

Tamil Nadu Taxation Special Tribunal Act, 1992

42 of 1992

[07 August 1992]

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SCHEDULE 1 :- SCHEDULE I

Tamil Nadu Taxation Special Tribunal Act, 1992

42 of 1992

[07 August 1992]

An Act to provide for the adjudication or trial by a Special Tribunal

of any disputes, complaints or offences with respect to the levy, assessment, collection and enforcement of any tax under any specified State Act, in pursuance of Article 323-B of the Constitution and for matters connected therewith or incidental thereto. BE it enacted by the Legislative Assembly of the State of Tamil Nadu in the forty third year of the republic of India as follows:-

1. Short Title, Extent And Commencement :-

(1) The Act may be called the Tamil Nadu Taxation Special Tribunal Act, 1992.

(2) It extends to the whole of the State of Tamil Nadu.

(3) It shall come into force on such date as the Government may, by notification, appoint and different dates may be appointed for different provisions of this Act.

2. Definitions :-

In this Act unless the context otherwise requires, --

(a) "Administrative Member" means a Member of the Special Tribunal appointed as such who possesses the qualifications specified in clause (d) of sub-section (3) of Section 3.

(b) "appointed day" means the date appointed under sub-section (3) of Section 1;

(c) "appropriate authority" in relation to any specified State Act means the authority in charge of levy, assessment, collection or enforcement of tax;

(d) "Bench" means a Bench of the Special Tribunal;

(e) "Chairman" means the Chairman of the Special Tribunal; (f) "Government" means the State Government;

(g) "Judicial Member" means a Member of the Special Tribunal appointed as such who possesses any of the qualifications specified in clause (c) of sub-section (3) of Section 3.

(h) "Member" means a Member (whether Judicial or Administrative) of the Special Tribunal and includes the Chairman and the Vice-Chairman;

(i) "Special Tribunal" means the Tamil Nadu Taxation Special Tribunal constituted under Section 3;

(j) "Specified State Act" means a State Act specified in the Schedule to this Act;

(k) "Vice-Chairman" means the Vice-Chairman of the Special Tribunal;

(l) Words and expressions used in this Act, but not defined herein and defined in the specified State Act or the rules made thereunder, shall have the meanings respectively assigned to them by such Act or the rules made thereunder.

3. Constitution Of Special Tribunal :-

(1) The Government shall, by notification in the Tamil Nadu Government Gazette, constitute for the State a Special Tribunal called the Tamil Nadu Taxation Special Tribunal to exercise the jurisdiction, powers and authority conferred on such Special Tribunal by or under this Act.

(2) The Special Tribunal shall consist of a Chairman, a Vice-Chairman, a Judicial Member and an Administrative Member appointed by the Governor of the State.

(3) No person shall be qualified for appointment--

(a) as Chairman of the Special Tribunal unless he--

(i) is, or has been, a judge of a High Court; or

(ii) has, for at least two years, held the office of Vice-Chairman;

(b) as Vice-Chairman of the Special Tribunal unless he --

(i) is, or has been, or is qualified to be, a Judge of a High Court; or

(ii) has been an officer of the Government not below the rank of Special Commissioner and Secretary to Government, whether in Secretariat or elsewhere, for a period of not less than two years ; or

(iii) has been Secretary to Government, Law Department of the State Government, for a period of not less than two years ; or

(iv) has, for a period of not less than two years, held office as a Judicial Member or an Administrative Member;

(c) as a Judicial Member of the Special Tribunal unless he--

(i) is, or has been, or is qualified to be, a Judge of High Court; or

(ii) has been Secretary to Government, Law Department of the State Government for a period of not less than two years ;

(d) as an administrative Member of the Special Tribunal unless he has been an officer of the Government not below the rank of Commissioner and Secretary to the Government, whether in the Secretariat or elsewhere for a period of not less than two years and has dealt with taxation measures during his service in the Government in any capacity for a period of not less than two years in the aggregate.

