judicial member was in fact a requirement of fair procedure of law, and that the administrative Tribunal must be presided over in such a manner, so as to inspire confidence in the minds of the people, to the effect that it is highly competent and an expert body, with judicial approach and objectivity and, thus, this Court held that the persons who preside over the CAT, which is intended to supplant the High Court must have adequate legal training and experience.

This Court further observed that it was desirable that a high-powered committee, headed by a sitting Judge of the Supreme Court who has been nominated by the Chief Justice of India to be its Chairman, should select the persons who preside over the CAT, to ensure the selection of proper and competent people to the office of trust and help to build up its reputation and accountability. The

Tribunal should consist of one Judicial Member and one Administrative Member on any Bench.

15. In **L. Chandra Kumar v. Union of India & Ors.,** AIR 1997 SC 1125, this Court held that the power of judicial review of the High Court under Article 226 of the Constitution of India, being a basic feature of the Constitution cannot be excluded. In this context, the Court held:

> *"....It must not be forgotten that what is permissible to be supplanted by another equally effective and efficacious institutional mechanism is the High Courts and not the judicial review itself....."*

The Court further observed that the creation of this Tribunal is founded on the premise that, specialised bodies comprising of both, well trained administrative members and those with judicial experience, would by virtue of their specialised knowledge, be better equipped to dispense speedy and efficient justice. The contention that the said Tribunal should consist only of a judicial member was rejected, and it was held that such a direction would attack the primary grounds of the theory, pursuant to which such Tribunals were constituted.

16. In **V.K. Majotra & Ors. v. Union of India & Ors.,** AIR 2003 SC 3909, this Court reversed the judgment of the Allahabad High Court wherein, direction had been issued that the Vice-Chairman of the CAT could be only a retired Judge of the High Court, i.e., a Judicial Member and that such a post could not be held by a Member of the Administrative Service, observing that such a direction had put at naught/obliterated from the statute book, certain provisions without striking them down.

17-18. A Constitution Bench of this Court in **Statesman (Private) Ltd. v. H.R. Deb & Ors.,** AIR 1968 SC 1495, examined the provisions of Sections 7(3)(d) and g(1) of the Industrial Disputes Act, 1947, which contain the expression 'judicial office', and held that a person holds 'judicial office' if he is performing judicial functions. The scheme of Chapters V and VI of the Constitution deal with judicial office and judicial service. Judicial service means a separation of the judiciary from the executive in public services. The functions of the labour court are of great public importance and are quasi-judicial in nature, therefore, a man having experience of the

civil side of the law is more suitable to preside over it, as compared to a person working on the criminal side. Persons employed performing multifarious duties and, in addition, performing some judicial functions, may not truly fulfil the requirement of the statute. Judicial office thus means, a fixed position for the performance of duties, which are primarily judicial in nature.

19. In **Shri Kumar Padma Prasad v. Union of India & Ors.,** (1992) 2 SCC 428, this Court held that the expression, `judicial office' in the generic sense, may include a wide variety of offices which are connected with the administration of justice in one way or another. The holder of a judicial office under Article 217(2)(a), means a person who exercises **only judicial functions,** determines cases *inter-se* parties and renders decisions in purely judicial capacity. He must belong to the judicial services which is a class in itself, is free from executive control, and is disciplined to hold the dignity, integrity and independence of the judiciary. The Court held that `judicial office' means a subsisting office with a substantive position, which has an existence independence from its holder.

20. The instant case is required to be examined in light of the aforesaid settled legal propositions.

21. The present Writ Petition was filed on the premise, that the post of the President of the Gujarat Revenue Tribunal was covered by the expression `District Judge, as has been defined under Article 236 of the Constitution, the definition being an exclusive one, and thus, in view of the provisions of Article 233 of the Constitution, the appointment of the President of the Tribunal can be made only upon consultation with the High Court. In the alternative it was suggested, that the said Tribunal is a court and that the post of the President is one of judicial service, and in view of the provisions of Article 234 of the Constitution, the appointment of the President can be made only upon consultation with the High Court, as well as the Gujarat Public Services Commission. Even otherwise, having regard to the functions, powers and duties vested in the President, a person with legal qualification and long judicial experience should alone be appointed as President. Reference to the Bombay Legislative Assembly debate dated 18.4.1939, as expressed by the then Revenue Minister, revealed that the intention of the legislature had been that the post be filled by a retired High Court Judge, or a District Judge of

