turpitude or defect of character or embarrassment which may be caused in the discharge of function as Sarpanch. We respectfully follow the view taken by the Full Bench in *Kashmiri Lal's* case (supra) and hold that the impugned orders Annexure P4 and P6 have been passed without affording due opportunity to the petitioner of defending himself, in violation of principles of natural justice, they are ordered to be set aside.

(12) Apart from this, it is provided in the proviso to section 51(1) of the Act that suspension period of Sarpanch, Up-Sarpanch or Panch shall not be exceeded six months from the date of issuance of suspension order except in criminal cases involving moral turpitude. There is no finding that criminal case pending against the petitioner involves moral turpitude. As the period of six months has already elapsed, petitioner is entitled to be reinstated as Sarpanch.

(13) For the reasons stated above, this petition is allowed, the orders Annexures P-4 and P-6 are quashed. Respondent No. 2 is directed to reinstate the petitioner as Sarpanch of Gram Panchayat Khapar for the unexpired term. No costs.

J.S.T.

Before Jawahar Lal Gupta & T.H.B. Chalapathi, JJ.

M/S KUNDAN RICE AND GENERAL MILLS AND

ANOTHER,—*Petitioners.*

versus

UNION OF INDIA AND OTHERS.—*Respondents.*

C.W.P. No. 12901 of 1996.

11th September, 1996.

Constitution of India, 1950—Art. 14 & 226—Recovery of Debts Due to Banks and Financial Institutions Act, 1993—Whether provisions of the Act are ultra vires *and unconstitutional—Provisions of the Act are calculated to provide a speedier and simpler remedy for recovery of debts due to banks—Public interest is involved—Enactment aimed at avoiding dilatory procedure—Provisions not arbitrary—Classification well-founded.*

Held, that the pronouncements by different Constitutional Benches of the Supreme Court clearly lay down that a differential treatment is permissible in cases where the interest of the general public is involved. Just as in case of eviction from premises, even in the matter of recovery of debts due to Banks and financial institutions, a differential procedure before a Tribunal should be permissible. Admittedly, the provisions of the Act are calculated to provide a simpler and speedier remedy for recovery of debts as due from any person to a Bank or Financial Institution. The public at large has an interest in the money due to the Banks. It has to be utilized for general good. It is in the large interest of the society that the money is speedly recovered. Thus, the enactment providing for a speedier remedy is calculated to ensure speedy justice. It is aimed at avoiding the dilatory procedure of an ordinary civil suit. The provisions are not arbitrary. These are based on a valid classification. These are applicable to persons who owe an amount of not less than Rs. 10 lacs to tne Bank or financial Institution. Even this limitation is aimed at ensuring that the Tribunals are not flooded with applications for petty amounts and the volume of work does not increase to an unmanageable extent which may defeat the very purpose of the Act. The classification is well founded. It has a rationale. The provisions are just and fair. These are not arbitrary or unfair.

(Paras 16 & 17)

Further held, that Article 323-A and 323-B were inserted by the 42nd Amendment Act, 1976. By Article 323-A, the Parliament was authorised to legislate and provide for adjudication or trial of matters relating to public services by Administrative Tribunals. Article 323-B made a similar provision in respect of disputes relating to taxation, foreign exchange, labour disputes, land reforms, elections, essential goods, offences and incidental matters. These two provisions were necessitated by the fact that the existing jurisdiction of the civil courts as well as of the High Courts under Article 226 of the Constitution was to be substituted. However, clause (2) of Article 323-B is not exhaustive regarding the matters for which Tribunals can be constituted. The plenary power of ihe Parliament to legislate under the Constitution has not been curtailed. In fact, the Parliament has the power to legislate not only in respect of various matters covered by List I but also in respect of any matter not enumerated in Lists II and III. Entry 43 empowers the Parliament to legislate with regard to 'incorporation', 'regulation' and 'winding up' of trading corporations including banking, Insurance and Financial Corporations. In any event, if the provisions of entry 43 are read alongwith those of Entry 95 in List I and 11-A in List III, the provisions of the Act are clearly within the legislative competence of the Parliament. Consequently, the contention raised by the learned counsel for the petitioners that the Act is arbitrary, *ultra vires* and unconstitutional, cannot be sustainted.

(Paras 20 & 21)

Constitution of India, 1950—Arts. 50 & 226—Recovery of Debts Due to Banks and Financial Institutions Act, 1993—Independence of judiciary—Power to establish Tribunals and make appointments vests with Central Government—Cannot be said that independence of judiciary is eroded or that object of separating Executive from Judiciary has been defeated.

