

(2002) 05 MP CK 0018

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 3525, 3529, 3531, 3551, 3554, 3597 and 4129 of 2001

A.K. Shrivastava

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-05-2002

Acts Referred:

Administrative Tribunals Act, 1985 — Section 4
Constitution of India, 1950 — Article 14, 16, 21, 309, 310
Madhya Pradesh Re-organisation Act, 2000 — Section 2, 74, 74(1), 74(2), 74(3)

Citation : (2002) 3 MPHT 1

Hon'ble Judges : S.S. Saraf, J; S.K. Kulshrestha, J

Bench : Division Bench

Advocate : S.L. Saxena, N.C. Jain, P.S. Nair, M.L. Choubey, Alok Pathak, Sandeep Awade and Shobha Menon, for the Appellant; Vivek Tankha and Ravindra Shrivastava, Generals, Ajay Mishra, Dy. A.G. and R.S. Patel, for the Respondent

Judgement

S.S. Saraf, J.—The factual matrix and the question of law involved being similar, this petition and the following petitions were heard analogously and are being disposed of by this common order.

- (i) W.P. No. 3525/2001 (Sanjay Kumar Mishra and Ors. v. State of M.P. and Ors.)
- (ii) W.P. No. 3531/2001 (M.P. High Court Bar Association, Jabalpur and Anr. v. Union of India and Ors.)
- (iii) W.P. No. 3551/2001 (Kamal Joshi and Ors. v. State of M.P. and Ors.)
- (iv) W.P. No. 3554/2001 (Nemi Chand Nema and Ors. v. State of M.P. and Ors.)
- (v) W.P. No. 3597/2001 (Madhya Pradesh Class-III Government Association v. Union of India and Ors.)
- (vi) W.P. No. 4129/2001 (Madhya Pradesh Class-III Government Employees Association and Ors. v. State of Madhya Pradesh and Ors.).

2. These petitions under Articles 226 and 227 of the Constitution of India have been filed to quash the following:--

(i) The Notification No. F-A-4-2-2001-I(1)-2171, dated 25-7-2001 issued by the respondent/State of M.P. whereby the Madhya Pradesh State Administrative Tribunal (for short the Tribunal") has "been abolished (Annexure P-1);

(ii) The Circular No. F-A-4-2-2001/I(1), dated 25-7-2001 issued by the respondent/State of M.P. whereby it has been ordered that the existing Chairman, Vice-Chairman and Members of the Tribunal cease to function with immediate effect irrespective of the unexpired period of tenure (Annexure P-2);

(iii) The Order No. A-4-2-2001/1(i), dated 25-7-2001 passed by the respondent/State of M.P. by which the State Government has terminated the services of all the officers and employees other than those on deputation with immediate effect (Annexure P-3); and

(iv) Madhya Pradesh Ordinance No. 3 of 2001 published in Madhya Pradesh Rajpatra Extra-ordinary, dated 28-7-2001 (Annexure P-4 in Writ Petition No. 3597/2001) providing transfer of applications and cases pending before the Tribunal.

3. The petitioners have also challenged the constitutional validity of Section 74 of the Madhya Pradesh Reorganisation Act, 2000 (for short "the Act of 2000"). In the alternative it has been prayed that if the aforesaid reliefs are not granted then it be declared that the Chairman, Vice-Chairman, Members, Officers and Employees of the Tribunal are entitled to full compensation for the unexpired period of tenure including full salary and counting of unexpired portion for pension, gratuity, leave encashment and also solatium striking down Section 74(2 & 3) of the Act of 2000 as ultra vires of the Constitution. It has also been prayed that the State of Madhya Pradesh be directed to absorb the employees of the Tribunal in other departments of the State with continuity in service and with the seniority from the date of their initial appointments. The relief claimed in Clause (D) of para 6 of the petition in W.P. No. 4129/2001 has not been pressed at this stage with permission to raise it separately.

4. The facts as unfolded in these writ petitions in brief are as under:--

The petitioner in W.P. No. 3529/2001 is the Administrative Member of the Tribunal while the petitioners in W.P. No. 3525/2001, W.P. No. 3551/2001, W.P. No. 3554/2001 and W.P. No. 4129/2001 are or were employees of the Tribunal except one which is M.P. Class-III Government Employees Association. Writ Petition No. 3531/2001 has been filed by the Madhya Pradesh High Court Bar Association and its President Shri Umakant Sharma while the Writ Petition No. 3597/2001 by the M.P. Class-III Government Employees Association. Some of the Advocates have also been included in the array of petitioners.

5. Consequent to the decision to carve out the State of Chhattisgarh from the existing State of Madhya Pradesh, the Madhya Pradesh Reorganisation Act of

2000 has been enacted by the Parliament. Under the provisions of the Act of 2000, two successor States namely State of Madhya Pradesh and State of Chhattisgarh came into existence w.e.f. 1-11-2000. Section 74 of the Act of 2000 appears to have made a provision in Sub-section (1) inter alia for abolition of the Tribunal. By virtue of powers conferred by or u/s 74 of the Act of 2000 on the Government of successor States, the respondent/ State of Madhya Pradesh in consultation with the State of Chhattisgarh abolished the Tribunal as per Annexure P-1. Earlier after taking decision of abolishing the Tribunal, the matter was referred to the Government of India for issuance of appropriate order for abolishing the Tribunal. It appears that the Government of India has written to the State of Madhya Pradesh that for the abolition of the Tribunal an amendment in the Administrative Tribunals Act, 1985 (for short "the AT. Act") is necessary. The respondent/State of Madhya Pradesh has, however, subsequently issued the above Notification (Annexure P-1). The Notification (Annexure P-1) is, therefore, beyond the competence of the State Government. Section 74(1) of the Act of 2000 is not properly worded and is ultra vires of the provisions of the Constitution.

6. A Writ Petition No. 2398/2001 was filed earlier challenging the vires of Section 74 of the Act of 2000 which has been dismissed by this Court by order dated 13-7-2001 (Annexure P-10). It has also been submitted that in view of the non-obstante clause in Sub-section (4) of Section 74 of the Act of 2000 at best it can be assumed that the Central Government alone is competent to issue directions on the subject of abolition of Tribunal. There is nothing in Section 74 of the Act of 2000 which authorises the State Government to issue a Notification for abolition of the Tribunal. The scope of Sub-section (4) of Section 74 of the Act of 2000 has not been considered in the order dated 13-7-2001 of this Court (Annexure P-10) and therefore the only result of the above decision of this Court (Annexure P-10) is that Section 74 of the Act of 2000 stands as it is under which the Tribunal can at best be abolished only by the Central Government.

