CHAPTER III  “TRIBUNAL” UNDER ARTICLE 136

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Tribunal is the key word in article 136 of the Constitution. Appellate jurisdiction of the Supreme Court depends on such a determination. Article 136 empowers the Court to hear appeals not only from courts but also from tribunals in any cause or matter. The power is more important since a plethora of bodies exercise adjudicatory functions under various statutes. Most of them are characterized as ‘quasi-judicial.’ In its true sense these bodies are not Courts, but at the same time have some characteristics both of courts as well as administrative body. In this context it is often said that all tribunals are courts but all courts are not tribunals. Innumerable adjudicatory bodies function outside the hierarchy of courts. Traditionally ordinary courts used to correct the decisions of tribunals. This is done by superior courts through writs and ordinary civil suits for declaration and injunction. Judicial review of administrative action is considered to be basic structure of the Constitution.\(^1\)

The Privy Council recognized tribunal and observed thus:\(^2\)

The authorities are clear to show that there are tribunals with many of the trappings of the court which nevertheless are not courts in the strict sense of exercising judicial power.

The Privy Council further focused on certain other characteristic features: a tribunal will not become a court merely because it gives a final decision, examines witnesses on oath, contending party is heard, decisions affecting rights of subjects are rendered by it, or decision is appealable to ordinary courts. Even while acting judicially a tribunal may retain its characteristics as an administrative body as distinguished from a court. Applying the aforesaid tests, the Privy Council ruled that the board of review

\(^{1}\) Keshavananda Bharatī v. Kerala, AIR (1973) SC 1461.
\(^{2}\) Shell Co of Australia v. Federal Commissioner of Taxation, 1931 A.C. 275 at p.296.
established under the Income Tax Assessment Act, 1922-25 of Australia as not a court but only an administrative tribunal empowered by law to review decisions of the commissioner of income tax who was not a judicial authority.

There is no hard and fast rule to declare whether a particular body is tribunal or not under article 136. No definitive norms have yet been laid down to answer the question with certainty. The Court in *Indo-China Steam Navigation v. Jasjit Singh*\(^3\) held that Central board of revenue exercising appellate power under section 190, and the Central Government exercising power under section 191 of the Sea Customs Act were tribunals. At the same time customs officers though they exercise some judicial powers were held to be not tribunals. The very first case in which the Court examined whether a body was tribunal or not was *Bharat Bank v. Employees of Bharat Bank*\(^4\). The question involved was that whether the court could entertain an appeal from an award of industrial tribunal. Mukherjea, J., who wrote the minority decision, took the view that industrial tribunal’s function was merely an extended form of process of collective bargaining and was akin to administrative rather than judicial. According to the learned Judge the Court could not grant special leave to appeal from an award of an industrial tribunal. But the majority view was that while the tribunal was not a court its functions and duties were in the nature of a body discharging judicial functions. As in the case of courts the tribunals also take evidence, witnesses are examined, cross-examined and reexamined. The industrial tribunals is a quasi-judicial body because it is outside the regular judicial hierarchy. It was held that no body which is purely administrative or legislative in nature without exercising any judicial function would fall under the purview of article 136\(^5\). The Supreme Court observed thus:

The intention of the Constitution by the use of the word ‘tribunal’ in the article seems to have been to include within the scope of article 136 tribunals adorned with similar trappings as Court but strictly not coming within that definition.

\(^3\) AIR 1964 SC 1140.  
\(^4\) AIR 1950 SC 188.  
\(^5\) Ibid.
The decision widened the scope of article 136 and brought a vast network of quasi-judicial bodies under the appellate jurisdiction. The expression tribunal does not mean a court but includes within its ambit all adjudicatory bodies, provided they are constituted by a statute and invested with inherent judicial power of the State.

A conciliation officer acting under Industrial Disputes Act 1950, was held not to be a tribunal in *Jaswant Sugar Mill v. Lakshmi Chand*. In this case the Court held that to be a tribunal a body besides being under a duty to act judicially should be invested with a part of judicial function of the State. The tribunal in principle is the investiture of the ‘trappings of a court’, that is the authority to determine matters in a case initiated by the parties, sitting in public, with power to compel attendance of witnesses and to examine them on oath, duty to follow fundamental rules of evidence, provisions for imposing sanctions by way of imprisonment, fine, damages. Thus the list of trapping of a court is illustrative. It is not necessary that all such trappings should be present in an authority.

In *Engineering Mazdoor Sabha v. Hind Cycles* the Court refused to hear an appeal from an arbitrator appointed under section 10A of the Industrial Disputes Act, 1950. The arbitrator lacks the basic and essential fundamental requisite of being a tribunal. The appointment of an arbitrator is based on agreement between parties concerned. He is a nominee not of the state but of private parties. To be a tribunal the power of adjudication must be derived from a statute and not from an agreement of parties.