Held, that it is true that provisions of Article 39-A and 50 contained in Part IV of the Constitution embody the aims and objects of the State. These impose a duty on the State. It has to work towards the goal of promoting justice on the basis of equal opportunity and providing free legal aid to the weaker sections of tht society. It has also to take steps to separate the judiciary from the Executive in the Public Services. However, it cannot be said that Constitution of a tribunal to provide for expeditious adjudication of disputes relating to recovery of debts is not a step which would promote justice. Infact, the Statute aims at recovering the dues in which public has a definite interest. When the funds are available, the State shall be in a better position to execute the projects and to help the weaker sections. The Act would clearly promote the objective enshrined in Article 39-A. Equally, the suggestion that the provisions in the Act which authorise the Central Government to make appointments of the Presiding Officers of the Tribunals impinge upon the provisions of Article 50 is wholly misconceived.

(Para 23)

Further held, that merely because the power of appointment has been vested in the Government, it cannot be said that the independence of the judiciary has been eroded or that the object of achieving separation of Judiciary from Executive has been defeated. Still further, the mere fact that the Presiding Officers shall be appointed by the Central Government cannot mean that they would be under its control or that they would not discharge their judicial obligations without fear or favour.

(Para 23)

Further held, that against the order of the Tribunal, a provision for appeal to the Appellate Tribunal has been made. Still further, the orders passed by the Tribunal can be subjected to the scrutiny of the High Court under Articles 226 and 227 of the Constitution. These are, in the very nature of things, sufficient safe-guards against the arbitrary exercise of power by the Tribunal. It is true that in respect of debts amounting to Rs. 10 lacs or more, the jurisdiction of the civil court has been ousted. This step has, however, been taken to curtail the delays of the ordinary civil courts. That is the object of the Act. It is not aimed at excluding a judicial trial. It does not in any way erode the independence of the Judiciary. Surely, independence of the Judiciary does not lie in enabling a citizen to delay the repayment of debts he owes. Nor is the independence of

Judiciary eroded merely because the Central Government has been given the power to make appointments. So, the second question is also answered in the negative. It is held that the Act does not erode the independence of the Judiciary.

(Paras 25 & 26)

Further held, that Section 2(g) defines a 'debt' to mean "any liability (inclusive of interest) which is alleged as due from any person.....in cash or otherwise.....and *legally recoverable* on the date of the application". Under Section 17, the Tribunal exercises the jurisdiction, power and authority to "*entertain* and *decide* applications from the Banks and Financial Institutions for recovery of debts" due to them. Section 19(4) requires the Tribunal to "pass such orders on the application as it thinks *fit to meet the ends of justice*". On a harmonious reading of these provisions, it is clear that the Tribunal has to determine the amount which is 'legally recoverable' from a person. It is required to pass such orders as would "meet the ends of justice". While deciding the matter, the Tribunal has to afford a due and reasonable opportunity to both the parties to prove their respective cases. In this situation, it cannot be said that a person who has taken a loan cannot claim that he has made certain payments which have not been accounted for or set off. Still further, he shall not be debarred from claiming that in fact, nothing is due to the Bank or the Financial Institution and that if at all he has a counter claim. In case, the Tribunal finds that there is evidence which proves that certain payments have been made, it shall be entitled to allow the claim of the respondent. A counter claim is normally based on a separate cause of action. It is founded on a separate transaction. In case, it is found that evidence is required to be recorded, the Tribunal may leave the person to seek his remedy in ordinary civil court. However, if the claim is admitted, nothing should stop the Tribunal from declining the claim made by the Bank.

(Para 28)

Further held, that on a reading of the provisions of the Act, it appears that the Act having imposed the duty to determine the amount 'legally recoverable' from a person and to pass orders which meet the ends of justice, the claim made by the petitioners that the plea of set off or counter-claim cannot be raised by a person or accepted by the Authority is untenable.

(Para 28)

O. P. Goyal, Advocate with Ashwani Verma, Advocate, for *the petitioners.*

Nemo, for *the respondents.*

JUDGMENT

Jawahar Lal Gupta, J.

(1) Are the provisions of the "Recovery of Debts Due to Banks and Financial Institutions Act, 1993" (Act No. 51 of 1993) *ultra vires* and unconstitutional ? This is the short question that arises for considtration in these two petitions. Counsel for the petitioners have referred to the facts as averred in Civil Writ Petition No. 12901 of 1996. These may be briefly noticed.

