

Cyber Appellate Tribunal & its Working

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Abstract—Tribunals and quasi-judicial bodies are a regular feature of the Indian judicial system, as they provide for easier and less onerous methods for dispute resolution, especially disputes which relate to technical areas and often require technical knowledge and familiarity with specialized factual scenarios. Further, quasi-judicial bodies do not have the same procedural restrictions as proper courts, which makes the adjudication of disputes easier. The Information Technology Act of India, which regulates several important aspects of electronic information, including the regulation of private electronic transactions as well as detailing civil and criminal offences relating to computers and electronic information, contemplates a specialized dispute resolution mechanism for disputes relating to the offences detailed under the Act. The Act provides for the establishment of quasi-judicial bodies, namely adjudicating officers under Section 46, to hear disputes namely, offences of a civil nature under Section 43, 43A, 44 and 45 of the Act, as well as criminal offences. The adjudicating officer has the power to both award compensation as damages in a civil remedy, as well as impose penalties for the contravention of the Act, and therefore has powers of both civil and criminal courts. The first appellate body provided in the Act, i.e. the authority that any party not satisfied by the decision of the adjudicating officer can appeal to, is the Cyber Appellate Tribunal, consisting of a Chairperson and any other members so prescribed by the Central Government. The second appeal, if a party is aggrieved by the decision of the Cyber Appellate Tribunal, may be filed before the High Court having jurisdiction, within 60 days from the date of communication of the order. The proper functioning of the Cyber Appellate Tribunal is particularly necessary for the functioning of a just judicial system in light of the provisions of the Information Technology Act.

1. INTRODUCTION

The Information Technology (Amendment) Act, 2008 has changed the composition of the CAT, CAT will now have a Chairperson and such other members as notified by the Central Government. Now it ceased to be single member body and became multimember appellate body. Prior to the amendment, the power to appoint the Presiding Officer was exclusively with the Central Government. But after the amendment, the IT Act mandates that the selection of the Chairperson and members of CAT shall be made in consultation with the Chief Justice of India. The expression “after consultation with the CJI” must be construed in the same manner as the expression “after consultation with the CJI” under Article 217 of Constitution of India as made in SC Advocate on Record

Association v. UOI. After the IT (Amendment) Act, 2008 this Act proposes that the jurisdiction, powers and authority of the CAT may be exercised by the benches constituted by the Chairperson of the CAT with one or two members of the tribunal as the Chairperson may deem fit.

2. QUALIFICATIONS FOR APPOINTMENT AS PRESIDING OFFICER OF THE CAT

A person shall not be qualified for appointment as the Presiding Officer of a CAT unless he is, or has been, or is qualified to be, a Judge of a High Court; or is or has been a member of the Indian Legal Service and is holding or has held a post in Grade I of that Service for at least three years. The Presiding Officer of a Cyber Appellate shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty five years, whichever is earlier.

3. SALARY, ALLOWANCES AND OTHER TERMS AND CONDITIONS OF SERVICE OF PRESIDING OFFICER

The salary and allowances payable to, and the other terms and conditions of service including pension, gratuity and other retirement benefits of, the Presiding Officer or a CAT shall be such as may be prescribed: Provided that neither the salary and allowances nor the other terms and conditions of service of the Presiding Officer shall be varied to his disadvantage after appointment.

4. FILLING UP OF VACANCIES

If, for reason other than temporary absence, any vacancy occurs in the office of the Presiding Officer of a CAT, then the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the CAT from the stage at which the vacancy is filled

5. RESIGNATION AND REMOVAL

The chairperson or the members of the CAT may, by notice in writing under his hand addressed to the Central Government,

resign his office. As per the provisions of Section 54(2) of IT Act, 2000 Chairperson or member can be removed by an order of the Central Government only on the ground of proved misbehavior or incapacity after inquiry made by a judge of the Supreme Court. Further, Central Government is empowered to frame rules to regulate the procedures for the investigation of misbehavior or incapacity.

6. ORDERS CONSTITUTING APPELLATE TRIBUNAL TO BE FINAL AND NOT TO INVALIDATE ITS PROCEEDINGS

No order of the Central Government appointing any person as the Presiding Officer of a CAT shall be called in question in any manner and no act or proceeding before a CAT shall be called in question in any manner on the ground merely of any defect in the constitution of a CAT.

7. APPEAL TO CAT

Any person aggrieved by an order made by Controller or an adjudicating officer under this Act may prefer an appeal to a CAT jurisdiction in the matter. No appeal shall lie to the CAT from an order made by an adjudicating officer with the consent of the parties. Every appeal shall be filed within a period of forty-five days from the date on which a copy of the order made by the Controller or the adjudicating officer is received by the person aggrieved and it shall be in such form and be accompanied by such fee as may be prescribed. Provided that the CAT may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period. On receipt of an appeal, the CAT may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against. The CAT shall send a copy or every order made by it to the parties to the appeal and to the concerned Controller or adjudicating officer. The appeal filed before the CAT shall be dealt with by it as expeditiously as possible and endeavor shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

8. PROCEDURE AND POWERS OF THE CAT

The CAT shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the CAT shall have powers to regulate its own procedure including the place at which it shall have its sitting. It shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the CPC, 1908, while trying a suit, in respect of the following matters, namely : -

- Summoning and enforcing the attendance of any person and examining him on oath;

- Requiring the discovery and production of documents or other electronic records;
- Receiving evidence on affidavits;
- Issuing commissions for the examination of witnesses of documents;
- Reviewing its decisions;
- Dismissing an application for default or deciding it ex-parte;
- Any other matter which may be prescribed.

