IN THE SUPREME COURT OF INDIA

CIVIL WRIT JURISDICTION

WRIT PETITION (CIVIL) No.________of 2017

(Under Article 32 of the Constitution of India)

IN THE MATTER OF:

Social Action for Forest & Environment …..Petitioner

Versus

Union of India & Anr. …..Respondents

ADVOCATE FOR THE PETITIONER: RUCHIRA GOEL

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OFFICE REPORT ON LIMITATION

1. The Petition is not filed with limitation.
2. There is delay of ………. Days in refilling the Petition and Petition for condonation of …………. days delay in refilling has been filed.

NEW DELHI
DATED: BRANCH OFFICER

LISTING PROFORMA

IN THE SUPREME COURT OF INDIA

SECTION: PIL(W)

The case pertains to (Please tick / check the correct box):

☐	Central Act (Title)	:	Constitution of India
☐	Provision	:	Articles 132 & 142 Constitution of India
☐	Central Rule (Title)	:	
☐	Rule No(s)	:	
☐	State Act		
☐	Provision(s)	:	
☐	State Rule (Title)	:	
☐	Rule No(s)	:	
☐	Impugned Interim Order: (Date)	:	
☐	Impugned Final Order/Decree (Date)	:	Notification No.7/2017 dated 31.03.2017 (Ministry of Law & Justice, Govt. of India); Notification No.GSR 514(E) dated 01.06.2017 (Deptt. of Revenue, Ministry of Finance, Govt. of India)
☐	High Court	:	
☐	Names of Judges	:	
☐	Tribunal/Authority	:	

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1. **Nature of Matter** : ☐ Civil ☐ Criminal

2.
   (a) Petitioner No. 1 : Social Action for Forest & Environment

   (b) Email ID : vikranttongad@gmail.com

   (c) Mobile Number : 9310842473

3\.

(a) Respondent No. 1 : Union of India (Ministry of Law & Justice)
(b) Email ID : NA
(c) Mobile Number : NA

4. Classification

(a) Main category
(b) Sub classification :

5\. Not to be listed before :

6\. Similar/Pending Matter :

7\. Criminal Matters :

Whether accused/convict has surrendered: Yes No
(a) FIR No. Date:
(b) Police Station:
(c) Sentence Awarded:
(d) Sentence Undergone:

8\. Land Acquisition Matters :
(a) Date of Section 4 notification:
(b) Date of Section 6 notification:
(c) Date of Section 17 notification

9\. Tax Matters : State the tax effect: :

10\. Special Category (first petitioner/appellant only) :

☐ Senior Citizen	☐ SC/ST	☐ Woman/Child
☐ Disabled	☐ Legal Aid	☐ In custody

11\. Vehicle Number :
(in case of Motor Accident Claim matters)

12\. Decided cases with citation :

AOR for the Petitioner(s)/Appellant(s)
Name: **RUCHIRA GOEL**
Registration No.:-2477
Phone:- 9582501126
Email: ruchiragoel@gmail.com

Date:____.07.2017

SYNOPSIS

The instant Petition is being preferred in the public interest by the Petitioner herein, Social Action for Forest and Environment (SAFE), a non-profit organization, impugning/assailing Part XIV (Sections 156 to 189) of the Finance Act, 2017 (Notification No. 7 of 2017, dated 31.03.2017) ("Impugned Finance Act, 2017") and the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017 (Notification No. G.S.R. 514(E) dated 01.06.2017) ("the impugned Tribunal Rules, 2017") framed under the purported authority granted by the Section 184 of the Impugned Finance Act, 2017.

The impugned Part XIV of the Finance Act, (which was unconstitutionally certified as a „Money Bill‟ by the Hon‟ble Speaker of the Lok Sabha, and thereby passed by bypassing the requirement for all Bills except Money Bills to get the assent of both Houses of Parliament) purports to amend the parent Acts of various Statutory Tribunals by merging certain Tribunals with other Tribunals constituted under different statutes for different purposes, and by way of Section 184, delegates to the Central Government the wide, unbridled and unguided power to frame Rules for inter alia, the qualifications, appointment, removal and other terms and conditions of service of the Members constituting the Tribunals specified in Schedule 8 to the Finance Act, which includes the National Green Tribunal

(“NGT”) constituted under the National Green Tribunal Act, 2010 (“NGT Act”).

Therefore, at the very outset, it is humbly submitted that the impugned Part XIV of the Finance Act, by being unconstitutionally certified „Money Bill‟, insofar as it purports to affect the substantive and procedural restructuring of the tribunals specified therein, has been passed without constitutional competence in egregious violation of the sacrosanct law – making process enshrined in the Constitution, and merits to be quashed on this ground alone. Moreover, it is submitted that the impugned Part XIV of the Finance Act, 2017, also suffers from the following glaring illegalities, namely:

(1) that Section 184 of the impugned Finance Act, suffers from excessive delegation in that it delegates completely unbridled, uncanalised and unguided powers to the Central Government to frame Rules pertaining to inter alia, the minimum qualifications, appointment, removal and other terms and conditions of service of the Members of the Tribunals/Authorities specified in the Eighth Schedule, and is therefore liable to be struck down under Art.14 on the grounds of arbitrariness;

(2) That the same also amounts to an abdication by Parliament of its essential legislative function, which in the context of Statutory Tribunals is to specify the minimum

qualifications of at the very least the Judicial members thereof (including the Chairperson) as well as the procedure for appointment of the Chairperson/heads of such Tribunals in the Parent Act constituting the Tribunal itself, a power which cannot be delegated to the executive as has been done by S.184 of the impugned Finance Act; and

(3) That moreover the impugned Part XIV of the Finance Act, in particular, the Eighth and Ninth Schedules thereof, insofar as it excludes/omits certain tribunals, such as the National Company Law Tribunal constituted under Section 408 of the Companies Act, from the purview of the sweeping Rule making power delegated to the Central Government under Section 184, without any intelligible differentia to justify the said exclusion, also suffers from under-classification with no nexus with the object of the Act (which in any event is not ascertainable qua the reorganization of the Tribunals), and is liable to be struck down under the doctrine of reasonable classification under Art.14 of the Constitution.

Moreover, the impugned Tribunal Rules, which have a direct effect on the Constitution of the Tribunals specified therein, have been issued by the Department of Revenue in the Respondent No.2 Ministry without the competence to do so under the Government of India (Allocation of Business) Rules,

1961 read with Art. 77(1) and(3) of the Constitution and also in contravention of the directions of this Hon‟ble Court regarding the overseeing of the functioning of Tribunals by the Ministry of Law and Justice in *L. Chandra Kumar v. Union of India* (1997) 3 SCC 261.

Furthermore, it is humbly submitted that the said impugned Tribunal Rules are also substantively *ultra vires* the doctrines of the rule of law and separation of powers embedded in the basic structure of the Constitution.

The Petitioner is a non-profit organization that works to protect and conserve the environment and forests in India, and to that effect, has often approached the National Green Tribunal for the enforcement of the rights of every person to a clean and healthy environment. Therefore the Petitioner herein has approached this Hon‟ble Court through the instant Petition to assail, inter alia, the clear and present danger of the chilling effect the impugned Finance Act and impugned Tribunal Rules have on the effective functioning and independence of the NGT. The impugned Act and Rules, it is submitted amount, inter alia to a colourable exercise of power by the Respondents, destroying the rule of law and doctrine of separation of powers between the executive and judicial branches of government, which are inherent in the basic structure of the Constitution.

It is also humbly submitted that while the provisions of the impugned Finance Act and Tribunal Rules would destroy the

independent functioning of all the Tribunals specified therein, the Petitioner, being an activist organization in the field of the environment, has sought to demonstrate the same with reference to the effect of the said Act and Rules on the functioning of the NGT.

It is humbly submitted that the NGT in particular, exercises wide and unrestricted original and appellate jurisdiction over all substantial questions relating to the environment, including the enforcement of legal and constitutional rights pertaining thereto (such as Art.21 of the Constitution) by way of giving directions to Governmental agencies, private parties, quashing/upholding Government clearances like environmental clearances and also by way of restituting environmental harm. Moreover, this Hon‟ble Court has often transferred for adjudication to the NGT, matters filed before it by litigants invoking the extraordinary plenary writ jurisdiction of this Hon‟ble Court, such as matters pertaining to the cleaning up of the Ganges and Yamuna, mining leases and permits within forest areas, and also matters pertaining to restitution in cases of environmental disasters, such as the Bhopal Gas Tragedy. Moreover, the NGT has also been exercising the power of judicial review over delegated legislation issued under the Acts scheduled in the NGT Act. Therefore, it is humble submitted that the NGT fulfills all the criteria of being an alternative „judicial‟ body with all the trappings of a court, to which the existing jurisdiction of courts

in respect of environmental matters has been transferred, as laid down by this Hon‟ble Court in a number of cases including *Union of India v. R. Gandhi* (2010) 11 SCC 1.

It is submitted that as has been held by this Hon‟ble Court in a number of decisions, including *R. Gandhi, R.K. Jain v. Union of India* (1993) 4 SCC 119, as well as the most recent *Madras Bar Association v. Union of India* (2014) 10 SCC 1, a necessary concomitant of such a transfer of adjudicatory powers to a tribunal is that, in order for the same be in compliance with the doctrines of the rule of law and independence of judiciary embedded in the Constitution, the Statute establishing the Tribunal must ensure that the structure and functioning of the said Tribunal, is equivalent in status to the Courts whose jurisdiction the said Tribunal exercises, and that the members of the same are, in the same manner as formal courts, completely independent of the executive branches of the government. The same, it is submitted is especially important in the case of a Tribunal like the NGT, which not only sits in Appeal over Central Government decisions, but also has before it as a party in *all* proceedings, a government agency/department.

It is humbly submitted that the Scheme of the NGT Act, prior to its amendment by Section 182 of the impugned Finance Act, demonstrated the complete independence of the NGT from the government, in matters of appointment, removal as well as

terms and conditions of service of its Members. As has been held by the NGT itself while interpreting the contours of its jurisdiction in *J. Wilfred v. Union of India* (O.A. No.74/2014, decision dated 14.07.2014), the entire appointment and removal process of the members of the NGT is controlled by this Hon‟ble Court, and that the Government is merely an „executing agency‟.

However, it is submitted that the Impugned Tribunal Rules directly affect and destroy this insulation from the Government that was provided for in the scheme of NGT Act, prior to its amendment by S. 182 of the impugned Finance Act, which is not only in contravention of the constitutional imperative of separation of powers, but there is also a clear and present danger of the same having a chilling effect on the public‟s rights to access to effective justice, thereby impinging upon the Rule of Law embodied in the Constitution. The said Impugned Tribunal Rules are in violation of the aforestated principles in the following ways:

(1) The Impugned Tribunal Rules have severely diluted the minimum qualifications for appointment of members to the NGT (including the Chairperson and Judicial Members) such that there is a clear and present danger of persons being appointed as the Chairperson/Judicial Members of the NGT, who have no judicial or even legal training and experience, and of persons without significant technical and scientific knowledge being appointed as Expert Members, which is in direct violation of the guidelines laid down by this Hon‟ble Court in *R. Gandhi.*

(2) The impugned Tribunal Rules also give primacy to the Executive in the Appointment and Removal of the Members (including the Chairperson and Judicial Members) of the NGT, thereby severely affecting not only the actual independence and separation of the Tribunal from the Government, in violation of the Basic Structure of the Constitution, but also affecting the public‟s trust in the NGT as an efficacious and „just‟ arbiter of the public‟s environmental grievances.

It is humbly submitted that the impugned Tribunal Rules clearly evidence the naked attempt by the Respondents to usurp judicial appointment power and encroach upon the independence of the judiciary, and thereby influence the administration of justice-something that was most recently struck down in the context of the 99th Amendment to the Constitution and the National Judicial Accountability Commission Act, 2015 in the *Fourth Judges Case* – *Supreme Court Advocates on Record Association v. Union of India* (2016) 5 SCC 1. It is clear that the Government, having failed to usurp judicial appointment power and thereby influence the administration of justice at the level of the Supreme Court and High Court, has now attempted the same at the level of judicial tribunals, and therefore the same is liable to be struck down as unconstitutional.