not less than ten years standing. Further, the Tribunal dealing with various cases under the Gujarat Agriculture and Land Ceiling Act, 1961, Gujarat Private Forest Act, Bombay Public Trust Act, Bombay Tenancy and Agricultural Lands Act, Bombay Jagirdari and Other Tenure Abolition Act, and with questions of title under Section 37(2) of the Bombay Land Revenue Court has to deal with large number of civil disputes between the citizens, as well as between the Government and citizens and, it is pertinent to note that at the relevant time of filing of this Writ Petition, 6500 cases were pending before the Tribunal. With these assertions, the prayers made by the writ petitioners were mainly to declare Sections 4 and 20 of the Act, 1958 as ultra-vires and unconstitutional on the grounds that they gave absolute unguided power to the State Government in relation to the appointment of the President, and further, to declare Rule 3(1) so far as it authorises the appointment of the Secretary, as ultra-vires and void, and also to quash the appointment of the respondent as the President.

The State Government contested the case, contending that the provisions of Article 236 of the Constitution have no application. Further, the Act as well as the Rules provide that a person having long

standing experience in the area of revenue law, and under Rule 3(2) an advocate who is qualified to be a Judge of the High Court, is eligible for the post of the President of the Tribunal. The Administrative Officer has long and vast experience in revenue matters, being posted as Special Divisional Magistrate, Collector, Deputy Secretary and Secretary dealing with laws pertaining to revenue and was hence, competent enough to deal with any subject assigned under the said Act and the Rules. Thus, the Secretary to the Government of Gujarat was competent/eligible to be selected to the post of the President of the Tribunal.

22. The High Court examined the functions and powers of the Tribunal. Section 117KK of the Bombay Land Revenue Code provides for reference of certain matters to the Tribunal for its opinion. Section 117L provides that the opinion of the Tribunal, along with settlement report, be laid on the table of the State Legislature and a copy thereof, be sent to every Member and the said report is liable to be discussed by way of a resolution moved in the State Legislature .

23. The Tribunal has also been conferred with the power to adjudicate disputes, which may arise from the provisions of the

Bombay Tenancy and Agricultural Lands Act, 1948. Section 75(1) of the said Act provides that an appeal against the award of the Collector, made under Section 66 may be filed before the Tribunal. Sub-section (2) of Section 75, provides that in deciding appeals preferred under sub-section (1), the Tribunal shall exercise all the powers which a court has and subject to the regulations framed by the Tribunal under the Act 1957, follow the same procedure **which a court follows in deciding appeals from the decree or order of an original court under the CPC**. Section 76(1) of the Act provides that notwithstanding anything contained in the Act, 1957, an application for revision may be made to the Tribunal against any order of the Collector, except an order under Section 32P, or an order in appeal against an order under sub-section (4) of Section 32G. Section 80 provides that all inquiries and proceedings before the Tribunal **shall be deemed to be judicial proceedings** within the meaning of Sections 193, 219 and 228 of the IPC. Section 85 deals with bar of jurisdiction. It further provides that no Civil Court shall have the jurisdiction to settle, decide or deal with, any question which is by or under this Act, required to be settled, decided or dealt with, by the Tribunal in appeal or revision. It is also provided in sub-section (2) of

Section 85 that no order of the Tribunal shall be questioned in any civil or criminal court.

24. The Gujarat Agricultural Lands Ceiling Act, 1960, was enacted to fix a ceiling on holdings of agricultural lands, and to provide for the acquisition and disposal of surplus agricultural lands. Chapter VI of the said Act deals with procedure, appeals and revision. Section 36 provides that any person aggrieved by an award made by the Tribunal under Section 24, or by the Collector under Section 28, may appeal to the Tribunal. Sub-section (3) of Section 36 provides that in deciding such appeal the Tribunal **shall exercise all the powers which a Court has and follow the same procedure which the Court follows in deciding appeals from the decree or order of the original court under the CPC**. Section 38 provides that notwithstanding anything contained in the Act, 1957, an application for revision may be made to the Tribunal constituted under the said Act, against any order passed by the Collector. Section 47 deals with bar of jurisdiction, as it provides that no civil court shall have the jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Tribunal. Section 48 provides that all inquiries and proceedings before the Tribunal **shall be deemed to**

be 'judicial proceedings', within the meaning of Sections 193, 219 and 228 of the IPC.