7. It has also been averred that the decision of the State Government to abolish the Tribunal suffers from malafides and arbitrariness. The State Government has taken the decision to abolish the Tribunal because some of the orders of the Tribunal have not been found palatable by the State Government. It appears that the Chief Minister of Madhya Pradesh (the respondent) has also made some comments against the Tribunal and therefore a Contempt Petition has been filed against him. Consequently the State Government rushed to issue impugned notification (Annexure P-1) abolishing the Tribunal so that the Tribunal could be abolished before the next date of hearing in Contempt Petition. It is also averred that the action of the State Government abolishing the Tribunal is arbitrary and unreasonable because no alternative mechanism has been provided for the disposal of the cases pending in the Tribunal.

8. It is further averred that the services of all the officers and employees except those on deputation have been terminated with immediate effect by Annexure

P-3. There is no mention in the Annexure that they shall be given alternative employment. Though, it is true that Sub-section (2) of Section 74 of the Act provides that no suit or other legal proceedings shall be instituted by any employee against termination of his employment or for the enforcement of any service conditions or for securing absorption in alternative public employment, the action to terminate their services is arbitrary.

9. It is further averred that Annexure P-2 is silent about the compensation to Chairman, Vice-Chairman or Members for the unexpired period of their tenure. Such action of the State Government cannot be justified under Sub-section (3) of Section 74 of the Act of 2000. Even if, it is assumed that the State Government has the power to abolish the Tribunal, such power has to be exercised in a fair, just and reasonable manner as required by Article 14, The Chairman, Vice-Chairman and Members have acquired ineligibility for holding office under the Central or the State Government in terms of Section 11(4) of the A.T. Act, therefore, they have right to full compensation including full salary, pension, gratuity, leave encashment for the unexpired period of their tenure. They are also entitled to solatium as part of compensation for the sudden issue of the impugned order. The impugned order (Annexure P-2) amounts to a direct attack on the independence of the Tribunal as the Chairman, Vice-Chairman and Members have been punished for unpalatable decisions. The Chairman, Vice-Chairman, Members, Officers and Employees of the Tribunal have legitimate expectations that they would continue to work up to the age of superannuation. The provisions of Sub-sections (2) and (3) of Section 74 of the Act of 2000 are arbitrary and violative of Article 14 as also violative of the fundamental rights of life guaranteed under Article 21 of the Constitution of India.

10. It has also been averred that the services of the officers and employees of the Tribunal could not have been terminated by the State of Madhya Pradesh because they were appointed by the Chairman of the Tribunal. The order terminating the services of the officers and employees has, therefore, no legal sanctity and has to be treated as non est.

11. It has also been averred that the Tribunal having been established under the Constitution cannot be abolished by a simple legislative Act. Unless and until an amendment is made in the Constitution and the A.T. Act for the abolition of the Tribunal, no action can be taken for abolition of the Tribunal. Section 74 of the Act is beyond the ambit, scope and pale of Article 323A of the Constitution and it cannot apply to the Tribunal. The abolition of the Tribunal will lead to transfer of cases to the High Court and Subordinate Courts and fresh institution of cases in these Courts which would compound the problem of pendency in these Courts. The right to an expeditious trial of the cases and the right to a quick redressal of the grievances of the Government servants would, therefore, be affected adversely which would infringe the right of life under Article 21 of the Constitution. Even if, the provisions of Section 74 of the Act of 2000 apply to the Tribunal, the successor State of Madhya Pradesh has no option but to continue

the Tribunal in the State and that option to discontinue the Tribunal or abolish it, is only available to the successor State of Chhattisgarh.

12. The respondent/State of Madhya Pradesh has denied the contentions raised by the petitioners and has averred that the petitions are devoid of any substance and therefore are wholly misconceived and deserve to be dismissed. It has been specifically denied that the State Government has no power to take decision regarding the existence of the Tribunal u/s 74 of the Act of 2000. It is further denied that Section 74(1) of the Act of 2000 is not properly worded and is ultra vires of the provisions of the Constitution. It has been averred that Sub-section (4) of Section 74 of the Act of 2000 has very limited scope. It only comes into play when there is any dispute between the successor States, in case there is no dispute between the successor States, Sub-section (4) has absolutely no application. When both the States mutually agreed for a certain decision, the Central Government has neither any discretion nor any role to play. The State Government had great expectation and hope at the time of establishment of the Tribunal. The Tribunal failed to live up to its expectation and its performance has been far from satisfactory. It is further averred that the decision to abolish Tribunal has been taken u/s 74 of the Act of 2000 which specifically empowers the successor States to allow to continue or abolish the Tribunal by mutual agreement. The Act of 2000 being special law has overriding effect over all provisions made in that regard. It has been denied that for the abolition of the Tribunal, the A.T. Act is required to be amended. The stand taken by the Government of India is based on complete mis-reading of provisions of law. The High Court by order dated 13-7-2001 passed in W.P. No. 2398/2001 after meticulous scrutiny of all the grounds raised and available has held the provisions of Section 74 of the Act of 2000 as intra vires. The State Government is competent to issue the notification (Annexure P-1) and consequential orders of Annexures P-2 and P-3. It has been denied that the Tribunal can only be abolished by the Central Government. It has also been denied that the decision to abolish the Tribunal is mala fide, suffers from arbitrariness and is unfair, unjust, unreasonable and violative of Article 14 of the Constitution.

13. It is further urged that after the Tribunal is validly abolished, the cases no longer remain pending in the Tribunal. The respective States, therefore, could legislate under Entry 65 read with 41 of List-II and Entries 11-A and 46 of List III of Schedule VII of the Constitution for adjudication of such cases by the High Court. The opinion of the Central Government on a question of the construction of the Act of 2000, is not binding or not even relevant for after a law has been enacted by Parliament, it is only the Courts which have jurisdiction to finally settle its interpretation. After re-organization of State, the successor State of Madhya Pradesh had made overall review of the performance of the Tribunal in the State for last 12 years. In the review so made, all the relevant aspects, for example mounting pendency of cases, inherent defects in the scheme and cumbersome process of selection contributing in its unsatisfactory performance, as well as its financial implications etc. were duly considered and deliberated in