Therefore, it is humbly submitted that Part XIV of the impugned Finance Act and the impugned Tribunal Rules in their entirety are unconstitutional and will cause grave and irreparable injuries to the rights of the public at large to effective judicial

remedies in the context of the protection and enforcement of the right to a clean and healthy environment under Art.21 of the Constitution. In view of the pan-India ramifications of the impugned Act and Rules, the Petitioner has no other recourse but to approach this Hon‟ble Court in public interest for the protection of the public‟s fundamental rights.

List of Dates

18.10.2010	The National Green Tribunal Act, 2010 came into force on 18.10.2010 for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources. Along with the said Act, the National Green Tribunal (Manner of Appointment of Judicial and Expert Members, Salaries, Allowances and other Terms and Conditions of Service of Chairperson and other Members and Procedure for Inquiry) Rules, 2010 were also notified. The term of the incumbent Chairperson of the NGT shall expire on 19.12.2017.
01.02.2017	The Finance Bill, 2017 was introduced in the Lok Sabha.
22.03.2017	The Lok Sabha approved the Finance Bill, 2017 on 22.03.2017 after the Hon'ble Speaker certified the same as a “Money Bill”.

31.03.2017	The President of India gave his assent to the Finance Bill, 2017.
01.04.2017	The Finance Act, 2017 came into effect from 01.04.2017 to give effect to the financial proposals of the Central Government for the financial year 2017-2018.
01.06.2017	The Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017 were framed by the Respondent No.2 vide Notification dated 01.06.2017 under the purported authority of Section 184 of the Finance Act, 2017, and affected inter alia, the constitution, qualifications, appointment, removal and other terms and conditions of all the members of the 19 Tribunals specified in the Schedule to the said Rules, in complete violation of separation of powers and independence of judiciary embedded in the basic structure of the Constitution of India.
__.07.2017	Hence, the present petition.

IN THE SUPREME COURT OF INDIA

CIVIL WRIT JURISDICTION

WRIT PETITION (CIVIL) No.________of 2017

(Under Article 32 of the Constitution of India)

IN THE MATTER OF:

Social Action for Forest & Environment
A Trust registered under the Indian Trust Act, 1882
Through its Trustee Shri Vikrant Tongad,
Having its Office at
T-16, Senior Citizen Housing Complex,
Sector-P-3, Greater Noida-201308
District Gautam Budh Nagar,
Uttar Pradesh. …..Petitioner

Versus

1. **Union of India**
Through the Secretary
Ministry of Law and Justice
4th Floor, A Wing
Shastri Bhavan
New Delhi-110001 …Respondent No.1

2. **Union of India**
Through its Jt. Secretary
Ministry of Finance
(Department of Revenue)
No.137, North Block
New Delhi-110001 ..Respondent No.2

A PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA FILED IN PUBLIC INTEREST

TO

HON'BLE THE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT

THE HUMBLE PETITION OF
THE PETITIONER HEREIN

MOST RESPECTFULLY SHOWETH:

1. That the Petitioner is preferring the instant Writ Petition under Article 32 read with Article 142 of the Constitution of India in public interest impugning Part XIV (Sections 156 to 189) of the Finance Act, 2017 (Notification No.7 of 2017, dated 31.03.2017) ("**Impugned Finance Act, 2017**") in particular, Section 184 (which grants the Central Government unbridled rule making power in respect of prescribing, inter-alia, the qualifications, appointment and removal processes for the Chairpersons and other Members of certain Tribunals specified therein) and praying for the issuance of a Writ, Order or Direction in the nature of certiorari, quashing and/or setting aside the same, and/or for Writ/Order/Directions in the nature of mandamus in respect of the same. The Petitioner, by way of the instant Petition is also impugning/assailing the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017 (Notification No. G.S.R. 514(E) dated 01.06.2017) ("**the impugned Tribunal Rules, 2017**") framed under the purported authority granted by the Section 184 of the Finance Act, 2017.

2. That the said provisions of the Finance Act, 2017 and the impugned Tribunal Rules, 2017 have been challenged by way of the instant Petition on the grounds, inter alia, of

having been passed without legislative competence and jurisdiction, being both procedurally and substantively ultra vires the Constitution of India, and being a flagrant attempt by the Respondents to usurp judicial power, thereby destroying the separation of powers between the branches of government and independence of judiciary enshrined in the Constitution, in complete violation of the basic structure of the Constitution. Furthermore, the direct effect of the impugned provisions of the Finance Act and Tribunal Rules 2017 is to severely restrict the rights of the public to effectively access justice, in particular, in the context of the protection and enforcement of the right to a clean and healthy environment. The remedies sought by the Petitioner in the instant Petition, cannot be obtained by means of representation, and therefore, no representation before any authority has been moved by the Petitioner before approaching this Hon‟ble Court.

3. That the Petitioner, the Social Action for Forest and Environment, is a non-profit organization established in 2013 and registered on 20.07.2013, under the Indian Trusts Act, 1882 with the Serial/Registration No.915, which works for the conservation and protection of the environment, with its Mission Statement being to "create (sic) awareness among people and train (sic) all the stakeholders which in turn will lead to development of a just society where people lead a healthy life". To that

effect, the Petitioner organization has often approached the National Green Tribunal (NGT) for the enforcement of the rights of every person to a clean and healthy environment, and has been a part of the cases before the NGT pertaining to, inter alia, the banning of construction in and around the Dadri wetlands in Uttar Pradesh; ground water depletion by private developers and water packaging units for commercial gains; the pollution of the Middle Ganges in and around Garmukhteshwar; and crop residue burning in Haryana, Punjab and Uttar Pradesh, to name a few. The Petitioner organization was founded by Mr. Vikrant Tongad, who is also its Trustee and a reputed environmental activist, through whom the present Petition is being filed. The mission objectives and work of the Petitioner can be found at its website: http://safegreen.in/. A true copy of the Trust Deed No.915 dated 20.07.2013 is enclosed with the Vakalatnama. A True typed copy of the List of Cases that the Petitioner Organization has filed before the Learned NGT is annexed as **Annexure P-1 (Pages to)**.

4. That neither the Petitioner, not its Founder/Trustee, Mr. Vikrant Tongad through whom the Petitioner is preferring the instant Petition, has any personal interest in the present litigation, but is agitating the present issue in wider public interest to protect the fundamental rights guaranteed under the Constitution of India. There is

absolutely no personal interest of the Petitioner. There are no civil, criminal or revenue litigations involving the Petitioner which could have a nexus with the issues involved in the present Petition. The Petitioner organization is largely crowd-funded and also receive funding through implementing the Corporate Social Projects of various Organizations. Petitioner organization has in the past, on an average, received amounts of Rs.5-6 Lakhs a year and files Income Tax Returns with its PAN Number being AAPTS0798C. Mr. Vikrant Tongad the Petitioner" Trustee, does not draw any Salary from the Petitioner but is self employed and a full time environment conservationist. Mr. Tongad also provides freelance environment consultancy. His annual income is approximately Rs.3 Lakhs per annum and he files his Income Tax Returns with his PAN Number being DMXPK0726F.

5. That the instant Petition has been preferred in public interest, as the rights of the general public at large, in particular, the efficacious enforcement of the right to a healthy environment under Articles 21 and access to justice under Art. 14 of the constitution have been severely and irreparably abrogated by the impugned Finance Act, 2017 and impugned Tribunal Rules 2017.

6. That the Respondent No. 1 is the Union of India, represented through the Ministry of Law and Justice, which has notified the impugned Finance Act, 2017, and, as per the orders passed by this Hon‟ble Court in various cases, the Respondent No.1 Ministry is the Ministry under the aegis/supervision of which, all statutory tribunals are to function. The Respondent No.2 is also the Union of India, represented through the Department of Revenue in the Ministry of Finance, and has issued the impugned Tribunal Rules 2017. A true typed copy of the relevant extracts of the Impugned Finance Act, 2017 (Part XIV, Sections 156- 189) is annexed herewith and marked as **Annexure P-2 (Pages to).** A true typed copy of the impugned Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017 is annexed herewith and marked as **Annexure P-3 (Pages. to).**

7. That it is humbly submitted that the averments made hereinbelow would highlight, inter alia, the following submissions of the Petitioner herein, qua the unconstitutionality of the impugned Finance Act, 2017 and impugned Tribunal Rules 2017, namely:

(i) That the impugned provisions of the Finance Act, 2017 are unconstitutional, having been passed

without the requisite competence, since the said Act was certified and passed as a „Money Bill‟ under the special procedure prescribed for the same under Art.109 of the Constitution, even though the impugned provisions of the said Finance Act, in no manner whatsoever, would constitute a „Money Bill‟ as defined in Art. 110 of the Constitution;

(ii) That Section 184 of the impugned Finance Act, 2017 suffers from excessive unguided delegation to the Central Government, inasmuch as the providing of the criteria/qualifications and procedure for appointment and removal of the Chairperson or President of any statutory Tribunal, such as the National Green Tribunal in the parent Act itself is an essential legislative function which cannot be abdicated and delegated to the executive branch of the government;

(iii) That moreover, S.184 of the impugned Finance Act, also delegates the unbridled and wide-ranging Rule – making power specified therein, to the Central Government without providing any guidelines/policy for the exercise of the same, and is therefore also liable to be struck down as arbitrary under Art. 14 of the Constitution;

(iv) That in any event, the impugned Tribunal Rules, 2017, having been framed by the Department of Revenue in the Respondent No.2 Ministry, are substantively ultra vires Section 184 of the impugned Finance Act, 2017, in that they suffer from a lack of legislative competence in terms of Article 77 of the Constitution read with the Government of India (Allocation of Business) Rules, 1961 ("**Allocation of Business Rules**");

(v) That moreover, the impugned Tribunal Rules 2017 inasmuch as they prescribe criteria for the qualifications of the Chairperson(s)/Presidents(s) and Judicial Members of the Statutory Tribunal(s)/Authorities specified in the Eighth Schedule of the impugned Finance Act, 2017 and the Schedule of the impugned Tribunal Rules, 2017, which have the effect of such persons being qualified for appointment who have no judicial experience, destroy the basis of the creation of statutory Tribunals i.e., they are constituted by the State and vested with the State‟s "inherent judicial power" and therefore must have all the trappings of a court. A necessary corollary of the transfer of the existing jurisdiction of courts to such Tribunals is that the tribunals and their constituent members

must be equivalent in status, independence and capacity to the Courts they replace, so as to ensure that the rights to effective access to justice for litigants under Arts. 14 and 21 is not infringed upon. The impugned Tribunal Rules have direct and far reaching consequences on the same;

(vi) That furthermore, the impugned Tribunal Rules 2017, insofar as they provide primacy to the executive in the appointment and removal process of the Chairperson(s)/Presidents(s) and Judicial Members of the Statutory Tribunal(s)/Authorities specified in the Eighth Schedule of the impugned Finance Act, 2017 and the Schedule of the impugned Tribunal Rules, 2017 amount to the Respondents attempting to usurp judicial appointment powers and influence in the administration of justice, which destroys the balance of separation of powers inherent in the fabric of the Constitution.

8. That it is humbly submitted that therefore, the impugned provisions of the Finance Act, 2017 and the Tribunal Rules 2017are a flagrant attempt by the Respondents herein to destroy the very fabric of our constitutional democracy – by abrogating the balance of separation of powers between the executive and judicial branches of the State and

thereby adversely affecting the public‟s right to efficacious access to justice, in particular with respect to the protection and enforcement of the fundamental right to a clean and healthy environment, which, after the coming into force of the NGT Act, are being enforced by the Learned NGT. The said actions of the Respondents, it is humbly submitted are not only in contravention of the decisions of this Hon‟ble Court which have held the independence of judiciary as an integral part of the doctrine separation of powers to be a sacrosanct part of the basic structure of the Constitution, but also in negation of all the decisions of this Hon‟ble Court on the constitution of specialized statutory Tribunals.

9. That while it is the Petitioner‟s humble submission that Part XIV of the impugned Finance Act, 2017 and the impugned Tribunal Rules 2017 have been passed without requisite legislative competence and are violative of the fundamental rights guaranteed to all persons under Arts. 14 and 21 of the Constitution in their entirety, the Petitioner, for the purpose of the instant Petition, shall strive to demonstrate the same through the illustration of the NGT and the chilling effect the said impugned Act and Rules would have on the functioning of the same.

