

***Law Audience Journal, Volume 5 & Issue 5, 12<sup>th</sup> April 2024,  
e-ISSN: 2581-6705, Indexed Journal, Impact Factor 5.611, Published  
at <https://www.lawaudience.com/volume-5-issue-5-2/>, Pages: 111 to  
122,***

***Title: Case Comment on Madras Bar Association vs. Union of India &  
Anr A.I.R 2015 S.C. 1571, Authored By: Ms. Akshita Chander  
Mittasurya (B.B.A L L.B), IIM Rohtak,  
Email Id: [ipl01akshitam@iimrohtak.ac.in](mailto:ipl01akshitam@iimrohtak.ac.in),***



**Cite this article as:**

MS. AKSHITA CHANDER MITTASURYA, “Case Comment on Madras Bar Association vs. Union of India & Anr A.I.R 2015 S.C. 1571”, Vol.5 & Issue 5, Law Audience Journal (e-ISSN: 2581-6705), Pages 111 to 122 (12<sup>th</sup> April 2024), available at <https://www.lawaudience.com/case-comment-on-madras-bar-association-vs-union-of-india-anr-a-i-r-2015-s-c-1571>.

**Law Audience Journal, Volume 5 & Issue 5, 12<sup>th</sup> April 2024,**  
**e-ISSN: 2581-6705, Indexed Journal, Impact Factor 5.611, Published**  
**at <https://www.lawaudience.com/volume-5-issue-5-2/>, Pages: 111 to**  
**122,**

**Title: Case Comment on Madras Bar Association vs. Union of India &**  
**Anr A.I.R 2015 S.C. 1571, Authored By: Ms. Akshita Chander**  
**Mittasurya (B.B.A L L.B), IIM Rohtak,**  
**Email Id: [ipl01akshitam@iimrohtak.ac.in](mailto:ipl01akshitam@iimrohtak.ac.in),**

**| Copyright © 2024 By Law Audience Journal |**

**(E-ISSN: 2581-6705)**

All Copyrights are reserved with the Authors. But, however, the Authors have granted to the Journal (Law Audience Journal), an irrevocable, non-exclusive, royalty-free, and transferable license to publish, reproduce, store, transmit, display, and distribute it in the Journal or books or in any form and all other media, retrieval systems and other formats now or hereafter known.

No part of this publication may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other non-commercial uses permitted by copyright law.

For permission requests, write to the publisher, subject of the email must be "**Permission Required**" at the email addresses given below.

Email(s): [lawjournal@lawaudience.com](mailto:lawjournal@lawaudience.com), [info@lawaudience.com](mailto:info@lawaudience.com),  
[lawaudience@gmail.com](mailto:lawaudience@gmail.com).

Phone (No(s)): +91-8351033361,

Website: [www.lawaudience.com](http://www.lawaudience.com).

Facebook: [www.facebook.com/lawaudience](http://www.facebook.com/lawaudience).

Instagram: [www.instagram.com/lawaudienceofficial](http://www.instagram.com/lawaudienceofficial).

Contact Timings: 10:00 AM to 8:00 PM.

***Law Audience Journal, Volume 5 & Issue 5, 12<sup>th</sup> April 2024, e-ISSN: 2581-6705, Indexed Journal, Impact Factor 5.611, Published at <https://www.lawaudience.com/volume-5-issue-5-2/>, Pages: 111 to 122,***

***Title: Case Comment on Madras Bar Association vs. Union of India & Anr A.I.R 2015 S.C. 1571, Authored By: Ms. Akshita Chander Mittasurya (B.B.A L L.B), IIM Rohtak, Email Id: [ipl01akshitam@iimrohtak.ac.in](mailto:ipl01akshitam@iimrohtak.ac.in),***

## **Disclaimer:**

*Law Audience Journal (e-ISSN: 2581-6705) and Its Editorial Board Members do not guarantee that the material published in it is 100 percent reliable. You can rely upon it at your own risk. But, however, the Journal and Its Editorial Board Members have taken the proper steps to provide the readers with relevant material. Proper footnotes & references have been given to avoid any copyright or plagiarism issue. Articles published in Volume 5 & Issue 5 are the original work of the authors.*