(2) On September 8, 1986, the Bank of India (Respondent No. 2) granted a cash credit limit of Rs. 15 lacs to the petitioners. On October 20, 1987, the limit was enhanced to Rs. 25 lacs. It was further enhanced to Rs. 35 lacs on October 21, 1988. The stocks, plant and machinery belonging to the petitioners were hypothecated with the second Respondent-Bank. In addition, agricultural land measuring about 70 kanals was mortgaged.

(3) Presumably, there was default in repayment. On January 5, 1994, the Respondent-Bank filed a suit for recovery of Rs. 41,01,522 with future interest at the rate of 18.25 per cent per annum with quarterly rests by sale of mortgaged properties and hypothecated goods against the petitioners. It also filed an application under Order 38, Rule 5 of the Code of Civil Procdure for restraining the petitioners from alienating the property during the pendency of the suit. Appropriate orders in this behalf restraining the petitioners from alienating the above-said properties were passed by the Court. On December 19, 1994, the suit was transferred by the Additional Senior Subordinate Judge, Moga to the Debt Recovery Tribunal, Jaipur. Thereafter the petitioners have filed the present writ petition and prayed *inter-alia* that Act No. 51 of 1993 be declared "as *ultra vires* and an act beyond the authority of law and in contravention of Article 323-B of the Constitution of India".

(4) Arguments in this case were addressed by Mr. O. P. Goyal, Senior Advocate. These were adopted by Mr. Arun Jain, learned counsel for the petitioner in the connected case. Learned counsel submitted that the provisions of the Act are arbitrary and *ultra vires*. The Act provides for the constitution of a Tribunal for the adjudication of disputes with regard to a matter which does not fall within clause (2) of Artcile 323-B. The jursidiction of the civil court in respect of claims for Rs. 10 lacs or more has been arbitrarily ousted. The independence of the Judiciary being a basic feature of the

Constitution, substitution of the civil court by the Tribunal erodes the independence of Judiciary and, thus, vitiates the provisions of the Act. A defendant cannot even seek adjustment, set-off or make a counter-claim. The learned counsel placed strong reliance on the decision of a Division Bench of the Delhi High Court in *Delhi High Court Bar Association and another* v. *Union of India* (1).

(5) The question that arise for consideration are :—

(i) Are the provisions of the Act *ultra vires* and unconstitutional ?

(ii) Does the Act erode the independence of Judiciary ?

(iii) Is a defendant debarred from claiming a set off or making a counter-claim ?

(6) At the outset, the historical antecedents of the Act may be briefly noticed. A Committee on Financial System was set up by the Government of India under the Chairmanship of Mr. M. Narasimhan. This Committee noticed that "Banks and Financial Institutions at present face considerable difficulties in recovering the dues from the clients and enforcement of security charged to them due to the delays in the legal processes. A significant portion of the funds of the Banks and Financial Institutions is thus blocked in unproductive assets, the values of which keep deteriorating with the passage of time. The question of speeding up the process of recovery was examined in great detail by a Committee set-up by the Government under the Chairmanship of late Shri Tiwari. The Tiwari Committee recommended *inter-alia* the setting up of Special Tribunals which could expedite the recovery process". Presumably, in pursuance of the observations of the Committee and in view of the fact that huge amounts of public money were lying locked up in litigation, a Bill was introduced in the Parliament "to provide for the establishment of Tribunals and Appellate Tribunals for expeditious adjudication and recovery of debts due to Banks and Financial Institutions". During the pendency of the Bill, the President issued the "Recovery of Debts Due to Banks and Financial Institutions Ordinance" on June 24, 1993. Ultimately, the Act was promulgated.

(1) (1995) Delhi Law Times 815.

(7) The Act is divided into six Chapters. Chapter I, Sections 1 and 2, are preliminary in nature. These provide for the extent of application of the Act and define various terms and expressions. Where the amount of debt is less than Rs. 10 lacs, the provisions of the Act do not apply. Chapter II—Sections 3 to 16 provide for the establishment of the Tribunal, appellate Tribunal and matters ancillary thereto. Chapter III—Sections 17 and 18, delineate the jurisdiction, the powers and the authority of the Tribunal. It also provides for exclusion of jurisdiction of courts except the Supreme Court and the High Court in relation to the matters specified in Section 17. Chapter IV—Sections 19 to 24 lay down the procedure that has to be followed by the Tribunal. ChapterV—Sections 25 to 30 provide for the recovery of debt as determined by the Tribunal. Chapter VI—Sections 31 to 37, contain miscellaneous provisions. It *inter alia* provides for the transfer of the pending cases to the Tribunals and the over-riding effect of the Act. Section 36 confers power on the Central Government to make rules.

