

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

W.P. (C) No. of 2020

PETITIONER:

Shamem M.S., Advocate,

RESPONDENTS:-

1. Union of India represented by the Secretary to Government, Ministry of Home, Government of India, Jai Singh Marg., Near Jantar Mantar, New Delhi – 110 001.
2. The Secretary to Government, Ministry of Law, Justice and Company Affairs, Government of India, Shastri Bhawan, Rajendra Prasad Road, New Delhi – 110 001.
3. The Secretary to Government, Ministry of Personnel, Public Grievances and Pensions, Government of India, 5th Floor, Sardar Patel Bhavan, New Delhi – 110 001.
4. The Hon'ble Chief Justice, High Court of Kerala, High Court Buildings, Ernakulam, Kochi – 682 031.
5. State of Kerala represented by the Chief Secretary, Government of Kerala, Thiruvananthapuram – 695 001.
6. The Secretary to Hon'ble Governor of Kerala, Raj Bhavan, Raj Bhavan Road, Thiruvananthapuram – 695 033.

MEMORANDUM OF WRIT PETITION FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

A. The address for service of the petitioner is that of his Counsel Sri. B. N. Shiv Shanker, Advocate, Bal – n – Shanker, K. S. N. Menon Road, Kochi - 16.

B. The address for service of the respondents is as shown above.

STATEMENT OF FACTS

1. This writ petition raises substantial questions of law arising under the Constitution of India and in particular in relation to maintenance of an independent judiciary. The apex court has declared in numerous cases that independence of the judiciary is one of the basic structures of the Constitution of India. The same cannot be permitted to be

bartered away or tinkered with any manner whatever. The legal questions raised in the writ petition are supported primarily by the judgement of the Constitution Bench of the Supreme Court in what is known as **NJAC case** and the **Madras Bar Association Cases**.

2. The petitioner is a legal practitioner in the High Court of Kerala. As such, he is enjoined if not duty bound to maintain the predominant position occupied by the judiciary in the country and the independence of judiciary not to be interfered with either by the executive or otherwise. The petitioner is moving this Honorable Court in the best interests of maintaining the purity, prestige and authority of judicial institutions and to prevent the executive in any manner encroaching upon those powers. The petitioner feels it is his duty to invite an authoritative pronouncement from this Hon'ble court on the issue of relation between the judiciary and the executive. The petitioner had earlier filed a public interest litigation in regard to the Citizenship Amendment Act as W.P. © No. 1185 of 2020. Apart from that he has not filed any other petitions.

3. Article 323A of the Constitution of the India was inserted by the Constitution Amendment Act, 1976 with effect from 3rd January, 1977. That Article provides for adjudication or trial by Administrative Tribunals of disputes with respect to recruitment and conditions of service of persons appointed to public service etc. Under Article 323 A (d) of the Constitution of India, the jurisdiction of all High Courts except that of the Supreme Court with respect to such disputes has been excluded and also providing for transfer to such tribunals any cases pending before courts giving the Administrative tribunal the same power that the High Court had previously enjoyed. In **Sampath Kumar v. Union of India** reported in (1987) 1 SCC 124, the apex court held that the jurisdiction of the High Court in regard to such matters is taken away and vested exclusively in the tribunals. Tribunals thus are clothed with the power

of exercise of jurisdiction even under Articles 226 and 227 of the Constitution of India in relation to what is generally known as service matters. The tribunals are empowered even to declare a law unconstitutional. Thus the Tribunals both Central and State established under Article 323A of the Constitution of India combined with the Administrative Tribunals Act, 1985 are substitutes for all purposes for the High courts in service matters. Necessarily therefore those Tribunals are judicial forums adjudging disputes between citizens and citizens and the State and citizens. The Tribunals therefore, are clothed with enough and intense judicial powers. The Tribunals thereby are part of the judiciary.