*Views or Opinions or Suggestions (if any), expressed or published in the Journal are the personal point of views of the Author(s) or Contributor(s) and the Journal & Its Editorial Board Members are not liable for the same.*

*While every effort has been made to avoid any mistake or omission, this publication is published online on the condition and understanding that the publisher shall not be liable in any manner to any person by reason of any mistake or omission in this publication or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this work.*

*All disputes are subject to the exclusive jurisdiction of Courts, Tribunals and Forums at India only.*

***Submit your article(s) for Publications at [lawaudience@gmail.com](mailto:lawaudience@gmail.com), or [lawjournal@lawaudience.com](mailto:lawjournal@lawaudience.com), with subject as "Submission of Paper(s) for Publication in Law Audience Journal".***

***Law Audience Journal, Volume 5 & Issue 5, 12<sup>th</sup> April 2024, e-ISSN: 2581-6705, Indexed Journal, Impact Factor 5.611, Published at <https://www.lawaudience.com/volume-5-issue-5-2/>, Pages: 111 to 122,***

***Title: Case Comment on Madras Bar Association vs. Union of India & Anr A.I.R 2015 S.C. 1571, Authored By: Ms. Akshita Chander Mittasurya (B.B.A L L.B), IIM Rohtak, Email Id: [ipl01akshitam@iimrohtak.ac.in](mailto:ipl01akshitam@iimrohtak.ac.in),***

## **Publisher Details:**

*Law Audience Journal (e-ISSN: 2581-6705),*

*Sole Proprietorship of Mr. Varun Kumar, Kharar, District. S.A.S, Nagar, Mohali, 140301,*

Phone No(s): +91-8351033361 (WhatsApp),

Email ID(s): [lawjournal@lawaudience.com](mailto:lawjournal@lawaudience.com),  
[info@lawaudience.com](mailto:info@lawaudience.com) or [lawaudience@gmail.com](mailto:lawaudience@gmail.com).

Website: [www.lawaudience.com](http://www.lawaudience.com).

Contact Timings: 10:00 AM to 8:00 PM.

---

## **Editor(s):**

- *Dr. Amit Yadav, Editor-In-Chief at Law Audience Journal, Assistant Professor at School of Law, Manipal University Jaipur.*
- *Adv. Varun Kumar, Founder-CEO-Owner-Publisher-Publishing Editor at Law Audience Journal.*

***Editorial Board Members Details Are Available At:***

***<https://www.lawaudience.com/editorial-board-members/>.***

***Title: Case Comment on Madras Bar Association vs. Union of India &***  
***Anr A.I.R 2015 S.C. 1571, Authored By: Ms. Akshita Chander***  
***Mittasurya (B.B.A L L.B), IIM Rohtak,***  
***Email Id: [ipl01akshitam@iimrohtak.ac.in](mailto:ipl01akshitam@iimrohtak.ac.in),***

## **I. FACTS:**

1. The writ petition filed by the Madras Bar Association is a continuation of earlier legal proceedings initiated after the judgment in *Union of India v. R. Gandhi, President, Madras Bar Association*<sup>1</sup>
2. Initially, the challenge was against the constitutionality of establishing the NCLT and NCLAT under Parts 1B and 1C of the Companies Act, 1956, introduced by the Companies (Second Amendment) Act, 2002.
3. The Madras High Court, in its judgment dated 30.03.2004, upheld the constitutionality of NCLT and the transfer of powers from the High Court and CLB to NCLT. However, it identified deficiencies in certain provisions of Parts 1B and 1C of the Act, 1956.
4. These deficiencies, including Sections 10FD(3)(f)(g)(h), 10FE, 10FF, 10FL(2), 10FR(3), 10FT, were deemed to violate the constitutional principle of separation of powers. The High Court ruled that unless these defects were rectified, it would be unconstitutional to confer the jurisdiction of the High Court or CLB onto NCLT and NCLAT.
5. The Madras Bar Association challenged the part of the High Court's judgment approving the establishment of NCLT and NCLAT, while the Union of India disputed the findings regarding the legal and constitutional flaws in the provisions under 1956 Act.