(8) A perusal of the provisions of the Act shows that the Central Government has been empowered to establish Tribunals for the expeditious adjudication and recovery of debts due to Banks and Financial Institutions. It can by notification establish one or more Tribunals and specify the area within which each of the Tribunals would exercise jurisdiction. Only a person who is or has been or is qualified to be a District Judge, can be appointed as the Presiding Officer of the Tribunal. He shall hold office for a term of five years or until he attains the age of 60 years, whichever is earlier. Similarly, the Central Government can establish one or more appellate Tribunals and specify the areas of their jurisdiction. The qualifications for appointment as Presiding Officer of the Appellate Tribunal have been specified in Section 10. Provisions for providing staff of the Tribunals have also been made. A Presiding Officer of a Tribunal cannot be removed except on the ground of proved mis-behaviour or in-capacity after enquiry made by a Judge of a High Court. In case of the Presiding Officer of an Appellate Tribunal, the enquiry has to be made by a Judge of the Supreme Court. The Act makes it incumbent on the Central Government to inform the Presiding Officer of the charges against him and to give him a reasonable opportunity of being heard in respect of those charges. Under Section 17, the Tribunal is empowered and authorised "to entertain and decide applications from the Banks and Financial Institutions for recovery of debts....." Similarly, the Appellate Tribunal has been vested with the jurisdiction and power to entertain and decide appeals.

The jurisdiction of the civil courts except the High Court and the Supreme Court has been excluded in respect of the matters regarding which the power of adjudication has been vested in the Tribunal. The application has to be filed before a Tribunal within the local limits of whose jurisdiction the defendant ordinarily resides or carries on business or works for gain or the cause of action wholly or in part arises. The Tribunal is required to issue summons requiring the defendant to show cause within 30 days of the service of the summons as to why the relief as prayed for should not be granted. The Tribunal can after giving the applicant and the defendant an opportunity of being heard, pass such orders on the application as it thinks fit to meet the ends of justice". Thereafter, even procedure for recovery etc. has also been laid down. The aggrieved party is entitled to file an appeal. There is provision for deposit of 75 per cent of the amount as determined by the Tribunal with power to waive or reduce for a good reason. The Tribunal as well as the Appellate Tribunal have to follow the principles of natural justice. These have been vested with powers of a civil court in the matter of summoning and enforcing the attendance of any person, requiring the discovery and production of documents. They can also receive evidence on affidavits, issue commissions for the examination of witnesses or documents, review the decisions or dismiss the application for default or decide the case *ex-parte*. The modes of recovery of debts have also been laid down. Provisions of the Limitation Act apply to the applications to be submitted to the Tribunal.

(9) It is, thus, clear that the Tribunal as constituted under the Act is not merely administrative. It is a part of the machinery for adjudication of disputes. It can be established regionally or locally. The procedure to be followed by the Tribunal is adversary and not 'inquisitorial'. The Presiding Officer is a person who has either held or is holding or is qualified to hold a high judicial office. He is trained in law. The procedure to be followed by the Tribunal is simple, clear and un-complicated. It is intended to provide a simpler, speedier and cheaper remedy than the ordinary courts. The process should not be slow and costly. It is not 'formalistic'. It is not unduly 'conservative, rigid and technical'. The Tribunal is not bound by the strict rules of evidence or the provisions of the Code of Civil Procedure. Yet, the procedure is calculated to ensure a just and fair opportunity to the litigant. The hearing is open and judicial. The Tribunal can make final and legally enforceable decisions.

(10) The Tribunal is, thus, constituted under a Statute. It is invested with judicial functions. It has all the trappings of a court.

(11) With this background, the questions as posed above may be considered.

Reg : (i) :

(12) Mr. Goyal submitted that the provisions of the Act are *ultar vires* and unconstitutional. The challenge was two-fold Firstly, the learned counsel submitted that the provisions of the Act were arbitrary and violative of the provisions contained in Articles 14 and 39A of the Constitution. Secondly, a half-hearted attempt was made to contend that the Parliament has no power to constitute a Tribunal as a substitute for a civil court except for the adjudcation of disputes as laid down in Article 323-B(2).