4. Choice for appointments to the judiciary under the Constitution of India vests exclusively within the domain of judiciary. Under Article 217 of the Constitution of India, Judges of the High Court are appointed by the President of India, after consultation with the Chief Justice of India and Chief Justices of High Courts, among others. This is because, in respect of the appointment of Judges and those manning the Tribunals, the predominance of the judiciary in such appointments has to be maintained to ensure complete independence of judiciary. The primary position occupied by the judiciary in this regard was declared initially in ***S. P. Gupta v. Union of India***, (AIR 1982 SC 148). The same principle was followed later in what is known as 2nd Judges appointment case, ***the Supreme Court Advocate-on-Record Association v. Union of India*** (1993) 4 SCC 441. The same principle is reiterated in ***Kannadasan v. Ajay Khose*** (2009) 7 SCC 1 and still later in ***Shanti Bushan v. Supreme Court of India***, (2018) 8 SCC 396.

5. In the ***Madras Bar Association case*** (2014) 10 SCC 1 dealing with the constitutionality of the National Tax Tribunal, the Supreme Court emphasized that the separation of powers, the rule of law and judicial review constitute among others the basic structure of the Constitution of India.

6. The court emphasized further that the independence of judiciary cannot be permitted to be destroyed by indirect methods. The court took the view that Labour Court Judges and Judges of the Industrial Tribunal etc. have to be held to be members of judicial services. It also made pointed reference to Article 50 of the Constitution of India reading as follows:-

“ 50. Separation of judiciary from executive.—The State shall take steps to separate the judiciary from the executive in the public services of the State.”

The court further held quoting from a report that;

*“ A Tribunal which substitutes the High Court as an alternative institutional mechanism for judicial review must be no less efficacious than the High Court. * Such a tribunal must inspire confidence and public esteem that it is a highly competent and expert mechanism with judicial approach and objectivity. What is needed in a tribunal, which is intended to supplant the High Court, is legal training and experience, and judicial acumen, equipment and approach.* When such a tribunal is composed of personnel drawn from the judiciary as well as from services or from amongst experts in the field, any weightage in favour of the service members or expert members and value-discounting the judicial members would render the tribunal less effective and efficacious than the High Court. The Act setting up such a tribunal would itself have to be declared as void under such circumstances. The same would not at all be conducive to judicial independence and may even tend, directly or indirectly, to influence their decision-making process, especially when the Government is a litigant in most of the cases coming before such tribunal. ”*

Accordingly the apex court took the very significant view that appointment to Tribunals, which are substitutes to the High Courts should be treated as appointments to the judiciary. Explaining the basic structure theory as regards appointment of Judges, this is what the Supreme Court said:-

“ It would appear that our Constitution had devised a wholesome and effective mechanism for the appointment of Judges which strikes a just balance between the judicial and executive powers so that while the final appointment vests in the highest authority of the executive, the power is subject to a mandatory consultative process which by convention is entitled to great weight by the President. Apart from these safety valves, checks and balances at every stage, where the power of the President is abused or misused or violates any of the constitutional safeguards it is always subject to judicial review. ”

The apex court ultimately held that the appointment to the posts of Chairman, Vice-chairman and other members is akin to that of Judges of the High Court. The court summarized its conclusion at page No. 173. Some of the relevant observations are quoted below:

“....All courts are tribunals. Any tribunal to which any existing jurisdiction of courts is transferred should also be a judicial tribunal. This means that such tribunal should have as members, persons of a rank, capacity and status as nearly as possible equal to the rank, status and capacity of the court which was till then dealing with such matters and the members of the tribunal should have the independence and security of tenure associated with judicial tribunals.”

It is therefore, clear that, the apex court had taken the view that in the appointment to the Tribunals also predominance to the judiciary should be ensured and not to surrender it to the executive. It is therefore, axiomatic that the selection of the Chairman or other members of Tribunals Central or State constituted under Article 323A of the

Constitution of India shall be made not by the executive but by the judiciary, since power of judicial review is given to the personal occupying the tribunal. This is what the Supreme Court said in page 187 of **(2014) 10 SCC:-**

"..... The stature of the members, who would constitute the tribunal, would depend on the jurisdiction which was being transferred to a tribunal. In other words, if the jurisdiction of the High Court was transferred to a tribunal, the stature of the members of the newly constituted tribunal, should be possessed of qualifications akin to the Judges of the High Court."