## **II. BRIEF HISTORY:**

### **Madras High Court:**

In 2004, the Madras Bar Council challenged the constitutionality of the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) in a writ petition filed in the Madras High Court. These tribunals, created by the Legislature in Parts 1B

<sup>1</sup> Union of India v. R. Gandhi, President, Madras Bar Association (2010) 11 SCC 1 (India)

***Title: Case Comment on Madras Bar Association vs. Union of India &  
Anr A.I.R 2015 S.C. 1571, Authored By: Ms. Akshita Chander  
Mittasurya (B.B.A L L.B), IIM Rohtak,  
Email Id: [ipl01akshitam@iimrohtak.ac.in](mailto:ipl01akshitam@iimrohtak.ac.in),***

and 1C of the Companies Act, 1956, were subject to a consolidated order by the Madras High Court on March 30, 2004. The court ruled that establishing the NCLT and granting it powers previously held by the High Court and the CLB was not unconstitutional.

The petitioner expressed dissatisfaction with the Madras High Court's decision affirming the constitutionality of the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT). Simultaneously, the Union of India contested the High Court's finding that certain clauses in Parts 1B and 1C of the Companies Act, 1956, were deemed to have legal and constitutional flaws. In response, both the petitioner and the Union of India appealed the Madras High Court ruling to the Supreme Court.

***Union of India v. R. Gandhi, President, Madras Bar Association*<sup>2</sup>:**

On May 11, 2010, the Constitution Bench of the Supreme Court delivered a verdict in the 2010 Judgement. The Bench affirmed the constitutional validity of the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT). Furthermore, it scrutinized the provisions in Parts 1B and 1C of the Companies Act, 1956, and largely agreed with the Madras High Court's assessment of significant flaws in these sections.

***Madras Bar Association v. Union of India*<sup>3</sup>:**

On September 25, 2014, the Supreme Court of India issued its verdict in the Madras Bar Association v. Union of India case. It confirmed the legality of the National Tax Tribunal Act of 2005, despite challenges brought forth under the 1976 Constitution (42nd Amendment) Act. However, the court identified issues with the appointments of Technical Members to the NCLT/NCLAT, citing similarities with past instances where the replacement of High Courts, responsible for judicial functions, with lower courts was considered inappropriate.

---

<sup>2</sup> *Supra* note 1 at 1.

<sup>3</sup> Madras Bar Association v. Union of India (2014) 10 SCC 1 (India)



***Title: Case Comment on Madras Bar Association vs. Union of India &  
Anr A.I.R 2015 S.C. 1571, Authored By: Ms. Akshita Chander  
Mittasurya (B.B.A L L.B), IIM Rohtak,  
Email Id: [ipl01akshitam@iimrohtak.ac.in](mailto:ipl01akshitam@iimrohtak.ac.in),***

Emphasizing the necessity of independence and impartiality in adjudicatory bodies, the court's ruling significantly impacted the operations and roles of tribunals in India.

### **III. PROVISIONS FROM 1956 ACT:**

1. *Part 1B of Companies Act, 1956: Deals with Establishment, composition and working of NCLT.*
2. *Part 1C of Companies Act, 1956: Deals with Establishment, composition and working of NCLAT.*

### **IV. SECTIONS FROM 2013 ACT:**

3. Section 2(4): "Appellate Tribunal"
4. Section 2(90): "Tribunal"
5. Section 408: Constitution of National Company Law Tribunal
6. Section 409: Qualification of President and Members of Tribunal
7. Section 410: Constitution of Appellate Tribunal
8. Section 411: Qualifications of chairperson and Members of Appellate Tribunal
9. Section 412: Selection of Members of Tribunal and Appellate Tribunal
10. Section 414: Salary, allowances and other terms and conditions of service of Members
11. Section 425: Power to punish for contempt.