10. The Brief Facts/Legal Framework leading to the institution of the present Writ Petition are as follows:

A. Constitutional Scheme on Judicial Enforcement of Rights and the Rise of Tribunals

(i) That the Indian Constitution provides for the establishment of a hierarchical judicial system to undertake the judicial function of the State, with the establishment of this Hon‟ble Court and the Hon‟ble High Courts of States as superior courts of record, with the powers to enforce inter alia, the fundamental and other constitutional rights of persons.

(ii) That however, the Constitution also makes provisions, by way of Art.32(3),for the Parliament to empower any other Court to exercise the powers granted to this Hon‟ble Court under Art.32(2); and for the Parliament to establish any additional courts for the better administration of laws (Art.247). The Parliament has further been empowered to make laws relating to the jurisdiction, constitution and organization of all courts by way of Entries 77, 78 and 95 of List I in Schedule 7.

(iii) That the 42nd Amendment to the Constitution, inserted Part XIV-A, empowering the Parliament to provide for the establishment of administrative tribunals (Art.323-A), and Tribunals for specified matters (Art.323-B). The said 42nd Amendment also

included within List III in Schedule 7, Entry 11A, giving the Union and States concurrent powers to legislate on the "Administration of Justice; constitution and organization of all courts, except the Supreme Court and High Courts". This Hon‟ble Court in *Union of India v. Delhi High Court Bar Association* (2002) 4 SCC 275 has traced the power of the Legislature to establish non-Art.323A and B Tribunals to the said provision.

(iv) That over the years there has been a proliferation of such specialized Statutory Tribunals which have been vested with adjudicatory powers to decide questions of fact and law, as „courts‟ of first instance. In particular, the statutes establishing all such Tribunals (including the 19 Scheduled Tribunals in the impugned Finance Act and Tribunal Rules 2017) transfer the existing jurisdiction of courts of first instance, to the Tribunal so created by the Statute and exclude the jurisdiction of such courts over any *lis* which falls within the *jurisdiction rationae materiea* of such Tribunals. For instance, Section 29 of the NGT Act states:

> *"29. Bar of Jurisdiction – (1) With effect from the date of establishment of the Tribunal under this Act, no civil court shall have*

jurisdiction to entertain any appeal in respect of any matter, which the Tribunal is empowered to determine under its appellate jurisdiction.

(2) No civil court shall have jurisdiction to settle disputes or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment damaged which may be adjudicated upon by the Tribunal, and no injunction in respect of any action taken or to be taken by or before the Tribunal in respect of the settlement of such dispute or any such claim for granting any relief or compensation or restitution of property damaged or environment shall be granted by the civil court."

(v) That this Hon"ble Court has often had occasion to consider the functioning of such Tribunals and pronounce on the legal and constitutional parameters of the establishment of the said Tribunals.

(vi) That for instance, this Hon"ble Court, in *Union of India v. R. Gandhi* (2010) 11 SCC 1 (*"R. Gandhi")*,

while considering the constitutional validity of the establishment of the National Company Law Tribunal by the Companies Act, 1956 and providing guidelines regarding the structuring and composition of Statutory Tribunals has emphasized:

> *"106. …(b) All courts are tribunals.* ***<u>Any tribunal to which any existing jurisdiction of courts is transferred should also be a Judicial Tribunal</u>****. This means that such Tribunal should have as members,* ***<u>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</u>****."*

(Emphasis supplied)

(vii) Similarly, this Hon"ble Court in *L. Chandra Kumar v. Union of India* (1997) 3 SCC 261, on the issue of Administrative Tribunals established under the Administrative Tribunals Act, 1985 substituting the High Courts" power of judicial review has quoted the Malimath Committee Report thus:

"88. …The relevant observations in the regard, being of considerable significance to our analysis, are extracted in full as follows:

> *„…8.65 A Tribunal which substitutes the High Court as an alternative institutional mechanism for judicial review must be no less effective 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. (See S.P. Sampath Kumar v. Union of India). The protagonists of specialist tribunals, who simultaneously with their establishment want exclusion of the Writ jurisdiction of the High Courts in regard to matters entrusted for adjudication to such tribunals, ought not to overlook these vital and important aspects. ***<u>It must not be forgotten that what is permissible to be supplant by another equally effective and efficacious institutional mechanism is the High Courts and not the judicial review itself.</u>*** *Tribunals are not an end in themselves but a means to an end; even if the laudable objectives of speedy justice, uniformity of approach,*

predictability of decisions and specialist justice are to be achieved, the frame work of the tribunal intended to be set up to attain them must still retain its basic judicial character and inspire public confidence. Any scheme of decentralisation of administration of justice providing for an alternative institutional mechanism in substitution of the High Courts must pass the aforesaid test in order to be constitutionally valid."

(Emphasis in original)

(viii) That furthermore, this Hon"ble Court, when considering the constitutional validity of the National Tax Tribunal, in *Madras Bar Association v. Union of India* (2014) 10 SCC 1 ("Madras Bar Association 2014") reiterated the view taken earlier in *R. Gandhi* regarding the transfer of jurisdiction to statutorily established Tribunals, while also emphasizing the essential requirement of the independence of the adjudicatory process being vested in the Tribunal.

B. Establishment of the NGT

(i) That this Hon"ble Court has held time and again the right to a clean and healthy environment to be an

integral and inviolable part of the right to life under Art.21 of the Constitution.

(ii) That in order to protect the environment, India has been a part of various International Conventions and Declarations such as the United Nations‟ Conference on the Human Environment held at Stockholm in 1972 ("Stockholm Declaration"), the United Nations Conference on Environment and Development held at Rio de Janeiro in 1992 ("Rio Declaration") and most recently, India has also ratified the Paris Climate Accords of December 2015.

(iii) That in order to honour its commitments under the said International Declarations and Conventions, India has enacted several legislations. For instance, the Environment Protection Act, 1986("EP Act") was enacted under the powers granted to the Parliament under Art.253 of the Constitution to implement the decisions taken at the Stockholm Conference, and the Coastal Regulation Zone Notification, 1991, issued under the said Act, was held by this Hon‟ble Court in *S. Jagannath v. Union of India* (1997) 2 SCC 87 to therefore have overriding effect over any laws enacted by the State legislatures. In 1994, the Government issued the Environment Impact

Assessment Notification ("EIA Notification") prescribing industries that would require Environmental Clearances before commencing operations and the procedure for the same, which was later substituted by the 2006 EIA Notification.

(iv) That the Parliament was also empowered by certain States under Art. 252 to enact the Water (Prevention and Control of Pollution) Act, 1974 ("**Water Act**"), which established the Central Pollution Control Board ("**CPCB**") and State Pollution Control Boards ("**SPCBs**") to inter alia, monitor and promote cleanliness and pollution levels of water bodies across the country and to be the nodal agenc(ies) to grant/refuse consents to establish and operate to industries. The Parliament also enacted the Air (Prevention and Control of Pollution) Act, 1981 ("Air Act") to implement the decisions taken at the Stockholm conference, and by the said Air Act, the CPCB and SPCBs established under the Water Act were also empowered to take measures similar to those under the Water Act, in respect of the prevention, control and abatement of air pollution.

(v) That it is pertinent to note that the said three nodal Acts (EP Act, Water Act and Air Act) (along with the

Rules/regulations framed thereunder) established and/or identified government agencies that would provide the requisite clearances and be responsible for the prevention and control of pollution. The Water Act and Air also provided for dispute resolution mechanisms in the form of inter-departmental appeals and the like. The National Environment Appellate Authority was established by the National Environment Appellate Authority Act, 1997 to decide appeals relating to administrative decisions on Environment Impact Assessment – but became defunct from the year 2000. However, the enforcement of persons‟ rights to a clean environment continued to be the prerogative of the superior courts of record, i.e. this Hon‟ble Court and the various High Courts, in exercise of the extraordinary writ jurisdiction, while private *lis* between parties relating to the environment were the province of civil courts.

(vi) That the aftermath of the Bhopal Gas Tragedy led to the establishment of the National Environment Tribunal Act, 1995, which provided for the establishment of a National Environment Tribunal to consider questions of strict liability arising out of accidents occurring while handling hazardous

substances- however the said Tribunal was never established.

(vii) That this Hon"ble Court, in a number of decisions, such as *M.C. Mehta v. Union of India*, (1986) 2 SCC 176; *Indian Council for Environmental-Legal Action v. Union of India*, (1996) 3 SCC 212, *A.P. Pollution Control Board v. M.V. Nayudu*, (1999) 2 SCC 718, *A.P. Pollution Control Board Vs M.V. Nayudu II*, (2001) 2 SCC 62 stressed on the need for the establishment of environment courts, which led to the Law Commission undertaking a study on the feasibility of the same. In its 186th Report on "Proposal to Constitute Environment Courts, 2003", the Law Commission recommended the setting up of environmental courts having both original and appellate jurisdiction relating to environmental courts. In particular, it recommended:

> *"1. In view of the involvement of complex scientific and specialized issues relating to environment, there is a need to separate „Environment Courts" **manned only be persons having judicial or legal experience and assisted by persons having scientific qualification and experience in the field of environment.***

…5 (a) The proposed Environment Court shall have ***original jurisdiction in the civil cases where a substantial question relating to „environment" including enforcement of any legal or constitutional right relating to environment is involved****. …*

(b) The jurisdiction of civil courts is not ousted

(c) *The proposed Environment* ***court shall also have appellate jurisdiction in respect of appeals*** *under: (i) The Environment Protection Act, 1986 and rules made thereunder; (ii) the Water (Prevention and Control of Pollution) Act, 1974 and the rules made thereunder; (iii) the Air (Prevention and Control of Pollution) Act, 1981 and the rules made thereunder; (iv) the Public Liability Insurance Act, 1991."*

(Emphasis supplied)

(viii) That therefore, in pursuance of India"s commitment under the Rio Declaration, 1992, to provide for effective access to judicial and administrative proceedings, including redress and remedy, to victims of pollution and other environmental damage, the observations of this Hon"ble Court

regarding the need for environment courts, as well as the Law Commissions Recommendations regarding the same, the NGT Act, 2010 was enacted, which provided for the establishment of the NGT with appellate and original jurisdiction over matters related to the protection of the environment. A true typed copy of the relevant provisions of the National Green Tribunal Act, 2010 is annexed herewith as **Annexure P-4 (Pages to).**

(ix) That the NGT Act provides for the establishment of the NGT, headed by a Chairperson along with 10-20 Judicial Members and 10-20 Expert Members (Section 4(1)) The qualifications for the appointment of the said Chairperson, Judicial Members and Expert members are provided in Section 5 of the NGT. In order to qualify for appointment as the Chairperson or a Judicial Member, a person must be, or have been, a Judge of this Hon"ble Court, or a Chief Justice of a High Court(a sitting or former High Court Judge is however, qualified for appointment as a Judicial member) (Section 5(1)). Section 5(2) of the NGT lays down the criteria for qualification as an Expert member, which requires the appointee to have either (i) a Doctorate degree in Science, or Masters in Engineering or

Technology along with 15 years of experience in the relevant field, including 5 years practical experience in the field of environment and forests in a reputed national level institute or (ii) 15 years administrative experience which must include 5 years dealing with environmental matters in the Central/State government or at a reputed National/State level institution. Therefore, the legislature, when enacting the NGT Act laid down very high qualifications for all members who would constitute the NGT.

(x) Section 6 (2) of the NGT Act also provides the procedure for the appointment of the Chairperson, which is to be done with the Central Government in consultation with the Chief Justice of India. It is apposite that the word „consultation‟ as has been held by this Hon‟ble Court in various decisions concerning the appointment of Judges, requires the „consent‟ of the Chief Justice of India in any appointment of the Chairperson, thereby ensuring the independence of the Chairperson so appointed, from the government.