From the above observations of the Supreme Court, it is clear that like the provision contained in Article 217 of the Constitution of India, the selection for appointment to tribunals shall also be exercised by the judiciary being in the predominant position to maintain judicial independence and that power of appointment shall not be surrendered to the executive in any manner as it will amount to compromising the supremacy of the judiciary to choose those who are manning judicial service in tribunals.

7. The petitioner respectfully submits that in the matter of appointment of Chairman or members of the Central or State Administrative Tribunals, there shall be no role to the executive at all and the judiciary should have predominance in choosing those exercising judicial powers, considering that the most important litigant before them is the State.

The aforesaid principle is reiterated in what is known as **NJAC case** i.e. **Supreme Court Advocate-on-Record Association and Another v. Union of India** (2016) 5 SCC 1. Following are the excerpts from the judgement relating to the issue:-

“ The expectation from the judiciary to safeguard the rights of the citizens of this country can only be ensured by keeping it absolutely insulated and independent from the other organs of governance. In our considered view, the present status of the evolution of the “civil society” in India does not augur the participation of the political-executive establishment in the selection and appointment of Judges to the higher judiciary, or in the matter of transfer of Chief Justices and Judges of one High Court to another. ”

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“ We are also of the considered view that the power of veto vested in any two Members of NJAC would adversely impact primacy of the judiciary in the matter of selection and appointment of Judges to the higher judiciary (as also their transfer). Details in this behalf have already been recorded in Part VIII (refer to paras 330 - 336) hereinabove. Section 6(6) of the NJAC Act has the same connotation as the second proviso under Section 5(2), and Section 6(6) of the NJAC Act would therefore meet the same fate as Section 5(2). For the reasons recorded hereinabove, we are satisfied that Sections 5(2) and 6(6) of the NJAC Act also breach the “basic structure” of the Constitution with reference to the “independence of the judiciary” and the “separation of powers”. Sections 5(2) and 6(6), in our considered view, are therefore, also liable to be declared as ultra vires the Constitution. ”

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xx	xx	xx

“ We have already concluded earlier that the participation of the Union Minister in charge of Law and Justice as a Member of NJAC as contemplated under Article 124-A(1) in the matter of appointment of Judges to the higher judiciary would breach the concepts of “separation of powers” and the “independence of the judiciary”, which are both undisputedly components of the “basic structure” of the Constitution of India. For exactly the same reasons, we are of the view that Section 8 of the NJAC Act which provides that the Secretary to the Government of India in the Department of Justice would be the Convenor of NJAC, is

not sustainable in law. In a body like NJAC, the administrative functioning cannot be under executive or legislative control. "

The Supreme Court therefore, in unmistakeable terms has declared that the junction of an important executive functionary in the appointment of Judges will violate the basic structure of the Constitution of India. The presence of the Law Minister in NJAC was sufficient to persuade the Supreme Court to strike down Article 124-A of the Constitution of India introduced by way of amendment to provide the NJAC as an alternative to the collegium. The presence of Law Minister amounts to surrendering predominance enjoyed in the matter of appointment to the superior courts to the executive. Entrusting the entire selection to the executive is liable to be declared as a surrender to the political executive. In this context the provision relating to appointment of Chairman, Vice-Chairman and other members of Central Administrative Tribunals or Administrative Tribunals for a State may be cited. Section 6 of the Administrative Tribunals Act, 1985 to the extent it is relevant in the matter of appointment of personals to the Tribunal are as follows:

" 6. Qualifications for appointment as Chairman, Vice-Chairman and other members:-

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xx	xx	xx

(3) The Chairman and every other Member of the Central Administrative Tribunal shall be appointed after consultation with the Chief Justice of India by the President.

(4) Subject to the provision of sub-section (3), the Chairman and every other Member of an Administrative Tribunal for a State shall be appointed by the President after consultation with the Governor of the concerned State."