### **V. ISSUES OF THE CASE:**

1. Whether the constitution of NCLT and NCLAT under Parts 1B & 1C of Companies Act are valid?
2. Whether the prescription of qualifications including term of their office and salary allowances etc. of President and Members of the NCLT and as well as Chairman and Members of the NCLAT are valid?

***Title: Case Comment on Madras Bar Association vs. Union of India &***  
***Anr A.I.R 2015 S.C. 1571, Authored By: Ms. Akshita Chander***  
***Mittasurya (B.B.A L L.B), IIM Rohtak,***  
***Email Id: [ipl01akshitam@iimrohtak.ac.in](mailto:ipl01akshitam@iimrohtak.ac.in),***

3. Whether the structure of the Selection Committee for appointment of President/Members of the NCLT and Chairperson/Members of the NCLAT is valid?

## **VI. ARGUMENTS OF PETITIONER:**

### **Issue 1:**

1. During arguments, Mr. Datar primarily focused on challenging the Constitutional validity of the National Company Law Appellate Tribunal (NCLAT).
2. He didn't put significant effort into challenging the constitutionality of the National Company Law Tribunal (NCLT), as he almost conceded its validity based on a 2010 judgment.
3. Regarding NCLAT, although he acknowledged its validity being upheld in the same judgment, he aimed to show that the judgment lacked discussion on NCLAT.
4. His argument was that since there was no detailed discussion on NCLAT in the judgment, its conclusion shouldn't be considered binding.
5. He cited the *Madras Bar Association v. Union of India*<sup>4</sup> case, where the establishment of the National Tax Tribunal was deemed unconstitutional, suggesting that Section 410 regarding NCLAT should be treated similarly.

### **Issue 2:**

1. The Petitioner does not contest the qualifications outlined for the President and Judicial Members of the Tribunal, as well as the Chairperson and Judicial Members of the Appellate Tribunal.
2. However, the contention is directed towards the provisions concerning the technical Members of NCLT/NCLAT. The Petitioner argues that these provisions closely

---

<sup>4</sup> *Supra* note 3 at 6.



***Title: Case Comment on Madras Bar Association vs. Union of India &  
Anr A.I.R 2015 S.C. 1571, Authored By: Ms. Akshita Chander  
Mittasurya (B.B.A L L.B), IIM Rohtak,  
Email Id: [ipl01akshitam@iimrohtak.ac.in](mailto:ipl01akshitam@iimrohtak.ac.in),***

resemble those inserted via an amendment in the Act of 1956, which were previously challenged and found to be flawed.

3. To understand this argument better, a comparison is presented between the corresponding provisions in the Act of 1956 and the Act of 2013:
4. The Constitutional Bench of 2010's Judgement was quoted to express the opinion that given the expanded responsibilities of the NCLT, which now include tasks previously carried out by High Courts, technical Members of the NCLT/NCLAT should exclusively be chosen from individuals holding the rank of Secretaries or Additional Secretaries and possessing technical expertise.

### **Issue 3:**

1. The argument of the petitioner persists with the fact that the 2010 Judgement, the provision which specifies the composition of Selection Committee<sup>5</sup> which is now embodied in Sub-section (2) of Section 412, dealing with the composition of the Selection Committee, was found to be invalid and the court has pointed out some deviations in 2010 which may also apply to the latest section as no changes can be noticed comparing both Sections.
  - a) Although the Chief Justice of India or their nominee is designated as Chairperson, they do not possess a casting vote due to the committee's five-member composition, as opposed to the suggested four members.
  - b) The Court proposed a single Member from either the Ministry of Finance or the Ministry of Company Affairs. Notably, there appears to be a typographical error in Clause (c) of sub-para (viii) of paragraph 120, where "and" should be replaced with "or" for coherence.
  - c) Currently, both the Ministry of Corporate Affairs and the Ministry of Finance contribute one Member each to the Committee. This results in a five-member

<sup>5</sup> Companies Act, 1956, Act No. 1 of 1956, s. 10 FX

***Title: Case Comment on Madras Bar Association vs. Union of India &  
Anr A.I.R 2015 S.C. 1571, Authored By: Ms. Akshita Chander  
Mittasurya (B.B.A L L.B), IIM Rohtak,  
Email Id: [ipl01akshitam@iimrohtak.ac.in](mailto:ipl01akshitam@iimrohtak.ac.in),***

Committee, which was deemed invalid in the 2010 judgment. The imbalance arises from having three members from the administrative branch and only two from the judiciary, contrary to the intention.