(xi) The recommendation for the appointment of the Judicial and Expert Members, by way of Section 6(3) has been delegated to such Selection Committee as may be prescribed. Accordingly, the

National Green Tribunal (Manner of Appointment of Judicial and Expert Members, Salaries, Allowances and other Terms and Conditions of Service of Chairperson and other Members and Procedure for Inquiry) Rules 2010 **("NGT Appointment Rules**") prescribe under Rule 3 the constitution of a Selection Committee chaired by a sitting Supreme Court judge nominated by the Chief Justice of India in consultation with the Minister of Law and Justice and comprised of the NGT Chairperson, Secretary MoEF, Director of IIT (by rotation) and two experts in Environmental Policy and Forest Policy nominated by the Minister, MoEF, as members. The said NGT Appointment Rules also prescribe the terms and conditions of service of the members of the NGT under Rule 7, with the Chairperson having the same rank, salary, status and allowances as a sitting Supreme Court judge, Judicial Members being equated with sitting High Court judges, and Expert Members being equated with a Secretary to the Government of India. A true typed copy of the relevant provisions of the National Green Tribunal (Manner of Appointment of Judicial and Expert Members, Salaries, Allowances and other Terms and Conditions of Service of Chairperson and other Members and Procedure for Inquiry) Rules 2010 is

annexed herewith as **Annexure P-5 (Pages _____ to_____).**

(xii) That it is pertinent to note that Section 10 of the NGT Act enumerates the grounds and procedure for the removal or suspension of any member of the NGT, namely that the same can only be done by the Central Government in consultation with the Chief Justice of India, and, in case of the Chairperson or Judicial Member, only after an inquiry is conducted by a Judge of the Supreme Court, while, in the case of an Expert Member, only after he has been given an opportunity of being heard. It is only the framing of the procedure for the said inquiry that has been delegated under Section 10(4) and (5) to the Central Government, which under Chapter IV of the Appointment Rules, has prescribed the said procedure.

(xiii) That therefore, it is amply evident that the NGT Act (as is also the case with all the other Scheduled Tribunal statutes in the Tribunal Rules 2017), has striven to ensure that the independence of the members (in particular, the Chairperson and Judicial Members) from the executive is constantly maintained; moreover, by providing for the qualifications of all members, as well as grounds for

their removal/suspension, and the appointment procedure for the Chairperson in the parent Act itself, the NGT Act has also ensured that there is no excessive delegation of any powers in relation to the same, to the executive, thereby also maintaining the checks and balances between the legislative and executive branches of government. As has also been observed by the Ld. NGT while interpreting the contours of its own jurisdiction in *J. Wilfred v. Union of India* (O.A. No. 74/2014, decided on 17.07.2014) ("J. Wilfred"):

> *"**There is nothing in the provisions of the NGT Act that directly or even by necessary implication is indicative of any external control over the National Green Tribunal in discharge of its judicial functions.** MoEF is merely an administrative Ministry for the National Green Tribunal to provide for means and finances. Once budget is provided, the Ministry cannot have any interference in the functioning of the National Green Tribunal. Entire process of appointment and even removal is under the effective control of the Supreme Court of India, as neither appointments nor removal can be*

effected without the participation and approval of a sitting judge of the Supreme Court of India. ***<u>The administration is merely an executing agency within the framework of the Act.</u>***"

(Emphasis Supplied)

(xiv) That the NGT has been granted under the Act, both original and appellate jurisdiction. Under Section 14(1), the NGT has the original jurisdiction "*over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating environment), is involved, and such question arises out of the implementation of the enactments specified in Schedule I.*"The scheduled enactments include the EP Act, Water Act, Air Act, and all rules/regulations/notifications framed thereunder. Section 2(1)(m) defines a "substantial question relating to environment" as including instances where:

"*i. there is a direct violation of a specific statutory environmental obligation by a person by which –*

(A) the community at large other than an individual or group of individuals is

affected or likely to be affected by the environmental consequences; or

(B) the gravity of damage to the environment or property is substantial; or

(C) the damage to public health is broadly measurable;

ii. the environmental consequences relate to a specific activity or a point source of pollution"

(xv) That therefore, it is humbly submitted that the NGT enjoys jurisdiction over a wide gamut of matters related to the environment.

(xvi) That the NGT, by way of Section 16 also enjoys Appellate jurisdiction in the form of first appeals as well as, in certain cases, second appeals, from the orders/directions of the Authorities established under the Acts specified in Schedule I to the NGT Act. For instance, under Section 16(h) and (i), the NGT acts as the first Appellate Authority in respect of decisions granting or refusing environmental clearance under the EIA Notification issued under the EP Act, and under Section 16(g) the NGT acts as the First Appellate Authority over directions

issued by the Central Government under Section 5 of EP Act, while under Section 16 (a) and (f), the NGT acts as the second Appellate Authority over decisions of the Appellate Authority taken under Section 28 of the Water Act and Section 31 of the Air Act respectively. It is pertinent to note in most instances where the NGT exercises its appellate jurisdiction, it sits in appeal over decisions made by the Central Government.

(xvii) That furthermore, as elucidated hereinabove, Section 29 of the NGT ousts the jurisdiction of all civil courts in respect of the aforestated matters.

(xviii) It is humbly submitted that since its establishment, the NGT has been comprehensively and effectively dealing with all matters relating to environmental protection, from adjudicating on the grant of environmental and forest clearances for Hydroelectric Power Projects, to overseeing the cleaning up of the polluted Yamuna and Ganga rivers, to name a few. The Ld. NGT, in determining the contours of its own jurisdiction in *J. Wilfred* (concerning the grant of clearance under the CRZ Notification to construction of the Vizhinjam Port Project) has observed:

"32. … From the Statement of Objects and Reasons as well as the Preamble of the NGT Act, it is clear that the framers of the law intended to give a very wide and unrestricted jurisdiction to the Tribunal in the matters of environment. ***Be it original, appellate or special jurisdiction, the dimensions and areas of exercise of jurisdiction of the Tribunal are very wide. The various provisions of the NGT Act do not, by use of specific language or by necessary implication mention any restriction on the exercise of jurisdiction by the Tribunal so far it relates to a substantial question of environment and any or all of the Acts specified in Schedule I****. Sections 15 and 16 of the Act do not enumerate any restriction as to the scope of jurisdiction that the Tribunal may exercise.* ***There is no indication in the entire NGT Act that the legislature intended to divest the Tribunal of the power of judicial review.*** *…*

36. …The scheme of the NGT Act ***clearly gives the Tribunal complete independence to discharge its judicial functions, have***

security of tenure and conditions of service and is possessed of complete capacity associated with Courts. *A complete mechanism is provided for adjudication process before the Tribunal as well as the method and procedures under which the orders of the Tribunal could be assailed before the higher courts.* ***Thus, this Tribunal has the complete trappings of a civil court and satisfies all the stated features for acting as an independent judicial Tribunal with complete and comprehensive powers."***

(Emphasis Supplied)

(xix) That furthermore, a pertinent question that came up in the *J. Wilfred* case, was whether the NGT could exercise the power of judicial review over delegated legislation framed under the Acts enumerated in Schedule I to the NGT Act (such as the CRZ Notification 2011). It is submitted that after a thorough examination of the decisions of this Hon‟ble Court on the issue of Tribunals‟ powers of judicial review, the NGT came to the conclusion that it did have the said power. It is pertinent to note that vide Order dated 03.02.2016, this Hon‟ble Court (in

the Appeal against the *J. Wilfred* decision – CA No.8550/2014) has remanded the matter to NGT to consider all questions (including the constitutional validity of the CRZ Notification impugned therein). Therefore, it is humbly submitted that as of today, the NGT is exercising the power of judicial review over delegated legislation issued under the Scheduled Acts. It is apposite that any judicial review exercise is concerned purely with questions of constitutional law, and only an Adjudicatory Authority well conversant with the said principles can adjudicate upon the same.

(xx) That moreover, it is humbly submitted that apart from exercising judicial review as well as original and appellate jurisdiction on all questions relating to the environment, the NGT, since its inception, has also been, in a manner, interpreting and enforcing the contours of the right to environment as an integral part of the right to life enshrined in the Art. 21 of Constitution.

(xxi) The same, it is submitted is evident from the fact that this Hon"ble Court has, on various occasions, transferred matters pending before it, relating to the enforcement of the right to a clean and healthy environment under Art. 21, including but not limited

to the Bhopal Gas Tragedy (*Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India,* (2012) 8 SCC 326*)*; the grant or otherwise of mining leases and the establishment of different Hotels or buildings in Forest or Wildlife sanctuaries in different States as well as the actions taken by the Authorities relatable to the Forest (Conservation) Act, 1980 in compliance with the Orders of this Hon‟ble Court (*T.N. Godavarman Thirumulpad v. Union of India,* (2016) 13 SCC 586); the cleaning up of the Yamuna (*In Re: News Item published in Hindustan Times "And Quiet Flows the Maily Yamuna"* W.P.(C) No. 725 of 1994, order dated 24.04.2017); and the cleaning up of the Ganges (*M.C. Mehta v. Union of India*, W.P. (c) No.3727 of 1985, order dated 24.01.2017). It is pertinent to note that in all the aforementioned matters, the litigants had approached this Hon‟ble Court for the enforcement of their fundamental rights under Art.32 of the Constitution, which is a part of the plenary extraordinary jurisdiction of this Hon‟ble Court. Therefore, it is humbly submitted, that the transfer of the said cases to the NGT by this Hon‟ble Court implies the trust this Hon‟ble Court has, in the ability of the NGT to decide questions of constitutional law. In fact, it is pertinent to note that

while transferring the Yamuna matters to the NGT, this Hon‟ble Court has observed:

> *"…we are of the view, that it is not appropriate to have two parallel jurisdictions to deal with the same controversy**. We are satisfied, that the National Green Tribunal is examining the issue in hand effectively, and is passing appropriate orders from time to time**. In the instant view of the matter, we consider it just and appropriate to transfer these proceedings and the writ petition to the National Green Tribunal."*
>
> (Emphasis Supplied)

(xxii) That therefore, it is humbly submitted, that since the NGT exercises wide original and appellate jurisdiction over all matters relating to the environment, including the power of judicial review over delegated legislation, and has also been conferred the power, by this Hon‟ble Court, the power to interpret and determine the contours of the right to environment under Art.21, in the manner done by this Hon‟ble Court in exercise of its plenary extraordinary jurisdiction, it is clearly a judicial tribunal that constitutes an "alternative institutional mechanism in adjudicatory process" that must

necessarily incorporate, in the words of this Hon‟ble Court in *R.K. Jain v. Union of India* (1993) 4 SCC 119, the following:

> *"67. …It is, therefore, necessary that those who adjudicate upon these matters should have legal expertise, judicial experience and modicum of legal training as on many an occasion different and complex questions of law which baffle the minds of even trained judges in the High Court and Supreme Court would arise for discussion and decision. …*
>
> *70. …So long as the alternative institutional mechanism or authority set up by an Act is not less effective than the High court, it is consistent with the constitutional scheme.* ***The faith of the people is the bed- rock on which the edifice of judicial review and efficacy of the adjudication are founded. The alternative arrangement must, therefore, be effective and efficient. For inspiring confidence and trust in the litigant public they must have an assurance that the person deciding their causes is totally and completely free from the influence or pressure from the Govt. To***

maintain independence and imperativity it is necessary that the personnel should have at least modicum of legal training, learning and experience.... *Selection of competent and proper people instill people's faith and trust in the office and help to build up reputation and acceptability.* ***Judicial independence which is essential and imperative is secured and independent and impartial administration of justice is assured. Absence thereof only may get both law and procedure wronged and wrong headed views of the facts and may likely to give rise to nursing grievance of injustice. Therefore, functional fitness, experience at the liar and aptitudinal approach are fundamental for efficient judicial adjudication. Then only as a repository of the confidence, as its duty, the tribunal would properly and efficiently interpret the law and apply the law to the given set of facts.*** *Absence thereof would be repugnant or derogatory to the constitution."*

(Emphasis Supplied)

(xxiii) That it is humbly submitted that, as will be demonstrated hereinbelow, that the impugned

Finance Act and Tribunal Rules are an attempt by the Respondents to destroy the very basis of the establishment of the Tribunals, in particular, the NGT and a colourable exercise of power to usurp judicial power onto the executive, thereby destroying the balance of separation of powers enshrined in the Constitution.