the meeting of Council of Ministers held on 8-3-2001. The Council of Ministers after due and minute consideration and on considering application of mind arrived at the conclusion that the Tribunal has failed to satisfy its object and, therefore, there is no justification to continue the same. The Council of Ministers took a collective decision on 8-3-2001 to abolish the Tribunal u/s 74 of the Act of 2000. The Council of Ministers authorised the Chief Minister to decide the proposed date of abolition and to fulfil all the formalities and to decide modalities in respect thereof. The Chief Minister on 8-3-2001 itself during the routine Press briefing gave opinion about this decision. It has also been averred that the editors and reporters of the newspapers also filed their affidavits in compliance of the direction given by the Tribunal wherein all of them categorically stated that the Chief Minister did not make the statements attributed to him in the contempt petitions and news reports. The Tribunal though admitted that no overt act can be attributed against the Chief Secretary in all the contempt petitions yet issued notice for criminal contempt against the then Chief Secretary Shri K.S. Sharma/ respondent on the ground that he did not comply with the Tribunal's directions and that his reply was evasive. Initially 30th April, 2001 was fixed as the date for abolition of State Administrative Tribunal and accordingly the Government of Chhattisgarh was conveyed the decision taken by the Council of Ministers vide letter of Chief Secretary dated 18-3-2001. The State Government of Chhattisgarh after due and necessary consideration agreed for the abolition of the Tribunal and conveyed its decision vide letter dated 26-4-2001 to the State of M.P. Since the mutual agreement between both the successor States was arrived at on 26-4-2001, but due to paucity of time the formal date of abolition was postponed and accordingly 1st June, 2001 was fixed as the date of abolition of the Tribunal.

14. It is further averred that before the pronouncement of the order by the Division Bench of the High Court in Writ Petition No. 2398/2001, the understanding of relevant legal provisions was not very clear to the executive and therefore the decision taken by the State Government to abolish the Tribunal was communicated to the Central Government. After aforesaid pronouncement by the Division Bench of the High Court, the legal confusion stood cleared and thereafter the State Government, following the interpretation of law made by the High Court, issued notification dated 25-7-2001 (Annexure P-1) abolishing the Tribunal. As a natural consequence of abolition of the Tribunal, the services of employees stood terminated and therefore an order (Annexure P-3) was issued notifying aforesaid position. With the abolition of the Tribunal, the Chairman, Vice-Chairman and Members automatically ceased to function and therefore a formal circular dated 25-7-2001 (Annexure P-2) was also issued. In order to avoid any possible delay in the adjudication of pending matters the Ordinance (Annexure P-4) was promulgated whereby necessary arrangements have been initiated for hearing and adjudication of matters pending before the Tribunal on the date of its abolition.

15. It is also averred that the information of decision to abolish the Tribunal taken by the Council of Ministers was also released in the Press for the large

public information and there was no motive behind it. It has also been denied that by abolition of the Tribunal the State employees would be put to disadvantageous situation as compared to the employees of the Central Government. It is further averred that after establishment of the Tribunal, the original jurisdiction of the High Court and Civil Courts was taken away and after abolition both these fora would be available to the State employees for the redressal of their grievances. It has been denied that the decision to abolish their Tribunal has been taken because some orders passed by the Tribunal were not liked by the State Government and which restrained the State Government from working in a particular manner.

16. It has also been denied that in view of so called incriminating circumstances referred to in the petitions, the Chief Minister and the Chief Secretary took decision to abolish the Tribunal and issued Annexures P-1 to P-3 just to avoid next hearing on 8-3-2001 before the Tribunal. It is also denied that these notifications and orders were issued in haste to save the Chief Minister and Chief Secretary. It has been averred that it is absolutely baseless to apprehend that the system of justice is going to be hampered in any way by the abolition of the Tribunal. It has also been denied that the Ordinance has been issued without authority and jurisdiction and therefore the same is void ab initio. It has also been denied that the power has been wrongly and mala fide exercised for collateral purposes and that the action exhibits apparent arbitrariness and is opposed to the principle of equality and fairness enshrined under Article 14 of the Constitution. It has been denied that Section 74(2) of the Act of 2000 confers arbitrary and uncanalised powers to the State Government and that such power has been exercised arbitrarily and without any valid reason while terminating the services of employees of the Tribunal due to abolition thereof. It has been denied that the State Government has exercised its power arbitrarily, illegally and unjustifiedly and therefore the same is in violation of Article 14 of the Constitution. It has also been denied that by the abolition of the Tribunal, the State Government has assailed on the independence of the Tribunal as some of the decisions given by the Tribunal were unpalatable to the State Government.

17. "It has further been averred that the reasons assigned to challenge the validity of Sub-section (2) and Sub-section (3) of Section 74 of the Act of 2000 are completely baseless and devoid of any substance. It has also been denied that the principle of legitimate expectations attracted in present case and therefore, the orders Annexures P-1 and P-2 are violative of Article 14 of the Constitution. It has also been denied that Sub-sections (2) and (3) of Section 74 of the Act of 2000 are ultra vires in view of Articles 323A, 14 and 16 of the Constitution of India. The entire criticism made to challenge the validity of Section 74 of the Act of 2000, and action taken thereunder are baseless and devoid of any substance and merit and the same deserves to be rejected.

18. A return has also been filed by the Union of India in which it has been pointed out that the Chairman, Vice-Chairman and Members of the Tribunal

having been appointed by the President cannot be removed by an authority subordinate thereto and therefore the impugned order (Annexure P-2) is null and void ab initio. It has further been averred that u/s 74(1) of the Act of 2000, the State of Madhya Pradesh is only competent to take a decision as regards continuance or abolition (as distinguished from actual abolition) of the Tribunal after an agreement with the Government of Chhattisgarh. The authority for issuing a notification abolishing the Tribunal rests with the Government of India. The action of the State Government to abolish the Tribunal is arbitrary and without authority of law. The notification does not contain any provision for transfer of pending cases. The transfer of pending cases was subsequently ordered by Ordinance issued on 28th July, 2001 (Annexure P-4), the same is also without any authority of law. Since the Chairman, Vice-Chairman and Members were appointed by the President, therefore, notwithstanding the provision of Section 74(1)(3) of the Act of 2000, such persons can not be removed by the State Government. It is also averred that Section 74 of the Act of 2000 only empowers the State Government to have a decision for proposing abolition of the Tribunal after an agreement with the Government of Chhattisgarh. This Section does not empower the State Government to itself abolish the same for the simple reason that it was not set up by the State Government. The action of the State Government to abolish the Tribunal is, therefore, beyond their jurisdiction. The notification issued by the State Government abolishing the Tribunal and subsequent connected notification and orders including the Ordinance transferring pending cases being without authority of law are liable to be struck down.