It may be seen from the above provision while appointment to the Central Administrative Tribunal has to be made like that of Judges of High Courts after the consultation with the Hon'ble Chief Justices, in the

State Administrative Tribunal, the judiciary is altogether excluded. The appointment is in consultation with the Governor, who is the executive head of the State. The Governor can act only on the aid and advice of the Council of Ministers except in two or three areas where the Governor can exercise power in discretion. This means that the "consultation with the Governor" means the consultation with the executive, which in turn means the choice of the personnel of the State Administrative Tribunals vests exclusively with the Council of Ministers completely composed of political activists belonging to political parties. The Council of Ministers is placed on an advantageous position to choose Presiding Officers of the State Administrative Tribunals, while the majority of the litigants before the State Administrative Tribunals are Government employees. The State is a necessary party in all the litigations in the State Administrative Tribunal. Strangely the State itself determines the Judges. Such appointments therefore, are against all principles of fairness, justice and fair play. It is settled principle that nobody shall be Judge of his own cause. In the cases before the State Administrative Tribunals, State is a dominant party. In that view, the observations in **Shamsher Singh v. State of Punjab**, of the apex court is pertinent:

" Under the cabinet system of Government as embodied in our Constitution the Governor is the constitutional or formal head of the State and he exercises all his powers and functions conferred on him by or under the Constitution on the aid and advice of his council of Ministers save in spheres where the Governor is required by or under the constitution to exercise his functions in his discretion.

The court further observed;

"In all cases in which the President or the Governor exercises his functions conferred on him by or under the Constitution with the aid and advice of his Council of Ministers he does so by making rule-. for

convenient transaction of the business of the Government of India or the Government of the State respectively or by allocation among his Ministers of the said business, in accordance with Article 77 (3) and 166(3) respectively. Wherever the Constitution requires the satisfaction of Presidents the Governor for the exercise of any power or function by the President or the Governor, as the case may be, as for example in Articles 123, 213, 311(2) proviso (c), 317, 352(1), 356 and 360 the satisfaction required by the Constitution is not the Personal satisfaction of the President or of the Governor but is the satisfaction of the President or of the Governor in the Constitutional sense under the Cabinet system of Government. The reasons are these. It is the satisfaction of the, Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions.”

8. The choice of selection of Chairman and members of the State Administrative Tribunals, has been given completely to the executive namely the Council of Ministers. The decision of the Council of Ministers is made through the Governor and forwarded to the President of India. This undue advantage to the State is unlike that of appointments to the Central Administrative Tribunal. It is difficult to understand the distinction made in a Central statute in the process of appointment of members of State Tribunal and Central Tribunal, both of them discharging constitutional obligations in relation to Government servants. There cannot be a more blatant fallacy, discrimination and total surrender to executive for the choice of judicial appointments, when the members of the Tribunal are empowered even to examine the correctness of a statute. Therefore, it is submitted that Section 6(4) of the Administrative Tribunals Act providing the method of appointment of Chairman and members of State Administrative Tribunal is altogether void, inoperative and unconstitutional. The petitioner respectfully

points out this referring to **NJAC case** in which Article 124A of the Constitution of India was invalidated for the sole reason that Minister for Law can sit in the forum for the selection of a Judge. If that is so and if it encroaches upon the basic structure of the Constitution of India, it is wholly understandable how the power of appointment of judicial members in a Tribunal exercising constitutional powers can be surrendered to the executive. It is submitted that on the principle enunciated by the apex court in **NJAC case** and the **Madras Bar Association Cases**, Section 6(4) of the Administrative Tribunals Act, 1985 is liable to be declared bad in law as it violates the basic structure of the Constitution of India and thus void, inoperative and unconstitutional.

9. The petitioner respectfully begs to point that it is only after the authoritative declaration of law in the **Madras Bar Association Cases** and the **NJAC case** the aforesaid principle is accepted by the courts. The petitioner could approach this Hon'ble Court only thereafter. At any rate the unconstitutionality of any enactment can be taken up at any time as a permanent facet of defect in the statute. There is therefore, no delay in moving this Hon'ble Court. The petitioner has necessary locus standi as what is sought to be invalidated is a defective system destructive of the basic structure of the Constitution of India and also the supremacy and independence of judiciary.

The petitioner in the circumstances, is left with no other remedy than to invoke the extra ordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India and to pray for reliefs on the following mainly among other

G r o u n d s.