C. Enactment of Finance Act, 2017 and the Impugned Tribunal Rules framed thereunder

(i) That the Finance Bill, 2017 was presented before the Lok Sabha on 01.02.2017 when the Hon‟ble Finance Minister presented the Annual Budget.

(ii) That it is humbly submitted that while a Finance Bill as defined in Rule 219 of the Lok Sabha Rules of Procedure, is the Bill introduced by the Government to give effect to its financial proposals for the following financial year, the Finance Bill, 2017 also proposed amendments to various Acts, including, inter alia, a proposal to reform and reorganize 27 Tribunals, by, inter alia, merging 8 existing Tribunals with the remaining 19.

(iii) That on 21.03.2017, when the said Finance Bill was moved by the Hon‟ble Finance Minister, a Member of the Lok Sabha objected to the provisions of the Finance Bill relating to the amendments of various

Tribunal Acts being included in the same on the ground that the said provisions would not come within the definition of a „Finance Bill" under the Lok Sabha Rules of Procedure, nor as a Money Bill as defined under Art. 110(1) of the Constitution.

(iv) That the Hon"ble Finance Minister justified the said provisions as falling within the scope of Art.110(1)(g) ("any matter incidental to any of the matters specified in sub-clauses (a) to (f)"), and the Hon"ble Speaker, exercising the power granted to him under Art.110(3), ruled the Finance Bill to be a „Money Bill" within the meaning of Art.110(1).

(v) That therefore the said Finance Bill came to be passed by the Lok Sabha as a „money bill" on 22.03.2017, and thereby, under the special procedure for the passing of Money Bills under Art.109, it did not require the assent of the Rajya Sabha, in order to be notified as the impugned Finance Act, 2017 on 31.03.2017.

(vi) That it is humbly submitted that under Article 110(1), Bills dealing with *only* matters relating to tax; the borrowing of money/giving of guarantee by the Government of India; the Consolidated Fund (custody thereof, appropriation of moneys

therefrom/expenditure charged thereto/receipt of money into) or Contingency Fund of India; public account of India; audit of the accounts of the Union or of a State; or any matter incidental to the foregoing, can be classified as a „Money Bill‟. It is humbly submitted that therefore, a Money Bill must necessarily be confined to fiscal matters of the Union of India, within the parameters specified in Art. 110(1)(a)-(f). Therefore, the justification of the Respondents for the impugned provisions of the Finance Act, dealing with the reorganization of the statutory Tribunals, being a "Money Bill" on the ground that since Government money was being spent on the salaries etc., of the Chairperson(s)/Member(s) of such Tribunals, the reorganization of the Tribunals was incidental to the spending of such Government money, has no nexus with the plain meaning of the provisions of Art.110.

(vii) That in fact, it is humbly submitted that the impugned provisions of the Finance Act relating to the reorganization of Tribunals, in pith and substance, are related to the administration of justice and the establishment of courts and adjudicatory bodies (which as discussed hereinabove, are relatable to Art.32(2), 247, 323-A,

323-B read with Entries 77,78 and 95 of List I, Schedule 7, and Entry 11-A of List III), and the spending of Government money on the same is incidental to the main purpose of the said impugned provisions of the Finance Act.

(viii) That therefore, it is humbly submitted that the passing of the Finance Act, 2017 as a „Money Bill‟ under Art.109 of the Constitution was without constitutional competence, and a clear colourable exercise of power by the executive branch of the Government, represented by the Respondents herein, amounting to a fraud on the Constitution of India.

(ix) That moreover, it is humbly submitted that even though Art.110 (3) provides finality to the decision of the Speaker on whether the Bill in question is a Money Bill, the said decision, cannot be held to be outside the purview of judicial scrutiny by this Hon‟ble Court when the said decision amounts to a gross abuse of the sacrosanct law –making power enshrined in the Constitution, as has been done in the instant case.

(x) That moreover, the said colourable exercise of power –i.e. the bypassing of the mandatory

procedure for the passing of Bills, specified in Art.108 of the Constitution, by certifying non-fiscal bills as „Money Bills‟ has been attempted by the Respondents earlier as well – for instance, both the Insolvency and Bankruptcy Code, 2016 as well as the Aadhar (Targeted Delivery of Financial and other Subsidies, Benefits and Services) Act, 2016 ("Aadhar Act") were passed as „Money Bills‟, thereby doing away with the requirement of the said Bills being approved by both Houses of Parliament. In fact, it is pertinent to note that a challenged to the Aadhar Act, titled *Jairam Ramesh v. Union of India*, W.P. (C) No.231/2016, is pending adjudication before this Hon‟ble Court and was last listed on 13.02.2017 and is pending adjudication before this Hon'ble Court.

(xi) That Part XIV of the impugned Finance Act, 2017 purports to carry out "Amendments to Certain Acts to Provide for Merger of Tribunals and Other Authorities and Conditions of Service of Chairpersons, Members etc." The scheme of Part XIV is such that Sections 156-182 amend the provisions of the constituting Acts of 27 Statutory Tribunals so as to merge the 8 Tribunals specified in Schedule 9, with the 19 Tribunals specified in

Schedule 8 of the said impugned Finance Act, 2017 and to provide a blanket non-obstante clause stating that the qualifications, appointment, removal and other terms and conditions of service shall henceforth be governed by Section 184 of the Finance Act. For instance S. 182 of the impugned Finance Act amends the NGT Act to insert Section 10A, which reads in part:

> *"10A. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of service of the Chairperson, Judicial Member and Expert Member of the Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by Section 184 of that Act."*

(xii) That it is humbly submitted that there appears to be no intelligible differentia on the basis of which the 8 Tribunals to be merged with the other 19 Tribunals have been classified. For instance, under the 9th Schedule, the Airports Economic Regulatory Authority Appellate Tribunal established under the Airports Economic Regulatory Authority of India Act 2008 ("AERAI Act"), stands merged with the

Telecom Disputes Settlement and Appellate Tribunal ("TDSAT") under the Telecom Regulatory Authority of India Act, 1997 ("TRAI Act") with corresponding amendments being made by Sections 168 and 170 of the impugned Finance act to the provisions of the TRAI act and the AERAI Act, respectively, to provide for the TDSAT to adjudicate also disputes that were hitherto within the jurisdiction of the Airports Economic Regulatory Authority Appellate Tribunal. It is submitted that there appears to be no nexus between the fields of jurisdiction within which the TDSAT and the Airports Economic Regulatory Authority Appellate Tribunal function and therefore no reason for merging the two, thereby being in violation of the doctrine of reasonable classification encapsulated in Art.14 of the Constitution.

(xiii) That moreover, it is pertinent also to note that certain Statutory Tribunals that are currently functioning in the country have completely been left out of the Eighth and Ninth Schedules, such as the National Company Law Tribunal ("NCLT") constituted under Section 408 of the Companies Act, 2013. In this regard it is submitted that Part XIV is violative of Art. 14 of the Constitution, in that it

suffers from under classification, as the omission of Tribunals like the NCLT from Part XIV (which carries out far reaching amendments to the qualifications, appointment and removal procedures and the like to the members of such Tribunals)has no nexus with the object (which itself is not ascertainable) of Part XIV of the impugned Finance Act.

(xiv) That it is humbly submitted that apart from the above, Section 184 of the impugned Finance Act also suffers from excessive delegation and amounts to a complete abdication by the Respondents of their essential legislative functions.

(xv) That Section 184 delegates to the Central Government the unbridled and completely unguided power to frame Rules providing for inter alia the qualifications, appointment, removal, and other terms and conditions of service, of the Chairperson(s)/President(s)/Members and so on, of the 19 Tribunals specified in the Eighth Schedule to the Finance Act.

(xvi) That in this regard, it is submitted that this Hon‟ble Court has, time and again held that while the delegation of powers to the executive by the legislature, is a necessity in the proper functioning

of States, the said delegation of powers must firstly provide the Executive (or other body to whom power is delegated) with guidelines/policy within the four corners of which the said Delegatee must exercise the rule making power and secondly, and most importantly, the legislature in a constitutional democracy like ours which follows the Westminster model of government, must never delegate what amounts to its essential legislative function. Any abdication of its essential legislative function by the Legislature to the Executive would hit at the separation of powers doctrine, and be unconstitutional and invalid.

(xvii) That in this regard, it is submitted that the impugned Section 184 is violative of both the aforementioned principles. It is humbly submitted that S.184 does not provide any guidelines or policy for the framing of such Rules by the Central, except specifying the maximum tenure and age of superannuity of such Member of the Tribunal.

(xviii) Furthermore, it is humbly submitted that in the context of Statutory Tribunals, the specifying of the qualifications, appointment and removal procedures for at the very least the Chairpersons/President(s)/other heads of Statutory

Tribunals in the parent Act establishing the said Tribunal itself, is part of the essential legislative function of the Legislature that can never to delegated to the Executive.

(xix) That a perusal of the Parent Acts establishing the Tribunals specified in the Eighth Schedule would demonstrate that without fail, the qualifications, appointment and removal of the Chairperson(s)/President(s) and so on, who are to head the said Tribunals, are specified in each parent Act itself, while the procedure of appointment of other members such as technical/expert members has been delegated to a Selection Committee, the constitution of which is delegated to the Rules that may be so prescribed by the Central Government. The same is amply demonstrated from the scheme of the NGT Act, and Appointment Rules discussed hereinabove. Therefore, it is submitted that the delegation of the entire process to the Central Government as Section 184 purports to do, is not only a sharp departure from the established legislative practice, but is also a fraud on the Constitutional separation of powers.

(xx) That it is submitted that any amendment with regard to the qualification, appointment, removal and other

terms of service of the said Chairperson(s)/President(s)/heads of the Tribunals must necessarily be carried out by the Parliament. However, by granting such rule making power to the executive with regard to the above stated functions through a notification amounts to granting uncanalised power to the executive to control vital bodies which in essence perform judicial functions. Hence, it is submitted that Section 184 is violative of Art.14 for arbitrariness and is liable to be struck down.

(xxi) That moreover, it is humbly submitted that the said colourable exercise of power demonstrated by S.184 is even more egregious when one considers Tribunals like the NCLT which have been omitted from the Eighth Schedule and are therefore outside the ambit of the Rule Making power of granted to the Central Government under Section 184. The constitution and appointment of members of the NCLT, as specified in Sections 409 and 412 of the Companies Act, 2013 remain unaffected by the said Finance Act – demonstrating no reasonable classification between the Scheduled Tribunals on the one hand and the NCLT on the other.

(xxii) That the Respondent No.2, acting under the purported authority of S.184 of the Finance Act, 2017 has notified the Impugned Tribunal Rules 2017. It is submitted that the said Tribunal Rules are both procedurally and substantively ultravires both Section 184 of the Finance Act, as well as the separation of powers inherent in the basic structure of the Constitution.

(xxiii) In this regard, it is humbly submitted that when the delegation of the rule-making power is done to the Central Government, or when the Central Government carries out any business of the Government of India, the same, under Art.77 (1) is to be done in the name of the President who, under Article 77(3) has been empowered to make Rules for the allocation of the business of the Government amongst the Ministers. Accordingly, the President has notified the Allocation of Business Rules, 1961, demarcating the responsibilities and field of operation of various Ministries and departments within the Government, which have been amended from time to time.

(xxiv) That it is humbly submitted that the impugned Tribunal Rules 2017 have been notified by the Respondent No.2. A perusal of the latest field of

operation/responsibilities of the Respondent No.2 (Department of Revenue) would demonstrate that nowhere has it been entrusted with the administration of most of the Tribunals (in particular the NGT) and their parent Statutes specified in the Finance Act and Impugned Tribunal Rules. Therefore, is submitted that the issuance of the said impugned Tribunal Rules by the Department of Revenue in the Finance Ministry (Respondent no.2 herein) suffers from the lack of legislative and executive competence and therefore the same is ultra vires the Constitutional Scheme.

