

THE TRIBUNALS, APPELLATE TRIBUNALS AND OTHER AUTHORITIES (CONDITIONS OF SERVICE) BILL, 2014

Memorandum Submitted by CUTS

1. Background

In the wake of providing uniform conditions of service across Tribunals and other relevant authorities, the Tribunals, Appellate Tribunals and Other Authorities (Conditions of Service) Bill, 2014, has been introduced in the Rajya Sabha, and has been provided in the public domain for comments.¹ This is a welcome move on the part of the government and should also be used for bringing in harmony in the appointment of Chairmen and Members of the regulatory authorities.

In response to the invitation for comments on the captioned Bill, Consumer Unity & Trust Society (CUTS) International, Jaipur, hereby submits its Memorandum on the Tribunals, Appellate Tribunals and Other Authorities (Conditions of Service) Bill, 2014, hereinafter referred to as the Bill, 2014.

2. Introduction

The issues pertaining to the variance in terms of conditions of Members and Chairmen of different Tribunals and Appellate Tribunals has caught much attention of the Government. The issue was brought before the Supreme Court of India in a writ petition (*Rajiv Garg v.*

¹ The invitation for comments may be referred to in the mentioned link - http://164.100.47.5/newcommittee/press_release/press/Committee%20on%20Personnel,%20PublicGrievances,%20Law%20and%20Justice/Tribunals.pdf

Union of India),² where the Court decided that the matter needs pertinent attention and needs to be taken at the highest level.

An incidental issue was raised in a recent Public Interest Litigation (PIL) in the New Delhi High Court, filed by the Non-Governmental Organisation (NGO), Common Cause, where Mr. Prashant Bhushan, appearing on behalf of the NGO argued against former judges of the Supreme Court and High Court taking arbitration cases while being Members of tribunals and appellate tribunals. The Court set aside the PIL on the ground that the bone of contention in the given matter is covered in the Tribunals, Appellate Tribunals and Other Authorities (Conditions of Service) Bill, 2014, which is pending before the Rajya Sabha.

The Tribunals Bill was submitted in the Rajya Sabha on 11th February, 2014 by the then Minister of Law and Justice, Mr. Kapil Sibal. The Bill seeks to provide even conditions of service, with regard to tenure, retirement age, allowance and pension, leaves and prohibitions of Members and Chairmen of the Tribunals, Appellate Tribunals and other bodies performing quasi-judicial functions.

The Bill extends to include Members of Tribunals, Appellate Tribunals, Board, Commissions and Authorities under its ambit. The same have been enlisted under Schedule I of the Bill. Some of the bodies under the Bill are; the Competition Appellate Tribunal, the Debts Recovery Appellate Tribunal, the Press Council of India and the National Highways Tribunals.

3. Concerns raised by CUTS

a. Explanation to the Bill

² Civil Writ Petition No. 120/ 2012

The statement of the Objective and Reasons of the Bill, submitted by Mr. Kapil Sibal, with the introduction to the Bill lacks comprehensive explanation to the Bill. Although the statement underscores the objectives of the Bill, it fails to provide substantial reasons for the same. The rationale behind outlining the scope of the Bill has not been elucidated. While the Bill is backed by sound objectives, for its lack of explanation, one may question the reason for the limited scope of conditions sketched in the Bill.

b. Enforcement of the Act

Section 1(2) of the Bill provides that for coming into force, “different dates may be appointed for different provisions of this Act” by the Central Government.

It is argued that the objective of the Bill, as mentioned in the Statement of Objective and Reasons, is to essentially provide the same conditions of service to all the Members and Chairmen of the enlisted bodies. To ensure that the objective of the Bill is met as it comes into force and that unnecessary delays on the part of the Government do not hinder the objective of the Bill, it is necessary that the whole Bill comes into existence at the same time. If different provisions come into force at different times, in spite of having the Act for uniform services, varied conditions of services will remain across the target Members and Chairmen.

Furthermore, there have been instances where the relevant provisions of a Bill were not timely enforced because of lack of prompt action from the Government. For instance, various provisions of the Competition Act, 2002, were enforced at different intervals. Section 5 and Section 6, pertaining to “Regulations and Combinations”, only came into force in 2011.

c. Provision for ‘Removal of Members and Chairman’

While the Bill prescribes the tenure and age for retirement, it does not provide for a uniform process for removal of the Members and Chairmen under its ambit.