A. The petitioner respectfully begs to submit that Section 6 (4) of the Administrative Tribunals Act 13 of 1985 is liable to be declared wholly void, inoperative and unconstitutional in that the supremacy of the judiciary mandatorily required to be protected in making appointments to judicial posts, is encroached upon by the executive entirely arrogating to itself the power of appointment eliminating altogether the judiciary. While the Chairman and members of the Central Administrative Tribunals shall be appointed after consultation with the Chief Justice of India, the Chairman and every other member of an Administrative Tribunal for State shall be appointed after consultation with the Governor of the concerned State. No role is given or attributed to the judiciary in the matter of appointment of the Chairman or members of a State Administrative Tribunal. This it is submitted, is violative of the basic structure of the Constitution of India, as has been highlighted by the Supreme Court of India in numerous cases. The consistent view taken by the Supreme Court of India and particularly emphasized in the **NJAC case** and the **Madras Bar Association cases** is that in all judicial appointments the predominant opinion should be of the judiciary. No role at all is prescribed under the statute to the judiciary in the matter of appointment to the State Administrative Tribunal. This it is submitted, is in complete variance with the principles evolved by the Supreme Court in the **NJAC case** and the **Madras Bar Association cases**. Even earlier in the well-known **Shamsher Singh case**, the Supreme Court had declared that relegating the function of appointment and discipline over District Judges to the executive amounts to usurpation of powers exclusively possessed by the judiciary by the

executive. The Supreme Court has highlighted in that case that the Governor acts only on the aid and advice of the Council of Ministers. The Council of Ministers is composed of political activists. The Governor cannot except in two or three instances, act on his own and every decision of the Governor is taken on the aid and advice of the Council of Ministers. The Council of Ministers discharges executive function and not judicial. The Governor is the head of the executive under Article 154 of the Constitution of India, which specifies that the executive power of the State shall be vested in the Governor. Thus the power given to the Governor in the matter of appointment of Chairman and members of the State Administrative Tribunal, is executive in nature. This is precisely what the Hon'ble Supreme Court said shall not be done in the **NJAC case**. The presence of the Law Minister in the decision making body was frowned upon and declared contrary to the basic structure of the Constitution. It is therefore, wholly understandable how the arrogation of executive power in the appointment of Chairman and members of the State Administrative Tribunal can be sustained as the decision making is done by political activities more than one in number as the State Cabinet is wholly composed of a group of political activists. In addition to that the Chairman and members of a State Administrative Tribunal are adjudicating matters in majority of which the State is a party. This means that the executive determines who shall judge their actions in a judicial forum like State Administrative Tribunal discharging constitutional function. Nothing can be more abhorrent than such a provision. It is submitted that in the light of the consistent view taken by the Supreme Court that in all judicial posts the

power of appointment and the predominance in the matter of appointment shall vest with judiciary.

" We are also of the considered view, that the power of veto vested in any two Members of the NJAC, would adversely impact primacy of the judiciary, in the matter of selection and appointment of Judges to the higher judiciary (as also their transfer). Details in this behalf have already been recorded in part VIII hereinabove. Section 6(6) of the NJAC Act, has the same connotation as the second proviso under Section 5(2), and Section 6(6) of the NJAC Act would therefore meet the same fate, as Section 5(2). For the reasons recorded hereinabove, we are satisfied, that Sections 5(2) and 6(6) of the NJAC Act also breach the "basic structure" of the Constitution, with reference to the "independence of the judiciary" and the "separation of powers". Sections 5(2) and 6(6), in our considered view, are therefore, also liable to be declared as ultra vires the Constitution."

And also,

"We have already concluded earlier, that the participation of the Union Minister in charge of Law and Justice, as a Member of the NJAC, as contemplated under [Article 124A\(1\)](#), in the matter of appointment of Judges to the higher judiciary, would breach the concepts of "separation of powers" and the "independence of the judiciary", which are both undisputedly components of the "basic structure" of the Constitution of India. For exactly the same reasons, we are of the view, that Section 8 of the NJAC Act which provides, that the Secretary to the Government of India, in the Department of Justice, would be the convener of the NJAC, is not sustainable in law. In a body like the NJAC, the administrative functioning cannot be under executive or legislative control."

