

RBA vs UOI _order



?The Madras High Court on Monday vide Order dated August 17, 2020: ?effectively restrained the Central Government from appointing technical members to the Goods and Services Tax Appellate Tribunals (GSTAT) until further orders (RBA v. Union of India).



This order was passed on a plea filed by the Revenue Bar Association (RBA) challenging the rules concerning the appointment and the terms of service governing the President and Members of the GSTAT i.e. the GSTAT (Appointment and Conditions of Service of President and Members) Rules, 2019.

The Court had initially passed an interim order imposing the restriction on the Central Government in October last year.

Madras High Court

Madras High Court restrains Government from appointing Technical Members to GSTAT

However, the case was adjourned twice since in view of the Centre's submission that the GST Council was yet to meet and finalise its decisions on the issues raised in the case i.e. the qualifications, tenure and selection procedure, as well as other conditions relating to the constitution of the GSTAT.

On Monday, the Centre, through its counsel, K Srinivasamurthy, again sought for more time, urging that the matter be posted after two months.

Appearing for the Revenue Bar Association, Advocate Rahul Unnikrishnan re-asserted that a notification being challenged in the case cannot stand the scrutiny of law in view of the Supreme Court's verdict in Union of India v. R. Gandhi.

The Court, in turn, directed that its 2019 interim order restraining the Centre from making any appointment of technical members to the Tribunal would continue to operate until further orders.

"Since the matter continues to be adjourned on account of the respondent, let the matter be listed as prayed for by the learned counsel for the Union of India after two months and in the light of the above, we continue the interim order dated 03.10.2019 until further orders."

Madras High Court

The case has been posted to be taken up next on October 28.

Monday's order was passed by a Bench of Chief Justice AP Sahi and Justice Senthil Ramamoorthy. The 2019 order had been passed by a Bench of M Sathyanarayanan and Justice N Seshasayee.

The RBA has posed two broad challenges. The first concerns the constitution of selection committees which appoints technical members of the GSTAT Benches. In this regard, Rule 3 of the 2019 Rules is relevant. The second concerns the powers vested in the Government to dictate the service conditions of GSTAT members, in which regard Rule 8 is relevant.

Under the present regime, the technical members to the GSTAT Benches (National and/or State) are appointed

by the Central Government on the recommendations of a selection committee, composed entirely of members from the Executive, with no representation from the higher judiciary.

The RBA has pointed out that the selection committee comprises entirely of members from the Executive. Relying on the law laid down in the cases of *SP Sampath Kumar v Union of India*, *Union of India v R Gandhi*, *Madras Bar Association v Union of India* and *Shamnad Basheer v Union India*, the Association has contended that the manner in which technical members are appointed to the GSTAT under the 2019 rules is unconstitutional.

The RBA has also challenged the validity of Rule 8 of the 2019 Rules. This rule requires the President to apply to the Central Government for sanction of leave.

Another issue raised is that the service conditions of Members – such as salaries, leave, pay, TA, HRA, and other benefits – has been made equivalent to Group ‘A’ officers of the Government of India of corresponding status. The RBA has argued that this scheme of things would be detrimental to the independence of the tribunal.

The Court had earlier deferred hearing in the matter to peruse the judgment passed by the Bench of Justices S Manikumar and Subramonium Prasad in September 2019, which had concluded that the the constitution of the GSTAT under the prevailing GST regime is unconstitutional, in so far as it allows the number of technical members appointed to the tribunal to exceed the number of judicial members.



Read the order passed on August 17, 2020.