

ITEM NO.2

COURT NO.2

SECTION PIL

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil)

No(s). 267/2012

MADRAS BAR ASSOCIATION

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.
(with office report)
(For Final Disposal)

Respondent(s)

WITH

SLP(C) No. 35248/2012
(With appln.(s) for substitution and Interim Relief and Office Report)

W.P.(C) No. 1072/2013
(With appln.(s) for stay and appln.(s) for amendment of the petition and appln.(s) for directions and Office Report)

SLP(C) No. 7219/2014
(With appln.(s) for directions and appln.(s) for exemption from filing c/c and appln.(s) for directions and appln.(s) for exemption from filing c/c and Interim Relief)

Date : 18/02/2015 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Petitioner(s)

MR. Arvind P.Datar, Sr. Adv.
MR. Dhananjay Baijal, Adv.
MS. Akansha, Adv.

Signature Not Verified

MR. N.Sai, Adv.

Digitally signed by

MR. Nikhil Nayyar, Adv.

Shashi Sareen

Date: 2015.02.19

07:33:00 IST

Reason:

MR. Garvesh Kabra, Adv.

MR. B. V. Balaram Das, Adv.

2

For Respondent(s)

MR. Mukul Rohtagi, AG,
MS. Madhvi Diwan, Adv.
MR. Ashok Srivastava, adv.
MS. V.Mohana, Adv.
MS. Binu Tamta, Adv.
MS. Rekha Pandey, Adv.
MS. Sushma Suri, Adv.

MR. Sanjay Kapur, Adv.
MR. Anmol Chandan, Adv.

Ms. Priyanka Das, Adv.

Ms. Aishwarya Bhati, Adv.
Mr. Gopal, Adv.
Mr. Anshuman, Adv.
MS. Neha Meena, Adv.
MS. Madhurina Ghosh, Adv.
Mr. Hemendra Sharma, Adv.

Mr. Sonal Jain, Adv.
Mr. Rajiv M. Brahma, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Constitutional validity of Parts I-B and I-C
of The Companies Act 1956 inserted by Companies Second
Amendment Act of 2002 was examined by a Constitution
Bench in Union of India Vs. R. Gandhi, President, Madras
Bar Association 2010 (11) SCC 1 The operative part of
the order passed in the said case was to the following
effect:

"We, therefore dispose of these appeals,
partly allowing them, as follows:

i) We uphold the decision of the High
Court that the creation of the National Company
Law Tribunal and the National Company Law
Appellate Tribunal and vesting in them, the
powers and jurisdiction exercised by the High
Court in regard to company law matters, are not
unconstitutional.

3

ii) We declare that Parts I-B and I-C of the Act
as presently structured, are unconstitutional
for the reasons stated in the preceding
paragraph. However, Parts I-B and I-C of the
Act, may be made operational by making suitable
amendments, as indicated above, in addition to
what the Union Government has already agreed to
in pursuance of the impugned order of the High
Court."

The Parliament has subsequent to the above judgment
enacted The Companies Act, 2013 by which Companies Act,
1956 has been repealed. Besides Chapter XXVII of the new
Act envisages establishment of National Company Law
Tribunal and National Company Law Appellate Tribunal sought
in the manner and on the terms set out in the said chapter.
Constitutional validity of Chapter XXVII comprising
Sections 407 to 434 have been assailed by the

petitioner-association in Writ Petition (C)

No. 1072 of

2013 as ammended.

In conencted Writ Petition (C) No. 267

of 2012 the petitioner has prayed for

a mandamus directing

implemентаion of the directions issued by the Cosntitution

Bench in R.Gandhi's

case supra.

Having heard Mr. Arvind P.Datar, learned senior

counsel and Mr. Mukul Rohtagi, learend A.G. at some length

we are of the view that substantial questions of law

involving interpretation of the provisions of the

constitution falls for determination.

That apart since an

analogous challenge in the earlier round

of litigation

4

had been examined by a Constitution Bench of this Court, we

see no reason why the present writ petitions

should also

not be referred to a larger Bench for an authoratative

pronouncement on the questions that have been raised.

We

accordingly refer these writ petitions to be placed before

a Constitution Bench for final hearing and disposal.

Additional paper books shall be filed by the petitioners

within two weeks. The papers shall be placed before

Hon'ble the Chief Justice of India for constituting a

larger Bench.

SLP(C) Nos. 7219 of 2014 and 35248 of 2012:

De-tagged. To be listed separately after four

weeks.

(Shashi Sareen)
Court Master

(Renu Diwan)
Court Master