(4) No appointment of a person possessing the qualification specified in this section as the Chairman, the Vice-Chairman or a Member shall be made except after consultation with the Chief

Justice of India.

(5) Any vacancy in the office of the Chairman, Vice-Chairman or other Member shall be filled in by the Governor of the State in accordance with the provisions of this Act:

Provided that in the event of the occurrence of any vacancy in the office of the Chairman by reason of his death, resignation or otherwise, or when the Chairman is unable to discharge his functions owing to absence, illness or any other cause, the Government may authorize--

(i) the Vice-Chairman ; or

(ii) the Judicial Member, if there is any vacancy in the office of the Vice-Chairman by reason of his death, resignation or otherwise, or the Vice-Chairman is unable to discharge his functions owing to absence, illness or any other cause ;

to discharge the functions of the Chairman until the Chairman resumes his office or a Chairman appointed in accordance with the provisions of this Act enters upon his office.

4. Terms And Conditions Of Service Of Chairman, Vice-Chairman And Members :-

(1) The Chairman, Vice-Chairman or other Members shall hold office as such for a term of three years from the date on which he enters upon his office but shall be eligible for re-appointment for another term of three years :

Provided that no Chairman, Vice-Chairman or other Members shall hold office as such after he attained,--

(a) in the case of Chairman and Vice-Chairman, the age of sixty five years, and

(b) in the case of any other Member, the age of sixty two years.

(2) The salaries and allowances payable to, and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of the Chairman, Vice-Chairman or other Members shall be such as may be prescribed:

Provided that neither the salaries and allowances nor the other terms and conditions of service of the Chairman, Vice-Chairman or other Members shall be varied to his disadvantage after his appointment.

(3) (a) The Chairman, Vice-Chairman or other Members may, by notice in writing under his hand addressed to the Governor of the State, resign his office:

Provided that the Chairman, Vice-Chairman or other Members shall,

unless his resignation is accepted sooner by the Governor of the State, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(b) The Chairman, Vice-Chairman or other Members shall not be removed from his office except by an order made by the Governor of the State on the ground of proved misbehaviour or incapacity after an enquiry, made by a Judge of the High Court, in which such Chairman, Vice-Chairman or other Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(c) The Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the Chairman, Vice-Chairman or other Members referred to in clause (b).

5. Staff Of Special Tribunal :-

(1) The Government shall determine the nature and categories of the officers and other employees required to assist the Special Tribunal in the discharge of its functions and provide the Special Tribunal with such officers and other employees as it may think fit.

(2) The officers and other employees of the Special Tribunal shall discharge their functions under the general superintendence of the Chairman.

(3) The salaries and allowances and conditions of service of the officers and other employees of the Special Tribunal shall be such as may be prescribed.

(4) The Chairman shall exercise financial and administrative powers for the functioning of the Special Tribunal or may delegate the same in accordance with the rules made under this Act.

6. Application Of This Act To Specified State Acts :-

Save as expressly provided under any specified State Act, this Act shall apply to all matters of adjudication or trial of any dispute, complaint or offence with respect to levy, assessment, collection and enforcement of any tax under any specified State Act and matters connected therewith and incidental thereto.

7. Jurisdiction, Powers And Authority Of Special Tribunal :-

(1) Save as otherwise expressly provided in this Act, the Special

Tribunal shall, with effect on and from the appointed day, exercise, the jurisdiction, powers and authority exercisable immediately before that day by all Courts including the High Court (except the Supreme Court) for adjudication or trial of disputes or complaints with respect to all matters of levy, assessment, collection and enforcement of any tax under any specified State Act and matters connected therewith or incidental thereto.

(2) Notwithstanding anything contained in this Act, all proceedings triable by any Court or Courts in accordance with the provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), shall continue to be tried by such Court and the Special Tribunal shall have no jurisdiction to try such proceedings.