25. The Bombay Public Trust Act, l950, has been enacted to regulate, and to make better provision for the administration of public religious and charitable trusts in the State of Bombay, which also extends to the State of Gujarat. 1n exercise of powers conferred under Section 84 of the said Act, the Government of Bombay has framed the Bombay Public Trusts (Gujarat) Rules, 1961. Section 51 of the Act provides for consent of the Charity Commissioner for the institution of a suit. Sub-section (2) of Section 51 says that if the Charity Commissioner refuses his consent for the institution of a suit under sub-section (1) of Section 51, the concerned person may file an appeal to the Tribunal. References made to the Tribunal have been dealt with in Chapter Xl of the Act. Section 71 deals with appeals to the Tribunal, and provides that an appeal to the Tribunal under Sub-section (2) of Section 51, against the decision of the Charity Commissioner, refusing consent for the institution of a suit, shall be filed within 60 days from the date of such decision, in such form and shall be accompanied by such fee, as may be prescribed, and that the decision of the Tribunal shall be final and conclusive. Section 74

provides that all inquiries and appeals shall be deemed to be **judicial proceedings** within the meaning of Sections 193, 219 and 228 of the IPC. Section 76 provides that, save, in so far as they may be inconsistent with anything contained in the Act, **the provisions of the CPC will apply to all proceedings before the court under this Act.** Section 80 deals with bar of jurisdiction of civil courts, as it provides that no civil court can deal with any question which is by, or under the Act, to be decided or dealt with, by any officer or authority under the Act in respect of which, the decision or order of such officer or authority has been made final and conclusive.

26. Section 13(1) of the Act, 1957, provides that in exercising the jurisdiction conferred upon the Tribunal, the Tribunal shall have all the powers of a civil court as enumerated therein and **shall be deemed to be a civil court** for the purposes of Sections 195, 480 and 482 of the Cr.P.C., and that its proceedings shall be deemed to be judicial proceedings, within the meaning of Sections 193, 219 and 228 of the IPC.

27. The aforesaid observations made by the High Court, taking into consideration various statutes dealing with not only the revenue

matters, but also covering other subjects, make it crystal clear that the Tribunal does not deal only with revenue matters provided under the Schedule I, but has also been conferred appellate/revisional powers under various other statutes. Most of those statutes provide that the Tribunal, while dealing with appeals, references, revisions, would act giving strict adherence to the procedure prescribed in the CPC, for deciding a matter as followed by the Civil Court and certain powers have also been conferred upon it, as provided in the Cr.P.C. and IPC. Thus, we do not have any hesitation in concurring with the finding recorded by the High Court that the Tribunal is akin to a court and performs similar functions.

During the course of arguments before the High Court, learned Additional Advocate General had conceded that the judgments and orders passed by the Tribunal can be challenged under Article 227 of the Constitution. Thus, it has been conceded before the High Court that the High Court has supervisory control over the Tribunal, to the extent that it can revise and correct the judgments and orders passed by it. In such a fact-situation, the consultation/concurrence of the High Court, in the matter of making the appointment of the President of the Tribunal is required.

28. The object of consultation is to render the consultation meaningful to serve the intended purpose. It requires the meeting of minds between the parties involved in the process of consultation on the basis of material facts and points, to evolve a correct or at least satisfactory solution. If the power can be exercised only after consultation, consultation must be conscious, effective, meaningful and purposeful. It means that the party must disclose all the facts to other party for due deliberation. The consultee must express his opinion after full consideration of the matter upon the relevant facts and quintessence. (Vide: **UOI v. Sankalchand Himatlal Sheth,** AIR 1977 SC 2328; **Subhash Sharma & Ors. v. UOI,** AIR 1991 SC 631; **Justice K.P Mohapatra v. Sri Ram Chandra Nayak and Ors.,** (2002) 8 SCC 1; **Gauhati High Court & Anr. v. Kuladhar Phukan & Anr.,** AIR 2002 SC 1589; **High Court of Judicature for Rajasthan v. P.P Singh,** AIR 2003 SC 1029; **UOI v. Kali Dass Batish,** AIR 2006 SC 789; and **Andhra Bank v. Andhra Bank Officers,** AIR 2008 SC 2936).

29. Thus, it is evident from the above that the procedure to be observed under Article 234 of the Constitution goes to the extent of the true meaning of consultative process and not an empty formality.

30. In view of the above, we do not see any cogent reason to take a view contrary to the view taken by the High Court. The appeal lacks merit and is, therefore, accordingly dismissed.

……..……..J.
(Dr. B.S. CHAUHAN)

……..……..J.
(FAKKIR MOHAMED IBRAHIM KALIFULLA)

New Delhi,
October 16, 2012