(xxv) That moreover, it is humbly submitted that while the overseeing of the functioning of certain Tribunals under the said Rules have been entrusted to different Government Ministries (for instance, the MoEF is nodal Ministry for the NGT), there is no single nodal agency/government department overseeing the functioning of all tribunals, which had led this Hon‟ble Court in *L. Chandra Kumar* to direct that until such a nodal agency/department is established, the overseeing of the workings/functioning of Statutory Tribunals must be undertaken by the Ministry of Law and Justice (Respondent No.1 herein). Therefore, it is submitted

that the notification of the said impugned Tribunal Rules is also in violation of the express directions of this Hon‟ble Court.

(xxvi) That in any event, a perusal of the said Impugned Rules would demonstrate that the same encroach upon the independence of the judiciary in terms of the prescribed qualifications of the Chairperson(s)/President(s)/Judicial Member(s) of the said Tribunals, and also provide primacy to the executive in such appointment and removal processes, thereby further destroying the delicate balance of powers inherent in our Constitutional Scheme and basic structure.

(xxvii) That the scheme of the said impugned Tribunal Rules provides for a Schedule, Column (2) of which specifies the Tribunal; Column (3) the qualifications of the Members; Column (4) the Composition of the Search-cum-selection Committee; Column (5) the term of office; and Column (6) the retirement age.

(xxviii) That Rule 3 states that the qualification for appointment of Members is as prescribed in Column *(3)* of the Schedule; Rule 4(1) states that the said members shall be appointed by the Central Government on the recommendation of a Search-

cum-Selection Committee, the composition of which is prescribed in Column(4). Rule 4(2) importantly, makes the secretary to the Government of India in the Ministry or Department under which the said Tribunal is established, the convener of the said Search-cum-Selection Committee; while Rule 7 empowers the Central Government to remove a Member from office on the recommendation of a “Committee” constituted by it in this behalf, on the grounds specified in Rule 7(1). It is pertinent to note that while Rule 8 prescribes the procedure for conducting the inquiry into the conduct of the concerned member, the Rules nowhere specify the composition of the said Committee which conducts the said inquiry, and leave the same up to the whims and fancies of the Central Government. It is pertinent also to note that the second Proviso to Rule 7 carves out an exception in the case of the removal of the Chairperson of the National Company Law Appellate Tribunal (NCLAT), in that the said Chairperson can only be removed consultation with the Chief Justice of India, again, demonstrating no intelligible differentia is creating a separate class of Chairpersons of the NCLAT and also no nexus with any object of the said Tribunal Rules or the Finance Act, thereby making the same

a prima facie violation of the doctrine of equality under Art.14 of the Constitution.

(xxix) That it is humbly submitted that, as has been elucidated in the preceding submissions, that the Tribunals, in particular, the NGT, are judicial bodies with all the trappings of courts that apply and interpret the law of the land, including the dimensions of the fundamental rights to life and environment, and also engage in judicial review of various subordinate legislations. Therefore, as per the decisions of this Hon‟ble Court, such tribunals must necessarily be manned by persons with judicial training, and in particular, maintaining their independence from the executive and legislative branches of government is paramount. The directions of this Hon‟ble Court in *R. Gandhi* referred to hereinabove succinctly encapsulate the said principles. It is submitted that the scheme of the NGT Act and Appointment Rules, explained hereinabove are a clear example of the maintenance of such judicial independence which as at the heart of the basic structure of the Constitution.

(xxx) That however, it is humbly submitted that the impugned Tribunal Rules, 2017, completely destroy

the said independence of the Tribunals as judicial bodies and the separation of powers between the judicial and executive branches of government, in particular in the case of the NGT.

(xxxi) That it is humbly submitted that the NGT is the 19th Tribunal specified in the Schedule to the impugned Rules and that the Qualifications in Column (4), and the composition of the Search-cum-Selection Committee in Column (5) are at complete variance with the existing provisions for the same in the NGT Act and Appointment Rules and have a chilling effect on the basic requirement of independence and separation of powers in the composition of a tribunal like the NGT. A chart highlighting the differences in the provisions of the NGT Act and Appointment Rules on the one hand and the impugned Tribunal Rules on the other, is annexed herewith as **Annexure P-6 (Pages to).**

(xxxii) That it is humbly submitted that a perusal of the aforestated Chart would demonstrate the following glaring unconstitutional defects in the Impugned Tribunals Rules, when juxtaposed with the NGT Act and Appointment Rules and the unalienable requirements of independence of the Tribunal and separation from the executive.

(xxxiii) That for instance, under the NGT Act, it was mandatory that the Chairperson have actual judicial experience as either a Supreme Court Judge or the Chief Justice of a High Court, the *raison d‟etre* for which is that, as demonstrated hereinabove, the NGT is the apex environmental tribunal and appeals against its decisions are directly preferred to this Hon‟ble Court under Section 22, and that too only on substantial questions of law. Therefore, it is apposite that the person chairing the Tribunal must have judicial experience at the highest levels, either as a Supreme Court Judge or High Court Chief Justice. However, under the Impugned Tribunal Rules, a person can be appointed as the Chairperson of the NGT if he is *qualified* to be a Supreme Court Judge (which under Art. 124(3) may include practicing lawyers *and* qualified jurists), or has been an Expert or Judicial Member for 3 years (and Expert Members do not require judicial experience prior to appointment, and may be bureaucrats), or, most problematically, if he is a "person of integrity and standing having special knowledge of, and professional experience of not less than twenty-five years in law including five years‟ practical experience in the field of environment and forests".

*(xxxiv)*It is submitted that the highlighted provisions may result in a person being qualified for appointment as the Chairperson who is neither a Supreme Court or High Court Judge, nor has any legal background whatsoever, which is in direct contravention of the directions provided in *R. Gandhi.*

(xxxv) That similarly, under the NGT Act and Appointment Rules, in order to qualify as a Judicial Member a person must necessarily have judicial experience at the High Court or Supreme Court level, but under the Impugned Tribunal Rules, a person can be qualified to be a Judicial member if is *qualified* to be a High Court Judge or has held *judicial office* for 10 years. The reason for the original high qualifications required by the NGT Act for Judicial Members was that the Judicial members head the various zonal benches of the NGT, which are *coordinate benches* and not subordinate to the principal Bench at Delhi. Therefore such Judicial members" qualifications were necessary to be similar to those of the Chairperson. However, the Impugned Rules, 2017 drastically reduce the minimum qualifications of the Judicial Members – in that practicing advocates with no judicial experience, or Judicial Magistrates at the Sub-Divisional Levels, who may have never had

occasion to engage in constitutional interpretation may be appointed as Judicial Members, again, in contradistinction to the principles enunciated by this Hon‟ble Court regarding the constitution/composition of such tribunals.

(xxxvi) That under the NGT Act, an Expert Member must have very technical qualifications and expertise, to the level of a Doctorate in the case of the Sciences and Masters Degree in the case of Engineering and Technology *along with* 15 years‟ experience in the field at a National level institute, the primary rationale behind which is that the NGT is a highly specialized Tribunal dealing with technical scientific questions along with legal ones, and therefore it is imperative that the Expert members of the same, be well versant in the sciences. However, the said qualifications have been severely and significantly diluted by the Impugned Rules, in that *any person* with *any degree* in Science and its allied fields can qualify for appointment if he or she has a mere *five years‟* experience in the field.

(xxxvii) That it is submitted that this dilution in the qualifications of the members of the NGT has severe irreparable effects on the functioning of the Tribunal as an independent enforcer of the right to

the environment, the most egregious of which is the right to effective and expeditious access to justice. It is humbly submitted that a basic principle of the rule of law in the administration of justice is that justice must not only be done but must also be *manifestly seen to be done.* The NGT enjoys wide original and appellate jurisdiction over *all* matters relating to the environment, and most Applicants before it are non-governmental/non-profit organizations committed to the conservation of the environment, such as the Petitioner herein. Inherent in thisconferral of the wide jurisdiction to the NGT is the public trust that the Tribunal will apply its mind *judiciously* to the grievances of the public relating to environmental law, and the therefore, the decisions of the Tribunal (the only recourse against which is an Appeal to this Hon‟ble Court and that too, only on substantial questions of law) will be given by persons with the highest qualifications and judicial and technical experience. Therefore, any dilution in the qualifications of the members of the Tribunal would irreparably harm the litigants‟ trust in the expertise of the Tribunal, severely impairing their rights to access to justice.

(xxxviii) That furthermore, it is humbly submitted that the composition of the Search-cum-Selection Committee and the procedure for appointment of the members of the Tribunal clearly gives primacy to the executive in the manner of such appointment, thereby destroying the independence of the members of the Tribunals and the balance of separation of powers by a colourable usurpation of judicial power by the executive.

(xxxix) That under the original provisions of the NGT Act, the Chairperson could only be appointed in „consultation‟ with the Chief Justice of India. It is humbly submitted that once it is established that the NGT is an alternative *judicial* body, the word „consultation‟ must be given the meaning ascribed to it in the provisions of the Constitution pertaining to the appointment of judges, namely, that the said appointment must be done with *consent* of the Chief Justice of India, which is a fundamental to ensuring the independence of the judiciary, as has been held by this Hon‟ble Court in the *Judges cases.*

(xl) That furthermore, under the NGT Act, the appointment of Judicial and Expert Members was to be done on the recommendation of a Selection Committee, which under the Appointment Rules,

was to be chaired by a Supreme court Judge as the CJI�となく s nominee, and included the Chairperson as the Director of the IITs (by rotation). As per the said Rules, there is only *one* member of the Selection Committee who is a formal part of the Government, i.e. the Secretary to the Government of India in the MoEF. Furthermore, the remaining two members of the Selection Committee were to be experts each in the Environment Policy and Forest Policy, to be nominated by the Minister, MoEF. This mechanism, it is humbly submitted, ensured the complete independence of the appointment process from the executive as well as equivalence between to the judiciary and executive in deciding who to appoint. The primary rationale for the complete independence of the appointment process from the executive is that the NGT, when exercising its Appellate jurisdiction in particular, sits in appeal over the directions and decisions of the central government, such as Appeals with respect to the grant/refusal of Environmental Clearances which is done by the MoEF. Therefore, the Act has striven to ensure that there can be no possibility of the Government, in particular, the MoEF, influencing the appointment of a member who will later sit in Appeal over the very decisions of the MoEF itself.

(xli) That however the Impugned Rules 2017 have completely destroyed the independence of the said appointment process in the following ways: First, the convener of the Search-Cum-Selection Committee in the case of the NGT, would be the Secretary to the Government of India in the MoEF, as per Rule 4(3). Second, while the composition of the said Committee includes the nominee of the Chief Justice of India, it excludes the Chairperson of the NGT, thereby reducing the persons on the committee with Supreme Court/High Court level judicial experience to merely one. Third, there are two Government of India Secretaries on the said Committee - the convener of the said Committee himself, i.e., the Secretary MoEF, and another Secretary to be nominated by him. Fourth, there are two "experts" (with no guidelines as to who would qualify as an „expert‟) to be nominated by the two Central Government members. This scheme unequivocally demonstrates that the entire Selection process is in the complete control of the Central Government, with the CJI being included in the Committee only to cursorily meet any allegations of governmental bias.

(xlii) That it is humbly submitted that therefore, the entire selection process, which should be the province of

the judiciary, has been usurped in a colourable exercise of power by the Government by way of the Impugned Rules in order to destroy the separation of powers that lies at the heart of the basic structure of our Constitution, in complete violation of the decision of this Hon‟ble Court in *R. Gandhi*, wherein it was unequivocally held:

> *"101.* ***Independent judicial tribunals for determination of the rights of citizens, and for adjudication of the disputes and complaints of the citizens, is a necessary concomitant of the Rule of Law. Rule of Law has several facets, one of which is that disputes of citizens will be decided by Judges who are independent and impartial; and that disputes as to legality of acts of the Government will be decided by Judges who are independent of the Executive****. Another facet of Rule of Law is equality before law.* ***The essence of equality is that it must be capable of being enforced and adjudicated by an independent judicial forum. Judicial independence and separation of judicial power from the Executive are part of the common law traditions implicit in a***

Constitution like ours which is based on the Westminster model.