In the case on hand in the appointment of Chairman and members of the State Administrative Tribunal no specific role at all is prescribed to the judiciary as it is exclusively an executive function to be discharged by the President and the Governor both of them doing so as heads of

the executive. Like the appointment of Judges to superior courts, there should be mechanism for a High Court like collegium in the matter of appointment to Tribunals also. If the High Court is consulted it is not sufficient the Chief Justice alone is consulted. The expression "High Court" has been interpreted not to mean the Chief Justice alone. This means that a body of Judges constituted for the purpose should be consulted for appointment to judicial institutions like the Administrative Tribunal also. The Supreme Court has declared that the Chairman and members are holding posts akin to that of Judges of the High Court. Necessarily the consultation process with the "High Court" is mandatory and should be not merely the Chief Justice alone but a body of judges constituted by the High Court for the purpose. It is therefore, submitted that on the principles evolved by the apex court in the **NJAC case** and the **Madras Bar Association cases** and other similar pronouncements Section 6(4) of the Administrative Tribunals Act, 1985 is liable to be declared void, inoperative and wholly unconstitutional as infracting the basic structure of the Constitution of India.

B. The petitioner also submits that if the right of choosing personnel in a judicial forum is exclusively given to the executive, it may lead to partiality, favouritism and even making political choice. The safeguards provided if that power is exercised by the judiciary is totally absent in Section 6(4). It is common knowledge that most of the personnel being considered for appointment in the State Administrative Tribunal are Judges of the High Court and officials from various departments under the Government. The practice of appointing retired Judges has been condemned by several high functionaries in the judiciary, some of whom are; Mr. Justice T. S. Thakur, former Chief Justice of India, Mr. Justice

V.R. Krishna Iyer, an eminent and notable member of the legal fraternity, Mrs. Justice Ruma Pal, former Judge of the Supreme Court, etc. etc. All of them had given an opinion in unmistakable terms that there shall be no appointment offered to retired Judges or at least a cooling period after retirement is required to be mandatorily observed. In addition to that one of the Judges of the High Court of Kerala in his retirement speech has expressed the view from his own personal experience that preceding the retirement date the Judges are prone to be pro-government in rendering judgment. This is what Retired Justice Sri. Kemal Pasha said in his retirement speech:-

" Government is the major litigant before the courts of law, especially before the High Court. When a Judge is expecting a post retirement job from the government, normally he will be in a position not to invite displeasure from the government; at least in the year of his retirement. There is a common complaint that such Judges are not dared to invite displeasure from the Government by expecting such post retirement jobs. I believe the words of the Hon'ble Mr. Justice S. H. Kapadia and Hon'ble Mr. Justice T. S. Thakur that any Judge shall not accept any salaried job under the government, at least for a cooling period of three years from his/her date of retirement. "

In fact there is stiff opposition to the very concept of retired Judges securing re-employment soon after retirement as it will undoubtedly injure the credibility and independence of the judiciary which is of prime importance in a democracy. The choice by the executive of retired judges may depend on personal predilections, preferences and even political consideration. This is not conducive to the maintenance of the independence, impartiality and credibility required of a judicial office. It is therefore, submitted that providing an avenue and re-employment to retired judges in the form of Section 6(4) itself is liable to be struck

down as not conducive to the maintenance of an independent judiciary which is part of the basic structure of the Constitution of India. At any rate there shall be a cooling period as suggested by eminent personalities in the judiciary in seeking post retirement appointment. For the same reasons that were found by the Hon'ble Supreme Court for invalidating Article 124A of the Constitution of India, Section 6(4) of the Administrative Tribunal Act is liable to be struck down as infracting the basic structure of the Constitution of India and held unconstitutional, void and inoperative.

C. The petitioner as a legal practitioner is very seriously affected by the rush of retired judges to corner plum posts after retirement by keeping pleased the executive which commands exclusive power in the matter of appointments to State Administrative Tribunal. This is not at all conducive to the maintenance of an independent judiciary in the country. The State as a litigant will have an undue advantage in conducting litigation before persons of its own choice in Tribunals. This is wholly abhorrent to democratic principles and constitutional mandates. The legal rights of practitioners mainly Advocates will be seriously impaired if they are compelled to appear before judicial forums exclusively chosen by the executive, which it is submitted, will affect the right of legal practitioners, both guaranteed under Articles 19 and 21 of the Constitution of India. The petitioner therefore, has no other remedy provided in law than to invoke the extra ordinary jurisdiction of this Hon'ble Court. He therefore, is praying for appropriate reliefs from this Hon'ble Court including interim orders.