2. The structure given in Section 10FX of Companies Act, 1956, of the Selection Committee, was found fault and the Court emphasized the necessity of a four-member Selection Committee instead of the previously proposed five-member committee.
3. The composition of this committee was explicitly mandated in Direction No. (viii) of paragraph 120 of the court's decision.
4. The directive aims to streamline the selection process by reducing the committee's size and defining the roles of its members more clearly.

## **VII. ARGUMENTS OF RESPONDENT:**

### **Issue 1:**

The arguments of the respondent were cited from the previous judgement of *Madras Bar Association v. Union of India*<sup>6</sup>:

1. Section 408 of the Companies Act of 2013 grants the Central Government the authority to establish the NCLT by issuing a notification.
2. The NCLT is composed of a President and an appropriate number of Judicial and Technical members, as determined by the Central Government. Through a notification dated September 12, 2013, the Central Government formally instituted the NCLT.
3. Similarly, Section 410 of the Companies Act of 2013 confers upon the Central Government the power to form the NCLAT through notification.
4. The NCLAT comprises a Chairman and a maximum of eleven Judicial and Technical Members, appointed by the Central Government. By virtue of the aforementioned

<sup>6</sup> *Supra* note 1 at 1

***Title: Case Comment on Madras Bar Association vs. Union of India &  
Anr A.I.R 2015 S.C. 1571, Authored By: Ms. Akshita Chander  
Mittasurya (B.B.A L L.B), IIM Rohtak,  
Email Id: [ipl01akshitam@iimrohtak.ac.in](mailto:ipl01akshitam@iimrohtak.ac.in),***

notification dated September 12, 2013, the Central Government established the NCLAT as well.

5. The NCLT and NCLAT serve critical roles in adjudicating company law matters and providing appellate relief in corporate disputes.
6. The establishment of these tribunals streamlines the resolution process for company-related legal issues and ensures consistency and efficiency in the adjudication of such matters. The appointment of qualified Judicial and Technical Members underscores the importance of expertise and specialization in handling complex corporate law cases.

***Issue 2:***

1. The Respondents attempt to justify the provision by explaining that the deviation from the criteria outlined in the 2010 judgment was due to a shortage of officers at the Additional Secretary level in the Indian Companies Law Service.
2. They argue that functionally, the roles of Additional Secretary and Joint Secretary are comparable, and officers at both levels possess knowledge and expertise relevant to the operations and legal aspects of companies, which would benefit the NCLT.
3. However, this explanation is deemed legally unsustainable in light of the clear directive of the 2010 judgment.

***Issue 3:***

1. The Respondents argue that the composition of the Selection Committee outlined in Section 412(2) of the Act, 2013 is justified by the evolution of practices since the 2010 judgment, which provided a broad framework.
2. They assert that the inclusion of the Secretary of the Department of Financial Services is warranted due to the absorption of bodies like BIFR and AAIFR within its administrative jurisdiction.

***Title: Case Comment on Madras Bar Association vs. Union of India &***  
***Anr A.I.R 2015 S.C. 1571, Authored By: Ms. Akshita Chander***  
***Mittasurya (B.B.A L L.B), IIM Rohtak,***  
***Email Id: [ipl01akshitam@iimrohtak.ac.in](mailto:ipl01akshitam@iimrohtak.ac.in),***

3. The absence of a casting vote for the Chairman is justified by the historical unanimity in decision-making within such committees, as well as the absence of voting instances in Ministry of Corporate Affairs committees and similar statutory bodies/tribunals.
4. The Committee is empowered to establish its own procedural rules in accordance with the Act.
5. The Respondents further argue in addition to the arguments made as an effecting factor as:
  - a) Robust and effective practices have evolved within Selection Committees, with no known instances of significant disagreement.
  - b) The objective is to appoint individuals with relevant expertise and experience to the Committee.