(13) The Constitution contains a mandate that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. There are, however, definite limitations on the doctrine of equal protection. It does not have a universal application. It is not applicable when persons are differently placed. Different classes of persons with varying needs can be separately treated. When there is a conflict between the interest of a private individual and the public at large, a differential treatment has been accepted as being reasonable. To illustrate, in *Manna Lal and another* v. *Collector of Jhalawar and others* (2), it was held that—

> "The Government, even as a banker, can be legitimately put in a separate class. The dues of the Governmtnt of a State are the dues of the entire people of the State. This being the position, a law giving special facility for the recovery of such dues cannot, in any event, be said to offend Art. 14 of the Constitution".

(14) In *Nav Rattanmal and others* v. *State of Rajasthan* (3), the provision of Article 149 of the Limitation Act which prescribed a period of 60 years for suits by the Government, was challenged as

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(2) A.I.R. 1961 S.C. 828.

(3) A.I.R. 1961 S.C. 1704.

being unconstitutional and violative of Article 14. It was urged that there was no rational basis for treating the claim by Government differently from that of private individuals in the matter of time within which it could be enforced by suit. The challenge was negatived. It was held that the fact that "in the case of the Government, if a claim becomes barred by limitation, the loss falls on the public, i.e. on the community in general and to the benefit of the private individual who derives advantage by the lapse of time, in itself, would appear to indicate a sufficient ground for differentiating between the claims of an individual and the claims of the community at large". Similarly, in *M/s Builders Supply Corporation* v. *The Union of India and others* (4), it was contended that the "doctrine of the priority of tax dues might have been recognised by judicial decisions in India prior to 1950, there is no scope for continuing its operation after the Constitution came into force". This contention was negatived. It was *inter alia* observed that :—

> "The basic justification for the claim for priority made by respondent No. 1 (Union of India) in the present case rests on the well-recognised principle that the State is entitled to raise money by taxation, because unless adequate revenue is received by the State, it would not be able to function as a sovereign Government at all..... the State should be able to discharge its primary governmental functions and in order to be able to discharge such functions efficiently, it must be in possession of necessary funds, and this consideration emphasises the necessity and the wisdom of conceding to the State the right to claim priority in respect of its tax dues".

(15) Still later, in *Maganlal Chhaganlal (P) Ltd.* v. *Municipal Corporation of Greater Bombay and others* (5), summary procedure for eviction from premises was held up by the Apex Court. In this case, the legality of the provisions of and the proceedings initiated under the Bombay Municipal Corporation Act and the Bombay Government Premises (Eviction) Act, 1955 challenged as being violative of Article 14 of the Constitution. It was contended that "as there are two procedures available to the Corporation and the State

(4) A.I.R. 1965 S.C. 1061.

(5) A.I.R. 1974 S.C. 2009.

Government, one by way of a suit under the ordinary law and the other under either of the two Acts, which is harsher and more onerous than the procedure under the ordinary law, the latter is hit by Article 14 of the Constitution in the absence of any guidelines as to which procedure may be adopted". It was observed that the Statute itself "clearly lays down the purpose behind them, i.e. that premises belonging to the Corporation and the Government should be subject to speedy procedure in the matter of evicting unauthorised persons occupying them.....With such an indication clearly given in the Statutes one expects the officers concerned to avail themselves of the procedures prescribed by the Acts and not resort to the dilatory procedure of the Ordinary Civil Court". Their Lordships further observed as under :—

> "It is also necessary to point out that the procedures laid down by the two Acts now under consideration are not so harsh or onerous as to suggest that a discrimination would result if resort is made to the provisions of these two Acts in some cases and to the ordinary civil court in other cases. Even though the officers deciding these qutstions would be administrative officers there is provision in these Acts for giving notice to the party affected, to inform him of the grounds on which the order of eviction is proposed to be made, for the party affected to file a written statement and produce documents and be represented by lawyers. The provisions of the Civil Procedure Code regarding summoning and enforcing attendance of persons and examining them on oath, and requiring the discovery and production of documents are a valuable safeguard for the person affected. So is the provision for appeal to the Principal Judge of the City Civil Court in the city of Bombay, or to a District Judge in the Districts who has got to deal with the matter as expeditiously as possible, also a sufficient safeguard as was recognised in Suraj Mall Mohta's case (1955) 1 SCR 448=(AIR 1954 SC 545). The main difference between the procedure before an ordinary civil court and the executive authorities under these two Act is that in one case it will be decided by a judicial officer trained in law and it might also be that more than one appeal is available. As against that there is only one appeal available in the other but it is also open to the aggrieved party to resort to the High Court under the