*102. **The fundamental right to equality before law and equal protection of laws guaranteed by Article 14 of the Constitution, clearly includes a right to have the person's rights, adjudicated by a forum which exercises judicial power in an impartial and independent manner, consistent with the recognized principles of adjudication. Therefore wherever access to courts to enforce such rights is sought to be abridged, altered, modified or substituted by directing him to approach an alternative forum, such legislative act is open to challenge if it violates the right to adjudication by an independent forum**. Therefore, though the challenge by MBA is on the ground of violation of principles forming part of the basic structure, they are relatable to one or more of the express provisions of the Constitution which gave rise to such principles. Though the validity of the provisions of a legislative act cannot be challenged on the ground it violates the basic*

structure of the constitution, it can be challenged as violative of constitutional provisions which enshrine the principles of Rule of Law, separation of power and independence of Judiciary.”

(Emphasis Supplied)

(xliii) That it is humbly submitted that the impugned Tribunal Rules 2017 are a flagrant attempt by the Respondents to do indirectly what they cannot do directly – namely to ensure that the Government has the power to influence the administration of justice –something that has been repeatedly struck down as unconstitutional, the most recent being the striking down of the 99th Amendment to the Constitution and the National Judicial Accountability Commission Act, 2015 in the *Fourth Judges Case* – *Supreme Court Advocates on Record Association v. Union of India* (2016) 5 SCC 1, in the context of the appointment of the higher Judiciary. It is clear that the Government, having failed to usurp judicial appointment power and thereby influence the administration of justice at the level of the Supreme Court and High Court, has now attempted the same at the level of judicial tribunals.

11. That the Petitioner, in support of the submissions made hereinabove, urges the following amongst other grounds in the alternative and without prejudice to each other:

No Competence to Pass Part XIV of the Impugned Finance Act 2017 as a "Money Bill"

A. Because all Bills except Money Bills as defined in Article 110(1) of the Constitution (under which Money Bills pertain only to the fiscal matters specified therein) must be passed with the assent of both Houses of Parliament in the manner prescribed by Art.108.

B. Because a "financial Bill" like the Finance Bill 2017, within the meaning of Article 117(1), read with Rule 219 of the Lok Sabha Rules of Procedure, can only contain the matters specified in Art.110(1) and other additional matters incidental thereto, to the spending of Government money and allocation of Government funds. It is only such a Finance Bill that can bypass the mandatory procedure prescribed in Art.108, and be passed without the express consent of the Rajya Sabha under Art.109.

C. Because provisions of Part XIV of the Finance Bill (and the impugned Finance Act that gave effect to the same) had, on the face of it, no nexus whatsoever with the matters specified in

Art.110(1)(a)-(f), and were in pith and substance related to the administration of justice. This Hon"ble Court has in various cases such as *Union of India v. Delhi High Court Bar Association* (2002) 4 SCC 275 and *R. Gandhi* (2010) 11 SCC 1 traced the power to enact laws establishing Tribunals as being relatable to Art.32(2), 247, 323-A, 323-B read with Entries 77,78 and 95 of List I, Schedule 7, and Entry 11-A of List III.

D. Because therefore, Part XIV of impugned Finance Act could in no way be classified as a Money or Financial Bill, and by certifying it as such, the Lok Sabha has effectively bypassed any interference therein by the Rajya Sabha, which it was incompetent to do under the Constitutional Scheme.

E. Because therefore, the passing of the Finance Act as a Money Bill without competence amounts to a colourable exercise of power and fraud upon the Constitution by the Government, and when such proceedings are tainted on account of substantive illegality or unconstitutionality, the same cannot be immune from the purview of judicial review and scrutiny.

F. Because therefore, Part XIV of the impugned Finance Act, 2017 merits to be struck down in its entirety.

Unconstitutionality of Part XIV of the Impugned Finance Act under Article 14 on account of unreasonable classification

G. Because Part XIV of the impugned Finance Act, 2017 purports to carry out "Amendments to Certain Acts to Provide for Merger of Tribunals and Other Authorities and Conditions of Service of Chairpersons, Members etc.". The scheme of Part XIV is such that Sections 156-182 amend the provisions of the constituting Acts of 27 Statutory Tribunals so as to merge the 8 Tribunals specified in Schedule 9, with the 19 Tribunals specified in Schedule 8 of the said impugned Finance Act, 2017, but there appears to be no intelligible differentia on the basis of which the 8 Tribunals to be merged with the other 19 Tribunals have been classified, such as for instance the rationale behind to clubbing or merging the Airports Economic Regulatory Authority Appellate Tribunal with the Telecom Disputes Settlement and Appellate Tribunal ("**TDSAT**") which have completely different fields of operation, thereby rendering the said merging of the Tribunals *ultra vires* the doctrine of

reasonable classification encapsulated in Art.14 of the Constitution.

H. Because moreover certain Statutory Tribunals that are currently functioning in the country have completely been left out of the Eighth and Ninth Schedules, such as the National Company Law Tribunal ("**NCLT**") constituted under Section 408 of the Companies Act, 2013, with no intelligible differentia to constitute the NCLT as a separate class of Tribunals on its own, the functioning of which will not be affected by the impugned Finance Act, thereby rendering the impugned Part XIV of the Finance Act void on the ground of under classification.

Excessive Delegation under Section 184 of the impugned Finance Act, 2017

I. Because Section 184 of the impugned Finance Act also suffers from excessive delegation and amounts to a complete abdication by the Respondents of their essential legislative functions, by delegating to the Central Government the unbridled and completely unguided power to frame Rules providing for inter alia the qualifications, appointment, removal, and other terms and conditions of service, of the Chairperson(s)/President(s)/Members and so on, of

the 19 Tribunals specified in the Eighth Schedule to the Finance Act, including the NGT Act.

J. Because it is an established principle of law that any delegation of powers under any Statute, in order to be constitutional, must firstly provide the Executive (or other body to whom the power is delegated) with guidelines/policy within the four corners of which the said Delegatee must exercise the rule making power and secondly, and most importantly, the legislature in a constitutional democracy like ours which follows the Westminster model of government, must never delegate what amounts to its essential legislative function.

K. Because the impugned Section 184 is violative of both the aforementioned principles, in that it does not provide any guidelines or policy for the framing of such Rules by the Central, except specifying the maximum tenure and age of superannuity of such Member of the Tribunal.

L. Because moreover in the context of Statutory Tribunals, the essential legislative function of the Legislature that can never to delegated to the Executive is the specifying of the qualifications, appointment and removal procedures for at the very least the Chairpersons/President(s)/other heads of

Statutory Tribunals in the parent Act establishing the said Tribunal itself. A perusal of the Parent Acts establishing the Tribunals specified in the Eighth Schedule would demonstrate that without fail, the qualifications, appointment and removal of the Chairperson(s)/President(s) and so on, who are to head the said Tribunals, are specified in each parent Act itself, while the procedure of appointment of other members such as technical/expert members has been delegated to a Selection Committee, the constitution of which is delegated to the Rules that may be so prescribed by the Central Government.

M. Because therefore the delegation of the entire process to the Central Government as Section 184 purports to do, is not only a sharp departure from the established legislative practice, but is also a fraud on the Constitutional separation of powers and amounts to the granting of uncanalised power to the executive to control vital bodies which in essence perform judicial functions, thereby violative of Article 14 on the ground of arbitrariness as well.

Lack of Legislative Executive Competence to the Respondent No.2 to pass the Impugned Tribunal Rules 2017 under the purported authority of Section 184 of the impugned Finance Act

N. Because when a provision of a Statute delegates any law-making power to the Central Government, the said power must be exercised under Art.77(1), the name of the President, but by the Ministry/Department so authorized by the President under the Allocation of Business Rules framed under Art.77(3).

O. Because under the said Allocation of Business Rules 1961, and well as the latest portfolio of the field of work entrusted to the Department of Revenue as per the Respondent No.2‟s website, there is no such power granted to the said Department of Revenue to administer and/or frame Rules and the like in the case of all tribunals, yet the Impugned Rules, which affect the functioning of 19 Tribunals have been notified by the Respondent No.2 despite having no competence to do so.

P. Because while there is no nodal Ministry/Agency/Department to whom the administration of Tribunals in general has been entrusted, this Hon‟ble Court in *L. Chandra Kumar*, has stated that until such agency/department is specified it is the Ministry of Law and Justice (respondent no.1 herein) that should undertake the said task. Therefore, the competence, if any, to

pass the impugned Tribunal Rules, lay with the Respondent No.1 and not the respondent No.2, and the impugned Tribunal Rules merit to be struck down on this ground alone.

Under-classification in the Impugned Tribunal Rules – violative of Art.14

Q. Because the Impugned Tribunal Rules 2017 purport to affect inter alia the appointment, qualification, removal, terms and conditions of service of the members of only 19 Tribunals (within which 8 other Tribunals were subsumed by way of the impugned Finance Act, 2017) but do not affect the functioning of various other Tribunals established and functioning in India – such as the NCLT.

R. Because there is no intelligible differentia between the classification of the 19 Scheduled Tribunals on the one hand by the impugned Tribunal Rules, and the Tribunals left out of the purview thereof, like the NCLT, on the other, and no reasonable nexus of the same with the object, if any, of the impugned Rules, and therefore the same is liable to be struck down on the ground of under-classification under Art.14.

S. Because furthermore, the second proviso to Rule 7 carves out an exception in the case of the removal of the Chairperson of the NCLAT, providing a

special procedure for the same (the requirement of the CJI‟s consent before removal) without any intelligible differentia for the removal of the Chairperson NCALT to constitute a class of its own in contradistinction with the Chairpersons of the other Scheduled Tribunals, and is therefore violative of Article 14 as well.

Tribunals like the NGT having all the trappings of „courts‟ – imperative to ensure the highest judicial qualification and complete independence of members from the executive

T. Because the Scheduled Tribunals constitute alternative „judicial‟ mechanisms of dispute resolution. In particular, a Tribunal like the NGT has extremely wide original and appellate jurisdiction over all matters related to substantial questions of enforcement of legal and constitutional rights to the environment, and also exercises judicial review powers over delegated legislation. Moreover, the NGT Act ousts the jurisdiction of all civil courts over matters that the NGT has been provided jurisdiction over, and this Hon‟ble Court has also often transferred matters pertaining to Hon‟ble Court‟s extraordinary jurisdiction to enforce the right to a clean and healthy environment under Art.21 to the NGT, being satisfied that the NGT is capable of

deciding the questions of law as well as facts raised therein.

U. Because therefore this Hon‟ble Court has time and again, laid down the principles on the basis of which such Tribunals should be constituted. In particular, this Hon‟ble Court has consistently held that if such Tribunals are to be vested with judicial powers normally exercised by Courts, such Tribunals should possess also the independence, security and capacity associated with Courts and has also stressed upon what features in the constitution of such tribunals would fulfill the said requirements – in particular, that there must be „total insulation of the judiciary‟ from the executive (S.P. Sampath v. Union of India (1987) 1 SCC 124) in terms of Art.50 of the Constitution.

V. Because moreover, the very Act under which the NGT is established, i.e. the NGT Act, in its Statement of Object and Reasons states that the NGT has been constituted in order for India to honour its commitment under the Rio Declaration, under Art. 253 of the Constitution, and based on the need to establish comprehensive „environment courts‟ expressed by this Hon‟ble Court in a number of decisions, as well as on the Recommendations of

the Law Commission in its 186th Report which specifically advocates the requirement of such environment courts to be manned by persons having judicial experience/training, and assisted by persons with technical scientific qualifications and experience in the field of the environment. Furthermore, since the NGT sits in appeals over decisions of the government, such as the granting/refusal of Environmental/Forest clearances and the like, it is even more imperative that the members of the NGT should be completely independent of any influence by the executive and must also inspire confidence and trust in the public, of their independence and ability and expertise to ensure justice and the rule of law.

Dilution of Qualifications and Appointment and Removal Procedure for members of NGT in the Impugned Tribunal Rules –a colourable usurpation of power by the Executive with a chilling effect on the rule of law and separation of powers doctrine

W. Because under the impugned Tribunal Rules, the Executive has complete primacy and control over the appointment of the members (including the Chairperson and Judicial members) of the NGT, which is in stark contrast with the original scheme of the NGT Act and Appointment Rules, under which, inter alia, the CJI had primacy in appointing the Chairperson of the NGT, while the 6 member

Selection Committee to appoint the Judicial and Expert Members of the Tribunal was chaired by a sitting judge of this Hon‟ble Court as the CJI‟s nominee, the Chairperson of the NGT, the Director of each IIT by rotation, and three government nominees (i.e., the Secretary MoEF and two experts in Environment Policy and Forest Policy nominated by the Minister for Environment and Forests) as members. Moreover, the inquiry for the removal of the Chairperson or judicial member of the NGT under the original scheme of the NGT Act, was to be conducted by a sitting judge of the Supreme Court, whereas under the Impugned Rules, the same is to conducted by a "committee" to be set up by the Central Government, the constitution and procedure of which, has been left to the whims and fancies of the Central Government, with no guidelines for the same whatsoever.