### **VIII. OBSERVATIONS BY COURT:**

- A. The argument asserting that the constitution of a tribunal violated the doctrine of separation of powers and independence of the judiciary, considered as part of the Constitution's basic structure, was deemed invalid. The court referred to various cases, including *Kuldip Nayar v. Union of India*<sup>7</sup> and *State of A.P. v. McDowell & Co.*<sup>8</sup> as well as the opinions of Chandrachud J. in *Indira Nehru Gandhi v. Raj Narain*<sup>9</sup> and Beg, C.J. in the seven-Judge Bench decision of *State of Karnataka v. Union of India*<sup>10</sup>. It emphasized that the basic structure doctrine, being derived from the Constitution, did not apply to ordinary statutes in the same manner.
- B. The contention challenging the establishment of tribunals under Parts 1B and 1C of the Companies Act 1956 was deemed invalid.

<sup>7</sup> *Kuldip Nayar v. Union of India* (2006) 7 SCC 1

<sup>8</sup> *State of A.P. v. McDowell & Co* (1996) 3 SCC 709

<sup>9</sup> *Indira Nehru Gandhi v. Raj Narain* 1975 Supp SCC

<sup>10</sup> *State of Karnataka v. Union of India* (1977) 4 SCC 608,125

***Title: Case Comment on Madras Bar Association vs. Union of India &***  
***Anr A.I.R 2015 S.C. 1571, Authored By: Ms. Akshita Chander***  
***Mittasurya (B.B.A L L.B), IIM Rohtak,***  
***Email Id: [ipl01akshitam@iimrohtak.ac.in](mailto:ipl01akshitam@iimrohtak.ac.in),***

The court noted that the central question was not about the transfer of judicial functions from courts to tribunals. Instead, it revolved around the transfer of judicial functions to tribunals staffed by individuals lacking suitability, qualification, or competence to exercise such judicial powers, or whose independence could be questioned.

C. The court noted that the Eradi Committee justified the transfer of company law jurisdiction from High Courts to tribunals due to prolonged court proceedings and cited the main reason as the delay caused by the multiplicity of court cases related to company dissolution. The Committee emphasized the challenges faced by Company Courts, each having one Company Judge in every High Court, in efficiently handling the workload associated with companies under liquidation. The report highlighted that delays were exacerbated by normal court procedures, including appeals under Section 483.<sup>11</sup> The Eradi Committee suggested that tribunals, comprising solely of judicial members, would address this issue. Notably, the Committee did not recommend the inclusion of technical members or civil service officers.<sup>12</sup> Parts IC and IB of the Companies Act proposed the appointment of a 'Judicial Member' and a 'Technical Member' under section 10FD to adjudicate disputes.<sup>13</sup>

D. The court observed that for the NCLT to effectively assume the functions of the High Court, its members should have a status and position closely resembling that of High Court Judges. This equivalence is not achieved merely by providing the same salary and perks as High Court Judges, but rather by appointing individuals whose rank, experience, or competence is nearly equal to that of High Court Judges. If technical members are necessary, they should possess expertise in company law or related fields, and mere experience in civil service does not qualify as technical expertise in company

---

<sup>11</sup> Shri Justice V. Balakrishna Eradi, Report of High level Committee on Law Relating to Insolvency and Winding up of Companies, 2000, at 25, 44

<sup>12</sup> *Id.* at 11

<sup>13</sup> *Id.* at 11



***Title: Case Comment on Madras Bar Association vs. Union of India &  
Anr A.I.R 2015 S.C. 1571, Authored By: Ms. Akshita Chander  
Mittasurya (B.B.A L L.B), IIM Rohtak,  
Email Id: [ipl01akshitam@iimrohtak.ac.in](mailto:ipl01akshitam@iimrohtak.ac.in),***

law. The candidates falling under section 10FD lack the necessary experience or expertise to adjudicate company matters.