provisions of Article 226 and Article 227 of the Constitution. This is no less effective than the provision for a second appeal. On the whole, considering the object with which these special procedures were enacted by the legislature we would not be prepared to hold that the difference between the two procedures is so unconscionable as to attract the vice of discrimination. After all, Article 14 does not demand a fanatical approach. We, therefore, hold that neither the provisions of Chapter V-A of the Bombay Municipal Corporation Act nor the provisions of the Bombay Government Premises (Eviction) Act, 1955 are hit by Art. 14 of the Constitution".

It is also observed that "the speedy machinery for eviction of unauthorised occupants from Municipal Premises is, therefore, justified, in that it is in the interest of the public that speedy and expeditious recovery of Municipal premises from unauthorised occupiers is made possible through the instrumentality of a speedier procedure, instead of the elaborate procedure by way of civil suit involving both expense and delay. *Speedy justice* is today, in view of the existing procedural skein of an ordinary suit, an almost impossible feat. There is, thus, a valid basis of differentiation between occupiers of Municipal premises and those of other premises, and there is a rational relation and nexus between the basis of the classification and the object of the legislation. The constitutional validity of the impugned provisions in the two statutes cannot, in the circumstances, be assailed on the ground that they make unjust discrimination between occupiers of Government or Municipal premises and occupiers of other premises".

(16) The above pronouncements by different Constitutional Benches of the Supreme Court clearly lay down that a differential treatment is permissible in cases where the interest of the general public is involved. Just as in case of eviction from premises, even in the matter of recovery of debts due to Banks and financial institutions, differential procedure before a Tribunal, should be permissible.

(17) Admittedly, the provisions of the Act are calculated to provide a simpler and speedier remedy for recovery of debts as due from any person to a Bank or Financial Institution. The public at large has an interest in the money due to the Banks. It has to be utilised for general good. It is in the larger interest of the society

that the money is speedly recovered. Thus, the enactment providing for a speedier remedy is calculated to ensure speedy justice. It is aimed at avoiding the dilatory procedure of an ordinary civil suit. The provisions are not arbitrary. These are based on a valid classification. These are applicable to persons who owe an amount of not less than Rs. 10 lacs to the Bank or Financial Institution. Even this limitation is aimed at ensuring that the Tribunals are not flooded with applications for petty amounts and the volume of work does not increase to an unmanageable extent which may defeat the very purpose of the Act. The classification is well founded. It has a rationale. The provisions are just and fair. These are not arbitrary or unfair.

(18) Another fact which may be mentioned here is that this petition had come up for hearing before us on September 3, 1996. By a sheer co-incidence, on the same day, a write-up had appeared in "The Tribune" under the caption "Banks' accountability at low premium". It was *inter-alia* mentioned that the following seven banks had to recover the amounts as indicated against each :—

Bank	*Amount (in crores)*
State Bank of India	Rs. 3180.00
Punjab National Bank	Rs. 1075.03
Bank of India	Rs. 974.49
Canara Bank	Rs. 943.39
Central Bank of India	Rs. 594.98
Indian Bank	Rs. 593.22
Punjab & Sind Bank	Rs. 578.74

These are substantial amounts However, these figures do not represent the total amount that is due to the various Banks and the Financial Institutions. These may well be only the tip of the iceberg. If such substantial amounts of money are due to various Banks and Financial Institutions, the need for ensuring speedy adjudication and recovery is imminent. The public at large has a definite interest in the matter. The Statute is calculated to serve this interest.

(19) Mr. Goyal also submitted that the Parliament had no power to promulgate the Act as it does not relate to a dispute which may be covered by the provisions of Article 323-B(2).

(20) Article 323-A and 323-B were inserted by the 42nd Amendment Act, 1976. By Article 323-A, the Parliament was authorised to legislate and provide for adjudication or trial of matters relating to public services by Administrative Tribunals. Article 323-B made a similar provision in respect of disputes relating to taxation, foreign exchange, labour disputes. land reforms, elections, essential goods, offences and incidental matters. These two provisions were necessitated by the fact that the existing jurisdiction of the civil courts as well as of the High Courts under Article 226 of the Constitution was to be substituted. However, Clause (2) of Article 323B is not exhaustive regarding the matters for which Tribunals can be constituted. The plenary power of the Parliament to legislate under the Constitution has not been curtailed. In fact, the Parliament has the power to legislate not only in respect of various matters covered by List I but also in respect of any matter not enumerated in Lists II and III. Entry 43 empowers the Parliament to legislate with regard to 'incorporation', 'regulation' and 'winding up' of trading corporations including banking, Insurance and Financial Corporations. In any event, if the provisions of entry 43 are read along with those of Entry 95 in List I and 11-A in List III, the provisions of the Act are clearly within the legislative competence of the Parliament.