19. On behalf of the State of Chhattisgarh, it has been averred that due to reorganisation both the States of Madhya Pradesh and Chhattisgarh shall be benefitted by the provisions of Section 74(1) of the Act of 2000. The Tribunal would exercise extended jurisdiction in the State of Chhattisgarh for a maximum period of two years but the mandate is subject to a further caveat, that before expiry of the period of two years a decision to abolish can be taken on mutual agreement qua the period. It has further been averred that the mutual agreement is not required for the decision to abolish the Tribunal but qua the period from which the decision will take effect because of abolition of Tribunal will have an impact in Chhattisgarh also. Since it was not a Tribunal of State of Chhattisgarh, there was no question of State of Chhattisgarh abolishing it. It has also been averred that the mutual agreement need not be "agreement in writing or in a certain format" it can be expressed as well as implied. It has also been averred that decision to abolish the Tribunal empowered u/s 74(1) of the Act of 2000 takes effect on its force and requires no direction u/s 74(4) of the Act of 2000 from the Central Government.

20. To appreciate the rival submissions raised at the bar, it is apposite to refer to Section 74 of the Act of 2000. It reads as under :--

"74. Jurisdiction of the Commissions, Authorities and Tribunals.-- (1)

Notwithstanding anything contained in any law for the time being in force, every Commission, Authority, Tribunal, University, Board or any other body constituted under a Central Act, State Act or Provincial Act and having jurisdiction over the existing State of Madhya Pradesh shall on and from the appointed day continue to function in the successor State of Madhya Pradesh and also exercise jurisdiction as existed before the appointed day over the State of Chhattisgarh for a maximum period of two years from the appointed day or till such period as is decided by mutual agreement between the successor States-

- (i) to continue such body as a joint body for the successor States; or
- (ii) to abolish it, on the expiry of that period, for either of the successor States; or
- (iii) to constitute a separate Commission, Authority, Tribunal, University, Board or any other body, as the case may be, for the State of Chhattisgarh, whichever is earlier.

(2) No suit or other legal proceedings shall be instituted, in case such body is abolished under Clause (ii) of Sub-section (i), by any employee of such body against the termination of his appointment or for the enforcement of any service conditions or for securing absorption in alternative public employment against the Central Government or any of the successor States.

(3) Notwithstanding anything contained in any law for the time being in force or in any judgment, decree or order of any Court or Tribunal or contract or agreement, any Chairman, or Member of any body abolished under Clause (ii) of Sub-section (1) shall not be entitled to any compensation for the unexpired period of his tenure.

(4) Notwithstanding anything contained in this Section or any law for the time being in force, the Central Government shall, in accordance with any mutual agreement between the successor States or if there is no such agreement, after consultation with the Government of the successor States, issue directions for the resolution of any matter relating to any body referred to in Sub-section (1) and falling within the jurisdiction of any of the successor States within any period referred to in Sub-section (1)."

21. The main contention of the learned Counsel appearing for the petitioners is that as per provisions of Section 74(1) of the Act of 2000, the State of Madhya Pradesh is not empowered to abolish the Tribunal as it is only the State of Chhattisgarh which has been given authority to decide to abolish the Tribunal. It has also been contended that the Parliament is not competent to enact Section 74(1) of the Act of 2000. A fair reading of Sub-section (1) of Section 74 of the Act of 2000 reveals that there is no scintilla of doubt that the above Section 74(1) gives an unfettered power to both the successor States to take decision in regard to abolition of the Tribunal. This is the exclusive prerogative discretion of both the successor States and no power or authority has been given to the Central Government in this regard. The learned Advocate General appearing for

the State of Madhya Pradesh has rightly contended that provisions of Section 74 have been specially engrafted in the M.P. Act of 2000. No such provision has been made in other Reorganisation Act enacted by the Parliament for the State of Uttar Pradesh and Bihar.

22. It appears that the power of creation or abolition of a Tribunal has been conferred on both the successor States by the Parliament with certain specific purposes. The Parliament appears to have granted an opportunity of re-determination to both the successor States in view of substantial changed circumstances necessitating review of all existing bodies keeping the experience of the old State. It is manifest that the Act of 2000 has been enacted by the Parliament under Articles 2 to 4 of the Constitution. Section 74 of the Act of 2000 contains "supplemental, incidental and consequential provisions" as envisaged in Article 4 of the Constitution to meet the situations resulting from the bifurcation of the existing State of Madhya Pradesh into two successor States. It appears that in this background, the option has been given to both the successor States to decide whether to continue or abolish the Tribunal.

23. A fair reading of Section 74(1) of the Act of 2000 clearly indicates that the Tribunal shall continue to function in the successor State of Madhya Pradesh and shall also exercise jurisdiction over the successor State of Chhattisgarh for a maximum period of two years from the appointed date or till such period as is decided by mutual agreement between both the successor States to abolish it, on the expiry of that period, whichever is earlier. The language is plain, simple and unambiguous. If it had been the intention of the Parliament to give power to abolish the Tribunal to Chhattisgarh State only, the word "any of the successor States" at the end of Sub-section (2) of Section 74 of the Act of 2000 would not have been used. The difference in phraseology that "the Tribunal shall continue to function in the successor State of Madhya Pradesh and also exercise jurisdiction as existed before the appointed date over the State of Chhattisgarh" appears to be because of the fact that the Tribunal has been functioning as the Tribunal of Madhya Pradesh State. Since the Tribunal was in existence in existing State of Madhya Pradesh, hence the phraseology has been used that "it shall continue to function in the successor State of Madhya Pradesh". The contention of the learned Counsel for the petitioners that the option to abolish the Tribunal is available to the successor State of Chhattisgarh only can not, therefore, be accepted. It has further been contended by the learned Counsel for the petitioners that the word "either" does not mean both, it means one or the other of the State. The language of Section 74(1) of the Act of 2000 is so unambiguous that there is little doubt that the word "either" has been used to denote each of the two successor States. The words "either of the successor States" mean any of the two successor States and therefore it includes both the States. There is no reason to believe that a power to abolish any body including Tribunal as envisaged in Section 74(1) of the Act of 2000 shall be conferred to only one State i.e., the State of Chhattisgarh. Both the States have been carved out of the existing State of Madhya Pradesh and both the States stand on same footing.