8. Power To Punish For Contempt :-

The Special Tribunal shall have and exercise the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise, and, for this purpose, the provisions of Contempt of Courts Act, 1971 (Central Act 70 of 1971) shall have effect subject to the modifications that--

(a) the reference therein to a High Court shall be construed as including a reference to the Special Tribunal;

(b) the reference to the Advocate-General in Section 15 of the said Act shall be construed in relation to the Special Tribunal as a reference to the Advocate-General of the State.

9. Procedure To Be Followed By Special Tribunal :-

(1) The Special Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (Central Act V of 1908) but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Government, the Special Tribunal shall have power to regulate its own procedure, including the place of sitting and time of its hearing.

(2) The Special Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Central Act V of 1908) while trying a suit, in respect of the following matters, namely:--

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery, inspection and production of books of

account and other documents ;

(c) reviewing its decisions;

(d) dismissing an appeal for default or deciding it ex parte; and

(e) any other matter which may be prescribed.

10. Composition Of Benches :-

The Bench shall consist of--

(i) the Chairman, Vice-Chairman and any other Member ; or

(ii) the Vice-Chairman and any other Member ; or

(iii) a single Member:

Provided that if any case which comes up before a Bench consisting of a single Member (who is not the Chairman) or a Bench consisting of more than one Member (of which the Chairman is not a Member) involves a question of law, such Bench may, in its discretion refer such case for the decision by a Bench of which the Chairman shall be a Member.

Explanation.--The single Member referred to in clause (iii) may be either the Chairman, Vice-Chairman or any other Member.

11. Power Of Chairman To Transfer Cases From One Bench To Another :-

On an application made by any party and after notice to such party and after hearing such party as he may desire to be heard, or in his own motion without such notice, the Chairman may transfer any case pending before one Bench, for disposal, to any other Bench.

12. Decision To Be By Majority :-

If the Members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided they shall state the point or points on which they differ, and make a reference to the Chairman, who shall either hear the point or points himself or refer the case for hearing on such point or points by a Bench consisting of one or more of the other Members and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it.

13. Power To Award Cost :-

The Special Tribunal shall have the power to award costs in any

matter decided by it and the amount of such costs awarded against an authority under the relevant specified State Act shall be payable by the appropriate authority under the said Act, or in case the amount of such costs awarded against any other person shall be paid by him to the Special Tribunal in such manner as may be prescribed.

14. Exclusion Of Jurisdiction Of Courts, Except The Supreme Court :-

On and from the appointed day, no Court (except the Supreme Court) shall have, or be entitled to exercise, any jurisdiction, powers or authority in relation to matters specified in the specified State Acts.

15. Bar Of Writs In High Court :-

No writ shall lie in the High Court to set aside or modify any proceeding or order taken or made by the appropriate authority under the specified State Acts.

16. Members And Staff Of Special Tribunal To Be Public Servants :-

The Chairman, Vice-Chairman and other Members and the officers and other employees of the Special Tribunal shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code, 1860 (Central Act XLV of 1860).

17. Protection Of Action Taken In Good Faith :-

No suit, prosecution or other legal proceedings shall lie against the Government or against the Chairman, Vice-Chairman and other Members of the Special Tribunal, for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

18. Act To Have Overriding Effect :-

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any law other than this Act.

19. Transfer Of Pending Cases From High Court :-

(1) All matters and proceedings including appeals relating to the levy, assessment, collection and enforcement of tax under any specified State Act and matters connected therewith or incidental thereto, pending before the High Court on the appointed day, shall stand transferred to the Special Tribunal:

Provided that, if any matter or proceeding has been heard in part or heard but judgment is not delivered on or before the appointed day nothing in this section shall apply to such matter or proceeding.

Explanation.-- No application or proceeding shall be deemed to have been heard in part only by reason of any interim order having been passed therein.