(21) Consequently, the contention raised by the learned counsel for the petitioners that the Act is arbitrary, *ultra vires* and unconstitutional. cannot be sustained. The first question is, accordingly, answered against the petitioners.

Reg : (*ii*) :

(22) It was next contended that the Constitution envisages an independent judiciary. Article 38A aims at ensuring that legal system promotes justice on the basis of equal opportunity. Article 50 directs the State to take steps to separate the Judiciary from the Executive in the public Services of the State. However, under the impugned Statute, the power to establish the Tribunals and to make appointments thereto has been reserved by the Parliament in favour of the Central Government. The jurisdiction of the Civil Courts has

been excluded. The Government has an interest in the Financial Institutions and the Banks. In this situation, the persons appointed by the Central Government to preside over the Tribunals cannot be independent. This erodes the independence of Judiciary.

(23) The contention cannot be accepted. It is true that the provisions of Article 39A and 50 contained in Part IV of the Constitution embody the aims and objects of the State. These impose a duty on the State. It has to work towards the goal of promoting justice on the basis of equal opportunity and providing free legal aid to the weaker sections of the Society. It has also to take steps to separate the Judiciary from the Executive in the Public Services. However, it cannot be said that constitution of a Tribunal to provide for expeditious adjudication of disputes relating to recovery of debts is not a step which would promote justice. In fact, the Statute aims at recovering the dues in which public has a definite interest. When the funds are available, the State shall be in a better position to execute the projects and to help the weaker sections. The Act would clearly promote the objective enshrined in Article 39A. Equally, the suggestion that the provisions in the Act which authorise the Central Government to make appointments of the Presiding Officers of the Tribunals impinge upon the provisions of Article 50 is wholly misconceived. There are innumerable Statutes under which appointment of Presiding Officers is made by the Government. To illustrate, under Section 7 of the Industrial Disputes Act, the Government can constitute one or more Labour Courts for the adjudication of Industrial Disputes. The appointment of the Presiding Officers has to be made by the Government. Similarly, under Section 7A, the Government can constitute tribunals and make appointments thereto. Under Section 7B, the Central Government can constitute one or more National Industrial Tribunals for the adjudication of industrial disputes. Under the provisions of Section 5 of the Monopolies and Restrictive Trade Practices Act, 1969, the Central Government is competent to establish a Commission and make appointments thereto. It is also competent to remove the members from the office. Provisions have also been made in the Act for appointment of the staff of the Commission. Under Section 165 of the Motor Vehicles Act 1988, a State Government can constitute one or more Motor Accident Claims Tribunals for the purpose of adjudicating upon claims of compensation and make appointments thereto. Similar provisions exist in the Railway Claims Tribunal Act, 1987. Merely because the power of appointment has been vested in the Government, it cannot be said that the independence of the Judiciary has been eroded or that the

object of achieving separation of Judiciary from Executive has been defeated. Still further, the mere fact that the Presiding Officers shall be appointed by the Central Government cannot mean that they would be under its control or that they would not discharge their judicial obligations without fear or favour.

(24) An Institution is only as good as the men who man it. In the Act, the qualifications for appointment of the Presiding Officers have been duly laid down. The provisions provide sufficient guidelines. It has not even been suggested that persons lacking in ability or integrity have been appointed as Presiding Officers. Nothing has been produced to show that any arbitrary orders have been passed. The fear expressed by the petitioners that the Presiding Officers having been appointed by the Government, they likely to lean in its favour, is wholly baseless and unfounded. It cannot, consequently, be entertained.