There is no reason to believe that only one State, i.e., the State of Chhattisgarh shall be favoured by the Parliament by giving option to abolish the Tribunal. This would have been a discriminatory attitude of the legislature. Whatever is given to one State shall not be given to other State, is therefore, totally inconceivable. It has been held by the Supreme Court in *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*,) that the rules of interpretation do not permit us to add words unless the Section as it stands is meaningless or of doubtful meaning. It has also been held by the Supreme Court in *Jumma Masjid, Mercara v. Kodimaniandra Deviah and Ors.* (AIR 1962 SC 842) that "we are not entitled to read words into an Act of Parliament unless clear reasons for it is to be found within four corners of the Act itself. If the power to decide to abolish the Tribunal is conferred on the State of Chhattisgarh, why such power shall not be conferred to the State of Madhya Pradesh remains unexplained. As stated earlier, both the successor States are on the same footing and therefore a power which is given to one of the successor States shall not be given to other successor State is beyond imagination. There is specific mention of the words "either of the successor States" in Clause (ii) of Sub-section (1) of Section 74 which clearly indicates that both the successor States have been empowered to take decision to abolish the Tribunal. In Sub-section (3) of Section 74 of the Act of 2000 also, the words "any of the successor States" in connection of consequence of abolition of the Tribunal have been used which clearly indicates that both of the successor States have been given power to decide about the abolition of the Tribunal.

24. In *Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another*, , the Supreme Court has held as under :--

"11. The normal rule of interpretation is that the words used by the legislature are generally a safe guide to its intention, Lord Reid in *West-Minster Bank Ltd. v. Zang* 1966 AC 182, observed that "no principle of interpretation of statutes is more firmly settled than the rule that the Court must deduce the intention of Parliament from the words used in Act". Applying such a rule, this Court observed in *G. Narayanaswami Vs. G. Pannerselvam and Others*, at p. 2290 that "where the statute's meaning is clear and explicit, words cannot be interpolated". What is true of the interpretation of an ordinary statute is not any the less true in the case of a constitutional provision, and the same rule applies equally to both. But if the words of an instrument are ambiguous in the sense that they can reasonably bear more than one meaning, that is to say, if the words are semantically ambiguous, or if a provision, if read literally, is patently incompatible with the other provisions of that instrument, the Court would be justified in construing the words in a manner which will make the particular provision purposeful. That, in essence is the rule of harmonious construction."

25. A fair reading of the Section 74(1) of the Act of 2000 leads us to an unambiguous intention of the Parliament that both the successor States have been empowered by the Parliament to decide whether to continue or abolish the Tribunal and since the meaning of the above Section 74(1) of the Act of 2000 is

clear and explicit, no other word can be permitted to be interpolated therein. In Section 2(j), the words "successor State" has been defined as the "successor States" in relation to the existing State of Madhya Pradesh means the State of Madhya Pradesh or Chhattisgarh. This definition clearly indicates that wherever the words "the successor States" have been used, it means both the States i.e., Madhya Pradesh as well as Chhattisgarh and therefore the contention of the learned Counsel for the petitioners that in Section 74(1) of the Act of 2000, the words "successor States" do not mean the State of Madhya Pradesh, cannot be accepted. Both the successor States have option to seek a Tribunal or not to seek a Tribunal. Unlike High Court and other Civil Courts there is no constitutional obligation to establish a Tribunal in any of the States.

26. Shri N.C. Jain, learned Senior Advocate appearing for the petitioners has contended that in view of the provisions of Clauses (a), (b) and (c) of Article 3 of the Constitution, the State of Chhattisgarh only is a new State and not a State of Madhya Pradesh. He has further contended that the State of Madhya Pradesh continues to be the old State of Madhya Pradesh. As pointed out earlier in view of the definition of the successor States given in Section 2(j) of the Act of 2000, the contention of Shri N.C. Jain, learned Senior Advocate for the petitioners, cannot be accepted.

27. At this point, the following passage from the Principles of Statutory Interpretation by Justice G.P. Singh, Eighth Edition 2001 will be relevant:--

"When the words of a statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences."

28. The language in Section 74(1) of the Act of 2000 is so plain, simple and unambiguous that effect must be given to it. The words "two years" or "till such period as is decided by mutual agreement between the successor States.... to abolish it, on the expiry of that period, for either of the successor States, whichever is earlier" used in the above Section 74(1), are for both the successor States and not for the State of Chhattisgarh alone. In the words "either of successor States" the successor State of Madhya Pradesh is also included. It is, therefore, clear that the privilege to decide to abolish the Tribunal has been given to both the successor States and not to State of Chhattisgarh alone. Since the language of the above Section 74(1) is clear, plain, unambiguous and is not susceptible of having two meanings, there is no ground to accept the contention as submitted by the learned Counsel for the petitioners that power to abolish the Tribunal has not been given to the State of Madhya Pradesh.

29. It has further been contended by the learned Counsel for the petitioners that in Section 74(1)(i) of the Act of 2000 "body" means body only and not a Tribunal. He has, therefore, submitted that by virtue of powers given by or u/s 74(1) the Tribunal cannot be abolished. He has further contended that in this respect the reference can be made to the provisions of Sections 24, 66 and 68 of

the Act of 2000. Having given a thoughtful consideration to the above contention of the learned Counsel for the petitioners, we are of the considered view that such a contention cannot be accepted. Section 24 of the Act of 2000 provides special provisions relating to Bar Council and Advocates. Section 66 provides that the Government of Madhya Pradesh or Chhattisgarh, as the case may be, shall continue to provide facilities to the people of other State, in respect of institutions specified in Eighth Schedule to the Act of 2000, while in Section 68 of the Act of 2000 provisions have been made relating to services in Madhya Pradesh and Chhattisgarh. None of the provisions of these Sections indicates that a Tribunal could not be abolished under provisions of Section 74(1) of the Act of 2000. There is specific mention of the word "Tribunal" in Section 74(1) of the Act of 2000 and therefore it cannot be said that the Tribunal cannot be abolished by virtue of powers given u/s 74(1) of the Act of 2000.