Every proceeding before the CAT shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code and the CAT shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Powers of CAT:-

- a) Powers of superintendence, direction
- b)) Power to constitute benches
- c) Power to transfer cases

9. RIGHT TO LEGAL REPRESENTATION

The appellant may either appear in person or authorize one or more legal practitioners or any of its officers to present his or its case before the CAT. Section 59 of IT Act states that the appellant may either appear in person or authorize one or more legal practitioners or any of its officers to present his case before CAT. Section 58 (1) states that the Cyber Regulation Appellate Tribunal is empowered to define its own procedures for conduct by stating. "The CAT shall not be bound by the procedure laid down by the code of Civil Procedure, 1908 but shall be guided by the principles of natural justice and, subject to other provisions of IT Act and of any rules, the CAT shall have powers to regulate its own procedures to regulate its own procedure including the place at which it shall have its sitting".

10. LIMITATION

The provisions of the Limitation Act, 1963, shall, as far as may be, apply to an appeal made to the CAT.

11. BAR OF JUDICIAL REVIEW

Section 55 of IT Act, 2000 bars judicial review with respect to two matters, Against an order of the Central Government appointing any person as the Chairperson of the CAT, and Any proceeding before a CAT on the ground merely of any defect in the constitution of a CAT. By making the order constituting the CAT final and barring the judicial review of any proceedings of the Tribunal on the ground of defect in the

constitution of the Tribunal, this section ensures the smooth and uninterrupted functioning of the Tribunal. It must have been the intention of the law makers that the proceedings of the tribunal do not get stalled by frivolous or vexatious litigation by busy bodies. But as per the ruling of Supreme Court in Keshavnanda Bharti case, the power of judicial review of the HC and the SC is the basic feature of the Constitution and hence the Parliament cannot take away by the amendment of the Constitution under Article 368. Applying the above dicta on Section 55 which takes away the power of judicial review, parliament has exceeded its limit, hence this section is unconstitutional.

12. CIVIL COURT NOT TO HAVE JURISDICTION

No court shall have jurisdictions to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under IT Act or the CAT constituted under IT Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

13. APPEAL TO HIGH COURT

IT Act, 2000 provides for a hierarchy of forums to adjudicate contraventions under the Act. An appeal against the decision of an adjudicating officer or Controller of Certifying Authority shall lie before the CAT. The IT Act provides for a second appellate forum to entertain appeal against the order of the CAT. According to Section 62 of the IT Act, a person aggrieved by the decision or order of the CAT may file an appeal to the HC within sixty days from the date of communication of the decision or order of the Tribunal to him on any question of fact or law arising out of such order. Provided that the HC may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days. The CAT is an appellate body against the decision of the adjudicating officer or Controller of Certifying Authority. It constitutes first appeal. Appeal against the decision of the CAT before the High Court is second appeal.

14. COMPOUNDING OF CONTRAVENTIONS

Any contravention may, either before or after the institution of adjudication proceedings, be compounded by the Controller or such other officer as may be specially authorized by him in this behalf or by the adjudicating officer, as the case may be, subject to such conditions as the Controller or such other officer or the adjudicating officer may specify : Provided that such sum shall not, in any case, exceed the maximum amount of the penalty which may be imposed under this Act for the contravention so compounded. Nothing above shall apply to a person who commits the same or similar contravention within a period of three years from the date on which the first

contravention, committed by him, was compounded. Where any contravention has been compounded, no proceeding of further proceeding, as the case may be, shall be taken against the person guilty of such contravention in respect of the contravention so compounded.

15. RECOVERY OF PENALTY

A penalty imposed under IT Act, if it is paid, shall be recovered as an arrear or land revenue and the license or the Digital Signature Certificate, as the case may be, shall be suspended till the penalty is paid.

16. CONCLUSION

For the smooth functioning of any law, such law must be just, fair and reasonable and at the same time there must be a proper forum to regulate it. To give effect to the IT Law, the parliament has established the most important authorities under the same Act for smooth functioning. "It is better for a city to be governed by a good man than even by good laws" said by Aristotle. CAT is making efforts to discharge their responsibilities with the existing manpower and steps have been initiated to recruit additional manpower for its effective functioning. The efficacy of the CAT is being improved by creating necessary awareness in the public & the authorities and with efforts to deploy adequate manpower. Since the computerized environment is more process based than personalized, it is hence necessary to have an identification strategy to ascertain the integrity, confidentiality and authentication of communication channels and processes.

17. ACKNOWLEDGEMENTS

We have taken efforts in this project. However, it would not have been possible without the kind support and help of many individuals and organizations. I would like to extend my sincere thanks to all of them.

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