For the foregoing reasons the petitioner most humbly prays that this Hon'ble Court may be pleased:

- i) To declare that Section 6(4) of the Administrative Tribunals Act 13 of 1985 is liable to be struck down as void, inoperative and unconstitutional it being violative of the basic structure of the Constitution of India in as much it excludes any role to the judiciary in making appointments of judicial officers, it being exclusively arrogated by the executive;
- ii) To issue a Writ of Mandamus commanding the respondents not to make any appointments to those posts in the State of Kerala in the manner now provided in Section 6(4) of the Administrative Tribunals Act, 13 of 1985 as it will amount to an unconstitutional act;
- iii) To issue such other writs, orders or directions as this Hon'ble Court may deem fit and proper in the circumstances of the case.

INTERIM RELIEF

For the reasons stated in the above Writ Petition and the affidavit filed in support thereof it is most humbly prayed that this Hon'ble Court may be pleased to issue an interim direction to respondents 1 to 3 not to take any steps for choice or selection for appointment to the posts of Chairman and Members followed or following the procedure now provided in Section 6(4) of the Administrative Tribunals Act, 13 of 1985, to State Administrative Tribunal, pending disposal of the above Writ Petition.

Dated this the 24th day of August, 2020

PETITIONER

Counsel for the Petitioner

Settled by: Shri K. Ramakumar, Senior Advocate.

W.P.(c) No. _____ of 2020

AFFIDAVIT

ADVOCATE

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

W.P.(c) No. of 2020

Shamem : Petitioner
v.
Union of India and others : Respondents

SYNOPSIS

The petitioner as a legal practitioner is filing the writ petition to uphold the basic structure of the constitution of India of which judicial predominance has been declared to be a constituent. The predominance of judiciary in judicial appointments has been upheld in various cases.

Section 6(4) of the Administrative Tribunal Act, (central Act 13 of 1985), however, surrenders the right of judiciary in making appointments to judicial tribunals entirely to the executive. This is against the principles enshrined by the Supreme Court in **NJAC** and **Madras Bar Association Cases**. The petitioner therefore, is challenging that provision infracting the basic structure of the Constitution of India and prays for appropriate reliefs. Hence this writ petition.

Case Laws Referred

1. **Central Public Information Officer vs. Subash Chandra Agarwal**
(2020) 5 SCC 481
2. **Shanthi Bhushan vs. Supreme Court of India**
(2018) 8 SCC 396
3. **Supreme Court Advocates-on-Record -Association and another vs. Union of India** (NJAC case) – (2016) 5 SCC 1
4. **Madras Bar Association vs. Union of India** (2014) 10 SCC 1.
5. **Madras Bar Association vs. Union of India**
[2010] 11 SCC 1
6. **N. Kannadasan vs. Ajay Khose and another**
(2009) 7 SCC 1
7. **Supreme Court Advocate on Record System vs. Union of India**
(1993) 4 SCC 441
8. **S.P. Sampath Kumar vs Union Of India & Ors** (AIR 1987 SC 386)
9. **S.P.Gupta vs. Union Of India** (AIR 1982 SC 148)
10. **Shamsher Singh & Anr vs State Of Punjab** (AIR 1974 SC 2192)

Dates and events:-

1985 – Administrative Tribunals Act came into force.

Rules/Regulations/Statutes applicable in the case:-

1. Constitution of India.
2. Administrative Tribunals Act 13 of 1985,.

Points urged:-

1. Whether Section 6(4) of the Administrative tribunal act. 13 of 1985 is not violative of the basic structure of the Constitution of India an as much as it excludes any role to the judiciary in the appointment to judicial tribunals?
2. Whether judicial independence which can be ensured only by the judiciary is not a part of the basic structure of the Constitution of India?
3. Whether investing exclusive power in the state cabinet in the matter of choosing Chairman and members of the state administrative tribunals will not offend the predominance of the judiciary and basic structure of the constitution of India?

Dated this the 24th day of August, 2020

COUNSEL FOR THE PETITIONER

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

W.P.(c) No. _____ of 2020

Shamem : Petitioner

V.