30. It has also been contended by Shri Rajendra Tiwari, learned Senior Advocate for the petitioners that unless the Tribunal is abolished by the State of Chhattisgarh, it cannot be abolished in State of Madhya Pradesh. A mere reading of Section 74 of the Act of 2000 makes it clear that there should be mutual agreement between the successor States with regard to the period or date from which any body is to be abolished. There is no provision in the above Section to make it obligatory to seek consent of the other successor State for abolishing the Tribunal before any of the successor States decides to abolish the same. Therefore, the contention of Shri Rajendra Tiwari, learned Senior Advocate that the State of Madhya Pradesh alone could not abolish the Tribunal can not be accepted. Shri Rajendra Tiwari, learned Senior Advocate has also contended that in view of Section 3 of the Act of 2000, the State of Chhattisgarh has been referred to as "new State" while in Section 4 of the Act of 2000, the State of Madhya Pradesh has not been referred to as "new State" which means that the State of Madhya Pradesh continued to be the same State excluding the territories as mentioned in Section 3 of the Act of 2001. In support of his contention, he has further submitted that for the above reason no oath was administered to the Judges of the existing State of Madhya Pradesh High Court on creation of new State of Madhya Pradesh while the Judges of Chhattisgarh High Court were required to be administered such oath. As pointed out earlier, the definition of successor State has been given in Section 2(j) of the Act of 2000 and therefore, there is no ambiguity regarding the fact that the existing State of Madhya Pradesh has been bifurcated into the new States of Madhya Pradesh and Chhattisgarh. On creation of both the existing States, the Judges allotted to the High Court of Chhattisgarh from the High Court of existing State of Madhya Pradesh were also not required to take oath. The above contention of Shri Rajendra Tiwari, learned Senior Advocate can not, therefore, be accepted.

31. Shri Rajendra Tiwari, learned Senior Advocate has further contended that if Tribunal can be abolished by the State then the Madhya Pradesh State can also be abolished by the Madhya Pradesh State by mutual consent of Chhattisgarh State because the Tribunal is the limb of the State. There is no force in the above

argument. Since the successor States have been empowered to take decision about the continuance or abolition of a Tribunal, such a power can be exercised by the State Government. There is no provision in the Act of 2000 to empower the State Government to abolish the State itself.

32. It has further been submitted by Shri N.C. Jain and Shri Rajendra Tiwari, learned Senior Advocates that if provisions of Section 74(1) of the Act of 2000 are applicable to Tribunals, the Central Administrative Tribunal could also be abolished by the State Government, though it was constituted by the Government of India. It has further been contended that on the same interpretation, the Income Tax Tribunal, Railway Claims Tribunal and other Tribunals constituted by the Government of India could also be abolished by the State Government. It is difficult for us to appreciate the above argument. What the learned Senior Advocates have lost sight of is that there is specific provision in the above Section 74(1) that a Tribunal etc, having jurisdiction over the existing State of Madhya Pradesh could only be abolished by a decision of the Government of successor States. There are Benches of these Tribunals in the State of Madhya Pradesh but their main seats are outside the State of Madhya Pradesh. These Tribunals are exercising jurisdiction over the entire territory of India. The Central Administrative Tribunal, the Income Tax Tribunal or the Railway Claims Tribunal having jurisdiction over the entire territory of India could not be abolished by State Government as per provisions of above Section 74(1) itself.

33. It has further been contended by the learned Counsel for the petitioners that once the power to constitute a Tribunal has been exercised, it stands exhausted. We are unable to accept the above contention. Section 74(1) of the Act of 2000 has specifically and unambiguously empowered the State Government to decide to abolish the Tribunal and therefore, it can not be said that once the State Government has exercised its power to constitute a Tribunal, it stands exhausted.

34. The Division Bench of this Court in *Mukesh Kumar Mishra and Anr. v. Union of India and four others* (W.P. No. 2398/2001, decided on 13-7-2001) has held that the State Government u/s 74(1) of the Act of 2000 has power to decide to abolish the Tribunal. It is, further, worth mentioning that the Division Bench of this Court also rejected the petition challenging the provisions of Section 74(1) (ii) of the Act of 2000 as ultra vires on the basis of the decision of this Court in W.P. No. 2398/2001, in *Mr. Dr. H.D. Gargava v. State of M.P.* (W.P. No. 1468/2000, decided on 19-6-2001).

35. For the reasons stated above, it can not be said that Section 74(1) of the Act of 2000 does not empower the existing State of Madhya Pradesh to take decision regarding the continuance or abolition of the Tribunal.

36. Now we come to the second point raised by the learned Counsel for the petitioners that the Parliament is not competent to enact Section 74(1) of the Act of 2000. It has been submitted that in view of the provisions of Section 4 of the

Administrative Tribunals Act, the provisions of Section 74(1) of the Act of 2000 are ultra vires. It has further been contended that the provisions of Section 74(1) of the Act of 2000 are inconsistent with the provisions of Article 323A of the Constitution and therefore the above Section 74(1) of the Act of 2000 is unconstitutional. In this connection, we can profitably refer the decision of this Court in Mukesh Kumar Mishra 's case (supra):

"6. *** **

Shri Jain submits that Article 323A of the Constitution has provided for establishment of the Tribunal to secure the speedy disposal of the service matters and the Parliament having enacted the Administrative Tribunals Act, 1985 for giving effect to the said constitutional mandate, *** ** Section 74(1)(ii) of the M.P. Reorganisation Act, which provides for abolition of the Tribunals is unconstitutional being repugnant to Article 323A of the Constitution. He emphasises that constitutional mandate for establishment of the Administrative Tribunals under Article 323A of the Constitution can not be frustrated by conferring discretion to the successor States of Madhya Pradesh and Chhattisgarh to abolish the same."

"8. Having appreciated the rival submission, we do not find any substance in the submission of Shri Jain. True it is that underlying object in inserting Article 323A of the Constitution was to reduce the mounting arrears in the High Courts and to secure the speedy disposal of service matters but this is an enabling provision which conferred discretion to the Parliament to make law providing of adjudication of dispute and complaints with respect to recruitment and condition of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State etc. by an Administrative Tribunal. As stated earlier, in pursuance of the aforesaid enabling provision the Parliament had enacted the Administrative Tribunals Act and u/s 4(1) of the Administrative Tribunals Act, Central Government established Central Administrative Tribunal, As regards the State Administrative Tribunal, Section 4(2) of the said Act, clearly contemplated its establishment by the Central Government on receipt of a request in this behalf from the State Government concerned. Thus neither Article 323A of the Constitution nor Section 4 of the Administrative Tribunals Act in mandatory terms provide for establishment of the State Administrative Tribunal. In fact, it has given discretion to the State Government to make request to the Central Government for establishment of the State Administrative Tribunal. Thus Article 323A of the Constitution and Section 4 of the Administrative Tribunals Act being enabling provisions and having not constituted State Administrative Tribunal, we are of the opinion that Section 74(1)(ii) of the M.P. Reorganisation Act has no conflict with either Article 323A of the Constitution or Section 4 of the Administrative Tribunals Act."