(2) Where any matter or proceeding including appeal stands transferred from the High Court to the Special Tribunal under sub-section (1) --

(a) the High Court shall, as soon as may be after such transfer, forward the records pertaining to such matter or proceeding to the Special Tribunal; and

(b) the Special Tribunal, shall, on receipt of such records, proceed to deal with such matter or proceedings from the stage at which it is transferred or from any earlier stage or de novo as the Special Tribunal may deem fit:

Provided that an interlocutory order granted on an application by the High Court shall continue to be in operation unless the Special Tribunal by an order varies or modifies the same.

(3) An appeal transferred from the High Court to the Special Tribunal shall be decided by a Bench of three Members.

20. Review :-

The Special Tribunal may, upon an application made within sixty days from the date of the order or on its own motion at any time within five years from the date of the order, review an order passed by it under this Act with a view to rectifying any mistake apparent on the face of the record and amend its earlier order.

21. Right To Be Represented By The Legal Practitioner :-

(1) In any proceeding pending before the Special Tribunal under this Act, the petitioner may appear either in person or through a legal practitioner of his choice to present his case before the Special Tribunal.

(2) The Government may authorise one or more legal practitioners or any of its officers to act as presenting officers and any person so authorised by it may present its case in any proceeding before the Special Tribunal.

22. Power To Make Rules :-

(1) The Government may make rules to carry out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all and any of the following matters, namely: --

(a) the salaries and allowances payable to, and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of the Chairman, Vice-Chairman and other Members under clause (c) of subsection (3) of Section 4;

(b) the procedure for the investigation of misbehaviour or incapacity of the Chairman, Vice-Chairman and other Members under clause (c) of subsection (3) of Section 4 ;

(c) the salaries and allowances and conditions of service of the officers and other employees of the Special Tribunal under subsection (3) of Section 5 ;

(d) the rules subject to which the Special Tribunal shall have power to regulate its own procedure under sub-section (1) of Section 9 and the additional matters in respect of which the Special Tribunal may exercise the powers of the Civil Court under clause (e) of subsection (2) of Section 9 ;

(e) any other matter which has to be, or may be, prescribed by rules under this Act.

(3)(a) All rules made under this Act shall be published in the Tamil Nadu Government Gazette and unless they are expressed to come into force on a particular day, shall come into force on the day on which they are so published.

(b) All notifications issued under this Act shall, unless they are expressed to come into force on a particular day, come into force on the day on which they are so published.

(4) Every rule made or notification issued under this Act shall, as soon as possible after it is made or issued, be placed on the Table of the Legislative Assembly and if, before the expiry of the session in which it is so placed or the next session, the Assembly makes any modifications in any such rule or notification or the Assembly decides that the rule or notification should not be made or issued,

the rule or notification shall thereafter have effect only in such modified form or be of no effect as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

23. Power To Remove Difficulties :-

(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by an order published in the Tamil Nadu Government Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to them to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the date of publication of this Act in the Tamil Nadu Government Gazette.

(2) Every order made under sub-section (1) shall, as soon as possible, after it is made, be placed on the Table of the Legislative Assembly and if, before the expiry of the session in which it is placed or the next session, the Assembly makes any modification in any such order or the Assembly decides that the order should not be issued, the order shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under the order.

24. Tamil Nadu Act 1 Of 1959, As Subsequently Modified To Have Effect Subject To Modifications :-

The provisions have been incorporated in the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959) at the relevant places under Sections 2(n), 16, 32, 34, 36, 36-A, 37, 38, 38-A, 39 and 52 of the Act.

25. Repeal Of Tamil Nadu Act 58 Of 1986 :-

The Tamil Nadu General Sales Tax (Seventh Amendment) Act, 1986 (Tamil Nadu Act 58 of 1986) is hereby repealed.

SCHEDULE 1

SCHEDULE I

1. The Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959).
2. The Tamil Nadu Additional Sales Tax Act, 1970 (Tamil Nadu Act 14 of 1970).
3. The Tamil Nadu Sales Tax (Surcharge) Act, 1971 (Tamil Nadu Act 24 of 1971).