Union of India and others : Respondents

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Dated this the 24th day of August, 2020

COUNSEL FOR THE PETITIONER

Presented on:- 24.08.2020

**Sub: Administrative Tribunals Act 13 of 1985 - Challenging Section 6 (4) -
BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM**

W.P. (C) No. _____ of 2020

Shamem : Petitioner

V.

Union of India and others : Respondents

**MEMORANDUM OF WRIT PETITION FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA**

Mr. B. N. SHIV SHANKER
ADVOCATE

Counsel for the Petitioner

BEFORE THE HONOURABLE HIGH COURT OF KERALA AT ERNAKULAM
DATA SHEET
PETITIONS / PROCEEDINGS FILED UNDER ARTICLE 226, 227 OF
CONSTITUTION OF INDIA AND CASE TYPE WITH NOMENCLATURE WA,
CONTEMPT CASE CIVIL, CONTEMPT CASE CRIMINAL, CONTEMPT APPEAL CIVIL
and RP's FILED AGAINST THE ABOVE SAID CASES.

CASE TYPE:	FILING NO: (For Office use only)		CNR NO: (For Office use only)	KLHC01
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PETITIONER'S DETAILS

Name of First Petitioner / Organisation		Shamem			
Nationality	INDIAN	Age	38	Senior Citizen	Y ☐ N ☐
Sex	Male ☐ Female ☐	Others	☐	Mobile Number	9847367278 / 9447744917
Email ID	ramakumarassociates@gmail.com			No. of Extra Petitioner[s]	NIL

DETAILS OF ADVOCATE / PARTY IN PERSON / REGISTERED CLERK

Name of Advocate / Party		RAMPRASAD UNNI T, ADVOCATE			
Bar Council Registration Number		K/962/1992		Advocate Code	R 290, P 296, R1320, A1578, A 1740.
Whether represents any Firm? If yes, state Name of Firm				M/S. K. RAMAKUMAR & ASSOCIATES	
Whether Senior Advocate engaged? If yes, state Name, Bar Council Regn. No. & Advocate Code				K. RAMAKUMAR, K110/59 & R 245	
		Y YES ☐ N ☐			
If Yes, specify, Name & Regn. Number		K. R. RAJEEV, 90/1993			

RESPONDENT'S DETAILS

Name of First Respondent / Organisation					
Age			Senior Citizen	Y ☐ N ☐	
Sex	Male ☐ Female ☐	Others	☐	Number of Extra Respondent[s]	4

SUBJECT MATTER

a.	State the subject matter [as per the current Roster]	.Public Interest litigation
b.	Main Act / Rules involved	Administrative Tribunals Act, 1985 and the Constitution of India
c.	Whether the case involves offence against Women ☐ Children ☐ Senior Citizen ☐ Marginalised Sections of Society ☐ SC/ST ☐ Physically challenged ☐ Mentally challenged ☐	

LOWER COURT / TRIBUNAL DETAILS / ARISING OUT OF

Name of Court		Case Number & Year	
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COPY SERVED DETAILS [If any]

Details of copy served to the other parties. [Specify the rank]

A.G	ASGI	Standing Counsel	OTHERS
For R4	For R1 to R3		
		,	
In the case of Writ Appeal state whether No Objection obtained for TODAY moving.			Y ☐ N ☐

OTHER DETAILS [If any]

State whether Victim Anonymity Case [Vide Office Circular No. 3/2017 Dated 21.12.2017]	Y ☐ N ☐
If yes, specify the rank of the Victim	

Specify whether case filed as [In urgently moved cases only]

T ☐ ay T ☐ horrow D ☐ y After Tomorrow A ☐ Other Day[Please Specify the date]

Place :Ernakulam

Date : 24.08.2020

Signature of Advocate

Form No. 1 A

(Rule 19(6))

BEFORE THE HIGH COURT OF KERALA

Number of the Proceedings : W.P. (Civil) No. of 2020

Name of the Parties filing
Vakalath : Shamem

Telephone No. (Landline/mobile) : 98473 67278

Email ID : Nil

Name of the Advocate : b. n. Shiv Shanker

Telephone No. : 9074747730

Email ID : advshivlinks@gmail.com

Signature of the Advocate.