To ensure inclusive conditions of service, it is essential to insert the provision on the process of removal of the Members and Chairmen. Here, the provision for ‘Removal of Members and Chairmen’ must mention the reasons based on which one may be removed from office and prescribe the process of removal.

d. Provision for ‘Qualifications for appointment’

The Bill must take this opportunity to prescribe the benchmark of the prerequisites attached to appointment of Members and Chairmen.

To ensure appointment of diligent and erudite Members and Chairmen, the Bill must propose certain benchmarks as ‘Qualifications for appointment’. Qualification of appointment is incidental to conditions of service, the scope of this Bill. The same may be provided as an overarching principle, where the Acts applicable under the Bill may use the principle as a yardstick to enlist qualifications. The same is likely to ensure prudent appointments which shall ultimately stir the efficiency of the Tribunal/such body in question.

e. Section 5: Chairman and Members deemed to retire from service

Section 5 provides, “A person who, immediately before the date of assuming office as the Chairman or, as the case may be, a Member, was in service of the Government, shall be deemed to have retired from service on the date on which he enters upon his office as such Chairman or Member”.

The given section makes provision for immediate absorption of Government officers, as member or Chairman of a Tribunal and other bodies under question. It is suggested that to

ensure impartiality and biasness of any kind towards the body in question and diligent neutral functioning, a cooling off clause must be inserted in the said section.

The cooling off clause shall commend a gap of two years before a government officer or Judge is absorbed as Member or Chairman of a Tribunal or such body under the Bill. Such a proposal has also been mooted by the former Chief Justice of India, Shri R. M. Lodha soon after he demitted the high office recently. Under the UN Convention on Corruption a similar advice is provided to Member States, and India is a signatory to the same. It has also been ratified by India.

f. Section 7: Prohibition of acting as arbitrator

Section 7 mentions, “No person while holding office as the Chairman or Member shall act as an arbitrator in any matter....”.

In furtherance of the objective of the Bill, it is important to not only exclude Members and Chairmen from matters regarding arbitration, but also to exclude them from any kind of private practice before any tribunals. Additionally, the same will enable Members and Chairmen to focus better on the duties endowed on them under the Act.

CUTS hereby suggests amendment of the given section as: “No person while holding office as the Chairman or Member shall act as an arbitrator in any matter or appear, act or plead before any Tribunal, Appellate Tribunal, Board, Commission or Authority.”

g. Provision for Accountability

As the Bill sets to prescribe the conditions of service, it should also provide for uniform method of review and accountability. Review and accountability shall be made a part of the conditions of service to trigger uniform process of periodic evaluation across pertinent

Tribunals and other bodies. The provision is important to encapsulate efficiency and responsibility amongst the relevant stakeholders.

h. Section 12: Declaration of financial and other interests

Section 12 maintains: “The Chairman and Member shall, before entering upon his office, declare his assets and liabilities and financial and other interests.”

To ensure transparency and accountability, the disclosure of financial assets and liabilities by the Members and Chairmen shall be made at regular intervals.

CUTS hereby suggests amendment of the given section as: “The Chairman and Member shall, before entering upon his office and at such intervals as prescribed, declare his assets and liabilities and financial and other interests.”

i. Review clause

To ensure that the Bill stands dynamic and in sync with the contemporary needs, a review clause should be inserted in the Bill to mandate periodic assessment of the Act in every five years.

3. Conclusion

The Tribunals, Appellate Tribunals and Other Authorities (Conditions of Service) Bill, 2014, takes cognizance of the need for providing uniform conditions of service of the relevant Members and Chairmen. However, the Bill misses the opportunity of drafting an inclusive Bill on the conditions of service. The drafters could have taken the objective of the Bill to a deeper level to include the role, scope and powers of the Members and Chairmen. As it is impossible to provide uniform role, scope and powers, the same could have been provided as

an overarching benchmark for the relevant bodies. Lastly, the Tribunals and Appellate Tribunals have been unable to achieve their main objective of providing speedy trials. The Bill could have expanded its mandate to include strong provisions to ensure the efficiency of such bodies.

Sd/-

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