In *Workmen of Meenakshi Mills Ltd v. Meenakshi Mills* the Court applied the ratio in *Jaswant Sugar Mills* and held that the appropriate government or authority while granting or refusing permission for retrenchment of workmen under section 25-N of the Industrial Dispute Act, 1947 was not a tribunal. The power of the government is not different from that of conciliation officer. In these two cases the Supreme Court declared several tests to be applied to know whether a body was tribunal or not. It should not be an administrative body but a quasi-judicial body, it should be under an obligation to act

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6 AIR 1963 SC 677.
7 AIR 1963 SC 874.
8 AIR 1994 SC 2696.
9 *Supra* n.6.
judicially, it should have some trappings of a court, it should be constituted by a statute and it should have the power to adjudicate disputes. But in Harinagar Sugar Mills and Indo-China Steam Navigation the Central Government or the board of revenue were held to be tribunals though these bodies hardly exhibited any trappings of a court. In Siemens Engineering and Manufacturing Company v. Union of India the Court first decided whether a body was quasi judicial and then proceeded to see whether it followed the principles of natural justice. If the Supreme Court insists too much on the external features, a large number of adjudicatory bodies will be free from the appellate jurisdiction under article 136.

In Gujarat Steel Tubes v. Mazdoor Union the Court held that the arbitrator appointed under section 10A of Industrial Dispute Act could be regarded as a ‘tribunal’ for the purposes of section11A of the same Act. The Court opined that arbitrator under section10A had power to bind even those who were not parties to the reference. The force of arbitrator’s award was derived from the parent statute. The ruling made it possible to hold that such an arbitrator was a tribunal for the purposes of article 136. In A.P.H.L Conference, Shillong v. W.A. Sangma the question was whether the Court could hear an appeal from a decision of the Election Commission while adjudicating a dispute, and raised the question whether the Commission could be regarded as a ‘tribunal’ for the purposes of article 136. The Court held that for a body to be a tribunal it was absolutely necessary that it must be constituted by the State and it must be invested with judicial as distinguished from purely administrative or executive functions. According to the Court,

The principle test which must necessarily be present in determining the character of the authority as tribunal is whether that authority is empowered to exercise any adjudicating power of the state and whether the same has been conferred on it by any statute or a statutory rule.

11 Supra n. 3.
12 AIR 1976 SC 1785.
13 AIR 1980 SC 1896.
14 AIR 1977 SC 2155.
15 Ibid. at 2163.
The Commission exercises a part of the state’s judicial power which is conferred on it through article 324. In deciding any dispute the Commission exercises judicial function and has a duty to act judicially. Hence the Election Commission was a tribunal though it has various administrative functions to discharge.

The *Income Tax Commissioner, Calcutta v. B.N.Bhattacharya*,\(^\text{16}\) the Court held that the settlement commission established under the Income Tax Act was a tribunal for the purpose of article 136. Its proceedings were declared to be judicial as the commission had considerable powers and its determination affected the rights of the parties and its obligations were quasi-judicial. In the like manner the Court declared many of the adjudicatory bodies as tribunals. In *Bharat Bank v. Employees of Bharat Bank*,\(^\text{17}\) Industrial Tribunal functioning under the Industrial Disputes Act, 1947 was held to be tribunal. Labour Appellate Tribunal under the Industrial Disputes (Appellate Tribunal) Act, 1950, was held to be tribunal in *Rothas Industries Ltd v. Brijnandan Pandey*.\(^\text{18}\) The Labour Court under the Bihar Shops and Establishment Act, 1954, was held to be a tribunal in *Brooke Bond India Ltd v. Chandranath*.\(^\text{19}\) In *Oil and Natural Gas Commission v. Workman*\(^\text{20}\) the Court held National Industrial Tribunal functioning under the Industrial Disputes Act 1947 as tribunal. In *CSIR v. K.G.S. Bhatt*\(^\text{21}\) the central administrative tribunal was held to be a tribunal. The election tribunals were held to be tribunals under *Durga Shankar v. Reghuraj Singh*.\(^\text{22}\) The railway rates tribunal\(^\text{23}\) was held to be tribunal by the Court. In *Dhakeshwari Cotton Mills v. Commissioner of Income Tax*\(^\text{24}\) and *Sovachand v. Commissioner of Income Tax*\(^\text{25}\) the income tax appellate tribunals were declared tribunals. The custodian general acting under section 27 of the Administration of