X. Because the said procedures clearly demonstrate the Respondents‟ mala fide intentions to ensure that the Government retains control over the Members of the NGT, who would later sit in appeal over the decisions of the Government, which smacks of executive interference in judicial functions, in violation of Art.50 of the Constitution. The same, it is

submitted is a naked power grab by the government, destroying the delicate balance in the separation of powers and independence of judiciary enshrined in the Constitution, which has repeatedly been held to intrinsic to the basic structure of the Constitution as well as to the rule of law.

Y. Because moreover, as has been held by this Hon"ble Court in *R. Gandhi,* a fundamental facet of the equality before law and the equal protection of laws, is effective access to justice for all, i.e. the adjudication of their disputes by independent judicial bodies, as a necessary concomitant to the rule of law. It is submitted a fundamental facet of access to justice is that justice must not only be done but must also be *manifestly seen to be done*. Therefore, the public at large must have confidence that the members of the tribunal/judicial body deciding their cases are both highly qualified, as well as independent of the Government. This is particularly so, in the case of the NGT, where the government and its various agencies/departments, are parties in nearly every case.

Z. Because therefore, the primacy granted to the Government in the Appointment and removal of the members of the Scheduled Tribunals such as the

NGT would, apart from destroying the independence of the Tribunal, also have a chilling effect on the public"s perception of whether justice is actually being done, with far reaching and irreparable adverse consequences on the very fabric of rule of law and our Constitutional democracy.

AA. Because similarly, the severe dilution of the minimum qualifications for Appointment of the members of the NGT by way of the impugned Rules, inasmuch as they have the effect of persons with no judicial training whatsoever being appointed as the Chairperson and/or Judicial members of the NGT also have a chilling effect on the ability of the NGT to function effectively as the apex body deciding environmental issues, and would also affect the public"s faith in its ability to do so.

BB. Because therefore, the Impugned Tribunal Rules merit to be quashed in their entirety.

12. That the Petitioner has not filed any similar petition before any other Hon"ble Court or this Hon"ble Court seeking the reliefs prayed for herein and that the Petitioner has no personal interest in the matter apart from the severe impingement on the fundamental rights of all persons

being done by the impugned Finance Act and Impugned Tribunal Rules, 2017. The present Petition has been filed bona fide and in the interests of the general public, and therefore, given also the pan-India ramifications of the impugned Finance Act and impugned Tribunal Rules, this Hon‟ble Court has the jurisdiction to entertain the present Writ Petition.

13. That the Petitioner does not have any alternate efficacious remedy before any other court of law given the pan-India ramification of the present case and no Government authorities have been moved in respect of the reliefs prayed in the petition.

14. That the Petitioner has a good case on merits and is likely to succeed in the Petition and that if the reliefs prayed for are not granted, the public at large will suffer grave and irreparable consequences.

PRAYER

That therefore, it is most respectfully prayed that this Hon‟ble Court may be pleased to:

A) Issue a Writ, Order or directions in the nature of certiorari, or any other appropriate order to quash/set aside Part XIV (Sections 156-189) of the Impugned Finance Act, 2017;

B) Issue a Writ, Order or directions in the nature of certiorari, or any other appropriate order to quash/set aside Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017 in their entirety; and

C) Pass any such further order(s) as this Hon"ble Court may deem fit in the interests of justice.

AND FOR THIS ACT OF KINDNESS YOUR HUMBLE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN BY: **FILED BY**:

VIVEK CHIB
RUCHIRA GOEL **(RUCHIRA GOEL)**
ADVOCATES ADVOCATE OF THE PETITIONER

DRAWN ON:
FILED ON

IN THE SUPREME COURT OF INDIA

CIVIL WRIT JURISDICTION

I.A. NO.____/2017

IN

WRIT PETITION (CIVIL) No.________of 2017

(Under Article 32 of the Constitution of India)

IN THE MATTER OF:

Social Action for Forest & Environment …..Petitioner

Versus

Union of India & Anr. …..Respondents

APPLICATION FOR STAY

TO

HON'BLE THE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUSTICES OF THE HON'BLE SUPREME COURT

MOST RESPECTFULLY SHOWETH:

1. That the Petitioner herein has preferred the accompanying Writ Petition under Article 32 of the Constitution of India praying inter-alia, for the quashing of Part XIV of the Finance Act, 2017, notified by the Respondent No.1 and the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017 ("Tribunal Rules 2017") framed by the Respondent No.2 vide Notification dated 01.06.2017 under the purported authority granted by Section 184 of the Finance Act, 2017. The said impugned provisions of the Finance Act and the Impugned Tribunal Rules amount to a colourable

exercise of power by the Respondents, having been enacted without constitutional competence, and moreover, the said impugned provisions also severely impinge upon the independence of members of the Tribunals, including the NGT, which is integral to the doctrine of separation of powers that forms part of the basic structure of the Constitution. The contents of the accompanying Writ Petition may be read as part and parcel of the present Application and the same are not being repeated here for the sake of brevity.

2. That the instant Application is being preferred by the Petitioner herein seeking a stay of operation of the impugned Tribunal Rules in particular with regard to any action being taken under the said Impugned Tribunal Rules for the appointment of the Chairperson of the National Green Tribunal as the term of the present Chairperson of the Tribunal is ending on 19.12.2017. The Petitioner by way of the instant Application is also praying that the Respondents be restrained from issuing any further Rules regarding the qualifications, appointments, removal and terms and conditions of service of the members of the Tribunals specified in the Eighth Schedule to the Finance Act, under the purported authority of Section 184 of the impugned Finance Act.

3. That the National Green Tribunal established under the NGT Act, 2010 has been conferred under Section 14 and Section 16 with original and appellate jurisdiction to decide all civil cases where a substantial question relating to environment is involved and such question arises out of the implementation of the seven central legislations specified in the Schedule to the NGT Act. The NGT under Section 19 of the NGT Act has been conferred the power of a Civil Court to try cases pending before it. Furthermore, any appeal (that too only on substantial questions of law) from a decision of the NGT lies directly to this Hon'ble Court under Section 22 of the NGT Act. Therefore, the National Green Tribunal has been conferred with plenary judicial power to deal with the environmental issues.

4. That the operation of the impugned Tribunal Rules would fundamentally affect the independence, authority and capacity of the NGT to adjudicate on environmental issues. It is humbly submitted that if the Impugned Rules are implemented, and a new Chairperson appointed to the NGT once the term of the current Chairperson expires in 5 months, there is a clear and present danger of the said new Chairperson being appointed under the impugned Tribunal Rules by the Respondents, who may be neither qualified nor possess the experience, judicial

training, vision and outlook to deal with complex environmental problems. In addition to the above, the members of the Tribunal will not have the administrative as well as functional autonomy and will be 'under' the control of the very Ministry whose decisions they are required to adjudicate upon which in complete violation of the guidelines laid down by this Hon'ble Court in *R. Gandhi* v. *Union of India*, (2010) 11 SCC 1.

5. That in case the impugned Rules are implemented, it would severely prejudice and affect the rights of the public at large to get effective access to fair justice with regard to right to environment which is part of the Right to Life under Art. 21 of the Constitution.

6. That furthermore, the matters related to appointment, qualification, removal and other conditions of services of the Chairperson, President, Members of the 19 Tribunals as prescribed in Schedule to the impugned Rules do not fall under any of the items of the business allocated to the Respondent No.2 Ministry under the Government of India (Allocation of Business) Rules, 1961 and no amendment has been made in the 1961 Rules insofar to include the above items under the Ministry which is in clear violation of Art.77 and the 1961 Rules.

7. That moreover, the impugned Part XIV of the Finance Act, under the purported authority of which the impugned Tribunal Rules have been issued, itself has been passed without competence under the Constitutional scheme by bypassing the mandatory requirement to be passed with assent of both Houses of Parliament for all Bills except Money Bills.

8. That it is further submitted that the balance of convenience also clearly rests in the Petitioner‟s favour and that the public would suffer irreparable harm if the impugned Tribunal Rules are not stayed and the irreversible action of the appointment of new members of the Scheduled Tribunals, in particular the appointment of a new Chairperson of the NGT, is made under the impugned Tribunal Rules.

P R A Y E R

In the aforesaid facts and circumstances, it is respectfully prayed that this Hon‟ble Court may kindly be pleased to:

a) Pass an order staying the operation of Part XIV of Chapter VI of the Finance Act, 2017 until the final disposal of the instant Petition;

b) Consequently pass and Order staying the operation of the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017 and

restraining the Respondents from appointing any Chairperson/Member of any Tribunals under the same until the final disposal of the instant Petition**;**

c) Restrain the Respondents from taking any action to appoint a new Chairperson of the NGT under the Impugned Rules, 2017 until the final disposal of the instant Petition; and

d) Pass any such further order(s) as it may deem fit in the interests of justice.

FOR THIS ACT OF KINDNESS, THE PETITIONER, AS DUTY BOUND, SHALL FOREVER PRAY

DRAWN BY: **FILED BY**:

VIVEK CHIB
RUCHIRA GOEL **(RUCHIRA GOEL)**
ADVOCATES ADVOCATE OF THE PETITIONER

DRAWN ON:
FILED ON

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) No.________of 2017

(Under Article 32 of the Constitution of India)

IN THE MATTER OF:

Social Action for Forest & Environment …..Petitioner

Versus

Union of India & Anr. …..Respondents

AFFIDAVIT

I, Vikrant Tongad, S/o Shri Baljeet Singh, Aged about 27 years, R/o T-16, Senior Citizen Housing Complex, Sector-P-3, Greater Noida-201308, District Gautam Budh Nagar, Uttar Pradesh, presently at New Delhi, do hereby solemnly affirm and state as under:

1. That I am the Authorised Representative of the Petitioner in the present case and am conversant with the facts and circumstances of the case and as such competent to swear the present affidavit.

2. That there is no personal gain, private motive or oblique reason in filing this Petition/Public Interest Litigation. This Petition is in public interest and not for any personal injury.

3. That there is no criminal or revenue litigation pending in which I am involved.

4. That the contents of the Synopsis and List of Dates from pages B to and those of Paragraphs 1 to of the Writ Petition from Page Nos. to contain facts which are true to my knowledge and belief as well as legal submissions that are believed to be true based on legal advice, while Paragraphs___to___are the prayers made to this Hon"ble Court.

5. That the Annexures filed along with the Writ Petition are the true typed copies of their respective originals.

DEPONENT

VERIFICATION

Verified at New Delhi on this day of July, 2017, that the contents of this affidavit are true to best of my knowledge and belief and nothing material has been concealed therefrom.

DEPONENT

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. NO. OF 2017

IN

WRIT PETITION (CIVIL) No.________of 2017

IN THE MATTER OF:

Social Action for Forest & Environment …..Petitioner

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Union of India & Anr. …..Respondents

AFFIDAVIT

I, Vikrant Tongad, S/o Shri Baljeet Singh, Aged about 27 years, R/o T-16, Senior Citizen Housing Complex, Sector-P-3, Greater Noida-201308, District Gautam Budh Nagar, Uttar Pradesh, presently at New Delhi, do hereby solemnly affirm and state as under:

1. That I am the Authorised Representative of the Petitioner in the present case and am conversant with the facts and circumstances of the case and as such competent to swear the present affidavit.

2. That the contents of paras to of the accompanying Application are true to my knowledge and the rest of the Application contains submissions and prayers for the consideration of this Hon'ble Court.

DEPONENT

VERIFICATION

Verified at New Delhi on this day of July, 2017, that the contents of this affidavit are true to best of my knowledge and belief and nothing material has been concealed therefrom.

DEPONENT