37. A perusal of the above passage from the decision of this Court in Mukesh Kumar Mishra's case (supra) clearly indicates that it has been decided by this Court that Section 74(1)(ii) of the Act of 2000 has no conflict with either Article

323A of the Constitution or Section 4 of the Administrative Tribunals Act, therefore it cannot be accepted, as contended by the learned Counsel for the petitioners, that the Parliament is not competent to enact Section 74(1) of the Act of 2000. In view of Section 85 of the Act of 2000, the provisions of the Act of 2000 shall have effect notwithstanding anything inconsistent therewith contained in any other law. In view of the above provisions of Section 85, the provisions of Section 74(1) of the Act of 2000 shall have overriding effect over the provisions of Section 4(2) of the Administrative Tribunals Act. This point has also been considered by this Court in Mukesh Kumar Mishra's case (supra) and it has been held that the provisions of the Act of 2000 shall have overriding effect over the provisions of the Administrative Tribunals Act. It has further been held by this Court in Mukesh Kumar Mishra's case (supra) that the provisions of Section 74(1) (ii) of the Act of 2000 are not ultra vires to Article 323A of the Constitution.

38. It has further been contended by that learned Counsel for the petitioners that once the power to constitute a Tribunal has been exercised by the State Government, the Parliament is denuded of any power to make any legislation to provide for the abolition of the Tribunal. This matter has also been considered by this Court in Mukesh Kumar Mishra's case (supra). The following passage from para 15 of the above decision is relevant to quote :--

"15. *** **

It is difficult to swallow that Parliament after enacting law on a particular subject shall have no power to amend, modify or repeal the same. The power of the Parliament, in our opinion, does not exhaust by enactment of any law and we are of the considered opinion that Parliament can make law in relation to a subject for which it has the Legislative competence, notwithstanding the fact that law on a particular subject was enacted by the Parliament earlier. The theory of exhaustion is unknown so far as the Legislative powers are concerned. What Parliament has done, Parliament can undo. However, to put the record straight, it is relevant here to state that Section 74 of the M.P. Reorganisation Act has not undone what has been provided in Section 4 of the Administrative Tribunals Act. *** **."

39. In view of above, it can not be accepted that the Parliament is not competent to enact Section 74(1) of the Act of 2000.

40. Learned Counsel for the petitioners has also contended that the executive can not be given unfettered powers to abolish Tribunal by the Parliament as the Tribunal is part of the State judiciary and therefore, the Parliament is not competent to enact any law which abolishes a body discharging the function of judiciary.

41. Shri Vivek Tankha, learned Advocate General appearing for the respondent/ State of Madhya Pradesh had contended that besides the State of Madhya Pradesh, there are only seven other States in the Country which opted for establishment of State Administrative Tribunal and in most of the States of India,

the State Administrative Tribunal has not been constituted. If it had been a constitutional obligation to establish State Administrative Tribunal, each State would have constituted the same. In our opinion, the above contention of Shri Vivek Tankha has considerable force.

42. Shri S.L. Saxena, learned Senior Advocate appearing for the petitioners has rightly contended that Section 74 of the Act of 2000 is not ultra vires to the constitutional provisions and that for abolition of the Tribunal, amendment in Administrative Tribunals Act is not necessary. He has further contended that Judicial Commissioner's Court in Vindhya Pradesh, which was declared to be High Court for purposes of Article 241 of the Constitution and High Court of Madhya Bharat were abolished by State Reorganisation Act, 1956.

43. As already noticed, the above Section 74(1) of the Act of 2000 is not inconsistent with the provisions of Article 323A of the Constitution. Article 323A of the Constitution provides that Parliament may by law provide for adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitments and conditions of service or persons appointed to public services and posts in connection with the affairs of the Union or of any State. By virtue of these provisions, the Parliament enacted Administrative Tribunals Act. By virtue of Section 4(2) of the Administrative Tribunals Act, the Central Government may, on receipt of a request in this behalf from any State Government, establish, by notification, an Administrative Tribunal for the State, therefore, the Tribunal was established not as per provisions of Article 323A of the Constitution but as per provisions of Section 4(2) of the Administrative Tribunals Act. A person or a body having power to establish something shall also have power to abolish it. Therefore merely because the power to decide about the Constitution of the Tribunal has been given to the State Government by Section 4(2) of the Administrative Tribunals Act, it cannot be said that the above Section 74(1) could not constitutionally be enacted by the Parliament. It has also been contended by the learned Counsel for the petitioners that the enactment of Section 74(1) is bad on the ground of excessive delegation. It is also contended that provisions of Article 323A of the Constitution have overriding effect over Article 4 of the Constitution. So far as the question of excessive delegation is concerned, Shri Vivek Tankha, learned Advocate General for the State of Madhya Pradesh has contended that this is not a case of delegated legislation but a case of conditional legislation. In this connection, the following excerpts from Principles of Statutory Interpretation by Justice G.P. Singh (Eighth Edition 2001) at page 769 may be relevant:--

"(b) Distinction between conditional and delegated legislation.-

A distinction is said to exist between what is called conditional legislation and delegated legislation proper. In case of conditional legislation, the legislation is complete in itself but its operation is made to depend on fulfilment of certain conditions and what is delegated to an outside authority, is the power to determine according to its own judgment whether or not those conditions are

fulfilled. In case of delegated legislation proper, some portion of the legislative power of the Legislature is delegated to the outside authority in that, the Legislature, though competent to perform both the essential and ancillary legislative functions, performs only the former and parts with the latter, i.e., the ancillary function of laying down details in favour of another for executing the policy of the statute enacted. The distinction between the two exists in this that whereas conditional legislation contains no element of delegation of legislative power and is, therefore, not open to attack on the ground of excessive delegation, delegated legislation proper does confer some legislative power on some outside authority and is therefore open to attack on the ground of excessive delegation."

44. In view of above, it can not be said that the above Section 74(1) of the Act of 2000 is ultra vires on the ground of excessive delegated legislation as this is the case of conditional legislation. We are also of the view that it can not be said that since no provisions for abolishing Tribunal have been provided under Article 323A, the Parliament is not competent to legislate about the provisions regarding abolition of the Tribunal as contended by the learned Counsel for the petitioners. The contention of the learned Counsel for the petitioners that the provisions of Article 323A of the Constitution have overriding effect over Article 4 of the Constitution also can not be accepted. As pointed out earlier, if a person or body is given powers to constitute some thing that power includes the power to abolish the same. Article 323A of the Constitution empowers the Parliament to enact law with regard to the Administrative Tribunal and the Tribunal has been constituted as per provisions of the Administrative Tribunals Act which has been enacted by the Parliament by virtue of powers given to it under Article 323A of the Constitution. It is, therefore, clear that the establishment of the Tribunal is not constitutional obligation of the State as is in case of High Court.