\(^{16}\) AIR 1979 SC 1724.
\(^{17}\) Supra n.4.
\(^{18}\) AIR 1957 SC 1.
\(^{19}\) AIR 1969 SC 992.
\(^{20}\) AIR 1973 SC 968.
\(^{21}\) AIR 1989 SC 1972.
\(^{22}\) AIR 1954 SC 520.
\(^{24}\) AIR 1955 SC 65.
\(^{25}\) AIR 1959 SC 59.
Evacuee Property Act was held to be tribunal in *Indira Sohan Lal v. Custodian*\(^{26}\) and *Bishambhar Nath Kohli v. Uttar Pradesh*.\(^{27}\)

In *Works Manager v. C.M. Pradhan*\(^{28}\) the Court declared the authority under the Payment of Wages Act, a tribunal. The Central Government acting under section 111(3) of the Companies Act, 1956, deciding a dispute regarding registration of shares between a company and the person who had purchased these shares was held to be tribunal\(^{29}\). Central Government exercising powers of revision under section 30 of the Mines and Minerals (Regulation and Development) Act, 1957 was held to be tribunal\(^{30}\). In *Dunlop India Ltd v. Union of India*\(^{31}\) and *Ahura Chemical Products v. Union of India*\(^{32}\) the Court held the Central Government tribunal while hearing appeals in customs matters. *Shri Bhagwan v. Ramchand*\(^{33}\) the Court held the State Government tribunal when it heard revision petition under section 7F of U.P (Temporary) Control of Rent and Eviction Act. State Government was also held tribunal under Rule (66) of Punjab Welfare Officers Recruitment and Conditions of Service Rules, 1952, issued under the Factories Act, 1948\(^{34}\). In *Delhi Cloth and General Mills v. Rajasthan*\(^{35}\) the Supreme Court declared the Board of Revenue, Rajasthan tribunal. Bar Council of India and its disciplinary committee under the Advocates Act, 1961, were held to be tribunal by the Supreme Court\(^{36}\).

It is interesting to note that the speaker acting under Schedule X to the Constitution deciding questions of disqualification of members of legislature had been held to be tribunal in *Kihota Hollohon v. Zachithu*\(^{37}\). In *Sarojini Ramaswami v. Union of India*
India\footnote{AIR 1992 SC 2218.} it was held that an inquiry committee constituted under Judge’s Enquiry Act could not be treated a tribunal for the purpose of article 136 because the report of the committee was merely in the nature of a recommendation. The report of the committee holding that the judge was guilty of misbehavior was not “final and conclusive”. Though the committee is acting judicially while investigating into the charges framed against the judge, its report was in the nature of a recommendation on which further action might be taken by the Parliament. Thus one of the grounds to hold a statutory body tribunal under article 136 was ‘finality’ or ‘conclusiveness’ and also the ‘binding nature of its determination’. The Court also held that the High Court while exercising disciplinary power over district judge did not act as tribunal, but acts purely administratively, it exercises power of control over the subordinate judiciary\footnote{Dev Singh v. Registrar Punjab and Haryana High Court, AIR 1987 SC 1629.}

In \textit{Commissioner of Police v. Registrar, Delhi High Court}\footnote{AIR 1997 SC 95.}, the former Prime Minister Narasimha Rao was summoned to appear before a criminal court on a charge of bribing members of Parliament. Narasimha Rao being entitled to proximate security, the Commissioner of Police, Delhi applied to Delhi High Court for permission to shift the venue of trial from to some other safe place for security reasons. The administrative committee of five judges of the High Court refused permission. An appeal was then filed before the Supreme Court under article 136 read with article 142. The Court accepted the request of the Commissioner and quashed the decision of the High Court. The Court rejected the objection that the order of the administrative committee of the High Court was an administrative order not amenable to the Courts jurisdiction under article 136. It was observed that jurisdiction under article 136 was plenary in nature and the Court could determine its own jurisdiction and its effort in that regard would be final. The decision is an exception to the rule so far maintained by the Supreme Court for considering a body to be a tribunal under article 136. Here a mere administrative decision was held subject to an appeal under article 136. The decision demonstrates that tests are only tests and extraordinary features of a case may demand interference to correct injustice. In \textit{Konkan
"Railway Cooperation Ltd. v. Rani Constructions Private Ltd." the Court refused leave under article 136 for appeal from an order of the Chief Justice nominating an arbitrator under Arbitration and Conciliation Act, 1996, since the Chief Justice did not act as tribunal.

Under the administrative law every administrative authority exercising adjudicatory power has to follow the principles of natural justice. There are many bodies which do not exercise judicial power but subjected to the rule of bias. The cardinal issue to be borne in mind is that the power under article 136 is a extraordinary power and when grave injustice or consequence may follow from a decision, the court cannot stand technicalities.

AIR 2002 SC 778.

See Kraitpak v. Union of India, AIR 1970 SC, where the selection of a candidate by Public Service Commission was held to be vitiated by the rule of bias.