## **IX. JUDGEMENT BY COURT:**

### **Issue 1:**

1. In a 2010 judgment, the establishment of the National Company Law Appellate Tribunal (NCLAT) was upheld despite challenges to its constitutional validity. The petitioner had previously questioned the validity of NCLAT, arguing that its creation, along with the National Company Law Tribunal (NCLT), infringed upon the separation of powers and the principles of impartiality and fairness in decision-making.
2. The petitioner's contention focused on the notion that by transferring powers from regular courts to tribunals, the legislature was interfering with judicial functions, thereby undermining the rule of law and the independence of the judiciary. Specifically, Section 10FR of the Companies Act, 1956, pertaining to the constitution of NCLAT, was scrutinized in this context.
3. Despite the petitioner's arguments challenging the constitutional validity of NCLAT and NCLT, the court thoroughly examined these contentions and ultimately dismissed them, affirming the legality and constitutionality of both tribunals. The judgment underscored the importance of the rule of law and separation of powers while upholding the establishment of NCLAT as a legitimate exercise of legislative authority.
4. The Constitution Bench upheld and followed the 2010 judgment regarding the NTT, while also distinguishing the features between NCLT/NCLAT and NTT to arrive at a different conclusion.

### **Issue 2:**

1. The Court expressed concerns over this erosion of independence, citing specific examples from certain enactments where standards and qualifications for decision-



***Title: Case Comment on Madras Bar Association vs. Union of India &  
Anr A.I.R 2015 S.C. 1571, Authored By: Ms. Akshita Chander  
Mittasurya (B.B.A L L.B), IIM Rohtak,  
Email Id: [ipl01akshitam@iimrohtak.ac.in](mailto:ipl01akshitam@iimrohtak.ac.in),***

makers were gradually diluted, especially in cases that were previously under the jurisdiction of High Courts.

2. Given this context, the Court deems it necessary to reiterate and provide further elaboration on the discussion regarding the erosion of judicial independence, as it serves as a comprehensive response to the arguments put forth by the Respondents.
3. Considering the clear and definitive directives provided in the 2010 judgment, any alterations to these directives could potentially undermine the standards that the judgment aimed to establish and safeguard. Therefore, it is held that Section 409(3)(a) and (c) are invalid, as they suffer from the same shortcomings.
4. Similarly, Section 411(3), which outlines the qualifications of technical Members, is also deemed invalid in its current wording.
5. To appoint technical Members to the NCLT, strict adherence to the directions outlined in sub-paragraphs (ii), (iii), (iv), and (v) of paragraph 120 of the 2010 judgment is necessary. Corrections must be made to Section 409(3) to rectify the deficiencies identified, in accordance with the directives of the court.
6. These measures ordered while addressing and disposing issue.

### **Issue 3:**

1. The opinion is that the arguments presented by the Respondents lack valid legal justification, especially considering that the matter was previously settled in the 2010 judgment, which now serves as a binding precedent for both parties.
2. The crucial aspect emphasized in the 2010 judgment was the authority vested in the Chairperson, namely the Chief Justice of India or their nominee, granting them the final decision-making power and the right to a casting vote.
3. This principle forms the core of the judgment, with clear reasons behind the composition provided. There is no ambiguity regarding the necessity for the Chairperson's decisive role in the selection process.

***Title: Case Comment on Madras Bar Association vs. Union of India &  
Anr A.I.R 2015 S.C. 1571, Authored By: Ms. Akshita Chander  
Mittasurya (B.B.A L L.B), IIM Rohtak,  
Email Id: [ipl01akshitam@iimrohtak.ac.in](mailto:ipl01akshitam@iimrohtak.ac.in),***

4. Given the authoritative nature of the 2010 judgment, there is no room for deviation from its directives. The provision challenged in the Act of 2013 attempts to circumvent this precedent, which is deemed incompatible and unacceptable.

5. Consequently, it is concluded that Section 412(2) of the Act, 2013 lacks validity. A directive is issued to rectify this flaw by aligning the provision with the specifications outlined in sub-para (viii) of paragraph 120 of the 2010 judgment, which specified the constitution of the Selection Committee with four members instead of five.