(25) It also deserves mention that against the order of the Tribunal, a provision for appeal to the Appellate Tribunal has been made. Still further, the orders passed by the Tribunal can be subjected to the scrutiny of the High Court under Articles 226 and 227 of the Constitution. These are, in the very nature of things, sufficient safe-guards against the arbitrary exercise of power by the Tribunal. It is true that in respect of debts amounting to Rs. 10 lacs or more. the jurisdiction of the civil court has been ousted. This step has, however, been taken to curtail the delays of the ordinary civil courts. That is the object of the Act. It is not aimed at excluding a judicial trial. It does not in any way erode the independence of the Judiciary. Surely, independence of the Judiciary does not lie in enabling a citizen to delay the repayment of debts he owes. Nor is the independence of Judiciary eroded merely because the Central Government has been given the power to make appointments.

(26) In view of the above, the second question is also answered in the negative. It is held that the Act does not erode the independence of the Judiciary.

Reg : (*iii*) :

(27) It was then contended that under the impugned Statute, the Banks or the Financial Institutions can file applications for recovery of debts. The Tribunal cannot adjudicate upon the plea of set off or adjustment and the counter claim as may be made by the defendant. Therefore, the Act makes an arbitrary provision in favour of the Banks.

(28) Even though, on the pleadings in these cases, such a question does not arise in this case, yet the counsel has been heard at length. Section 2(g) defines a 'debt' to mean "any liability (inclusive of interest) which is alleged as due from any person.....in cash or otherwise.....and *legally recoverable* on the date of the application". Under Section 17, the Tribunal exercises the jurisdiction, power and authority to "*entertain* and *decide* applications from the Banks and Financial Institutions for recovery of debts" due to them. Section 19 (4) requires the Tribunal to "pass such orders on the application as it thinks *fit to meet the ends of justice*". On a harmonious reading of these provisions, it is clear that the Tribunal has to determine the amount which is 'legally recoverable' from a person. It is required to pass such orders as would "meet the ends of justice". While deciding the matter, the Tribunal has to afford a due and reasonable opportunity to both the parties to prove their respective cases. In this situation, it cannot be said that a person who has taken a loan cannot claim that he has made certain payments which have not been accounted for or set off. Still further, he shall not be debarred from claiming that in fact, nothing is due to the Bank or the Financial Institution and that if at all he has a counter claim. In case, the Tribunal finds that there is evidence which proves that certain payments have been made, it shall be entitled to allow the claim of the respondent. A counter claim is normally based on a separate cause of action. It is founded on a separate transaction. In case, it is found that evidence is required to be recorded, the Tribunal may leave the person to seek his remedy in ordinary civil court. However, if the claim is admitted, nothing should stop the Tribunal from declining the claim made by the Bank. On a reading of the provisions of the Act, it appears that the Act having imposed the duty to determine the amount 'legally recoverable' from a person and to pass orders which meet the ends of justice, the claim made by the petitioners that the plea of set off or counter claim cannot be raised by a person or accepted by the Authority, is untenable.

(29) Mr. Goyal placed strong reliance on the decision of a Division Bench of the Delhi High Court in *Delhi High Court Bar Association's case* (supra). He relied on this decision in favour of his contention regarding questions (ii) and (iii).

(30) On a consideration of the judgment, it appears that the view taken by their Lordships is based on a very narrow construction of the provisions of the Statute. The conclusion recorded by

the Court that the Statute erodes the independence of Judiciary and that the debt is made recoverable as a tax or that the pleas of set off/ counter claim cannot be entertained, does not appear to be correct. Regretfully, though respectfully, a dissent has to be recorded.

(31) Prof. Wade in his treatise on 'Administrative Law' has said that—

> "Tribunals are subject to a law of Evolution which fosters diversity of species. Each one is devised for the purpose of some particular Statute and is, therefore, so to speak, tailor made".

(32) So is the present Statute. It has just been promulgated. It is subject to the law of Evolution. It is 'tailor-made' to meet the needs of the Society. It is not *ultra vires* or unconstitutional. It does not erode the independence of Judiciary. It does not shut out the pleas available to a person. Consequently, its provisions can't be struck down.

(33) Accordingly, both the writ petitions are dismissed *in limine*.

J.S.T.

Before R. S. Mongia & V. S. Aggarwal, JJ.

SATISH KUMARI & OTHERS,—*Petitioners.*

versus

STATE OF HARYANA & OTHERS,—*Respondents.*

C.W.P. 5633 *tf* 1996.

September 27, 1996.

Punjab Forest Subordinate Services (Ministerial Section) Rules, 1943—Rl. 9—Seniority of members of service—Absorption of certain employees on specific terms—Determination of inter se seniority.

Held, that absorption in the department is not a statutory right. It was specifically stated by the Chief Principal Conservator of