45. It has further been contended by the learned Counsel for the petitioners that if Tribunal comes within the purview of Section 74 of the Act of 2000 it means Administrative Tribunals Act has been abrogated by the above Section 74 of the Act of 2000 and the Parliament could not enact law for abolition of the Tribunal in view of the Article 323A. Having given a thoughtful consideration to the above contention of the learned Counsel for the petitioners, we are of the considered view that this can not be accepted as correct interpretation. Section 74 of the Act of 2000 has not abrogated the Administrative Tribunals Act. Assuming that the Tribunal is abolished by the State Government by virtue of the powers given to it by or u/s 74 of the Act of 2000, at any subsequent stage the State Government could again make a request to establish the Tribunal for the State, There is nothing either in Section 74 of the Act of 2000 or in any other provision of law debarring the State Government from again deciding to establish a Tribunal for the State. There is, therefore, no conflict between the above Section 74 and the Administrative Tribunals Act. As already noticed, this Court in Mukesh Kumar Mishra's case (supra) has observed that Section 74 of the Act of 2000 has not undone what has been provided in Section 4 of the Administrative Tribunals Act.

46. It has further been contended that the incorporation of Article 323A in the Constitution is a subsequent feature. Having exercised the right to get the Tribunal established, the State Government is not empowered to abolish the same because the constitutional scheme cannot be frustrated by abolition of the Tribunal. It has also been contended that in view of the Supreme Court's pronouncement in L. Chandra Kumar's case (supra), no authority could be permitted to abolish the Tribunal.

47. In L. Chandra Kumar's case (supra), the Supreme Court has held that the jurisdiction conferred upon the High Courts under Articles 226 and 227 of the Constitution and upon the Supreme Court under Article 32 of the Constitution is a part of the basic structure of our Constitution. While this jurisdiction cannot be ousted, other Courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226, 227 and 32 of the Constitution. It has further been observed by the Supreme Court that though various Tribunals have not performed up to the expectation, but still it cannot be said that Tribunals were benefitted on a fundamental unsound principle. There is no constitutional prohibition against their performing supplemental, as opposed to the substitutional role, in this respect. It is, thus, clear that the constitutional validity of the Tribunals was being challenged before the Apex Court. The Apex Court held that creation of the Tribunals is not unconstitutional and can be permitted to function as a supplemental to the Courts. The Supreme Court has never considered the point whether the establishment of an Administrative Tribunal for a State is mandatory and that once it is established, it cannot be abolished. Since the Parliament empowered the State Government to make request to the Central Government for establishment of an Administrative Tribunal for that State u/s 4(2) of the Administrative Tribunals Act, the same authority i.e., the Parliament can also empower the State Government to decide to abolish the same u/s 74(1) of the Act of 2000. As pointed out earlier, the provisions of the Act of 2000 shall have overriding effect over the provisions of Administrative Tribunals Act and therefore, it can not be accepted that decision to abolish the Tribunal is unconstitutional in view of the pronouncement of the decision of the Supreme Court in L. Chandra Kumar's case (supra).

48. It has also been contended by the learned Counsel for the petitioners that since Section 29 of the Administrative Tribunals Act has not been repealed, no forum is available to litigants whose cases are pending in the Tribunal and therefore the decision to abolish the Tribunal is illegal. In our considered opinion, the above contention can not be accepted. On abolition of the Tribunal, the cases pending before the Tribunal shall be decided by other fora having jurisdiction. Section 29 of the Administrative Tribunals Act provides for transfer of pending cases from the Courts to the Tribunal at the time of establishment of the Tribunal. Therefore, there is no need to repeal the above Section 29 before the Tribunal is abolished. On abolition of the Tribunal, the provisions of above Section 29 shall have no effect and consequently the appropriate fora would be available to the litigants.

49. In view of above, there is no ground to hold that the Parliament is not competent to enact Section 74(1) of the Act of 2000. In this respect, it is relevant to refer that the Apex Court has held that the Court can question the constitutional validity of an enactment but can not question the wisdom of the Parliament. The provisions of Section 74(1) of the Act of 2000 are within the ambit, power and pale of the Parliament. We therefore hold that the Parliament is competent to enact Section 74(1) of the Act of 2000.

50. The next contention of the learned Counsel for the petitioners is that the decision of the State Government to abolish the Tribunal is malafide, arbitrary and improper. To support the above contention, they have submitted that since some of the orders of the Tribunal were found unpalatable by the Government specially the order in R.K. Mishra v. State of M.P. 2000(II) M.P.L.S.R. 300, by which some provisions for reservation for SC & ST were struck down. This order was pronounced on 17-7-2000 by Bhopal Bench of the Tribunal. It has further been submitted that certain utterances were made by the Chief Minister against the Tribunal and therefore a contempt petition had been filed against him wherein the Chief Minister was to file reply and Vakalatnama. To avoid the hearing of the above contempt petition against the Chief Minister, the decision to abolish the Tribunal was taken. It has also been contended that no alternative mechanism for the disposal of the cases pending in the Tribunal has been provided. The abolition of the Tribunal will lead to transfer of cases from the Tribunal to the High Court and Subordinate Courts and also fresh institution of cases to these Courts which would compound the problem of pendency in these Courts. It is further contended that the Supreme Court in S.P. Sampath Kumar's case (supra), held that Tribunals are the substitute of the High Courts. By the abolition of the Tribunals, the High Courts will be burdened unbearably and therefore there is no propriety to abolish the Tribunal as it will amount to collapse of judicial system which should be prevented. For alternative remedy, 12 additional Judges shall be required in the High Court and since no alternative remedy has been provided in the Act of 2000, the order to abolish the Tribunal is illegal. It has, further, been contended that the State Government being one of the litigants before the Tribunal has no right to abolish the Tribunal.

51. It is also contended that the powers given to the State Government to abolish the Tribunal can not be exercised by it as such powers are without guidelines. It is further contended that the right to expeditious trial of the cases and the right to a quick redressal of the grievances of the Government servant would be affected adversely if the Tribunal is abolished which would infringe right of life under Article 21 of the Constitution.

52. Learned Advocate General appearing for the State of Madhya Pradesh, per contra, has submitted that there is no malafide at all in taking decision to abolish the Tribunal. He has cited the chronological details of the process of the decision to abolish the Tribunal which is as under :--

(i) On 8-3-2001 Cabinet took decision to abolish the Tribunal. The decision was

communicated to Press as usual. To communicate the decision of the Cabinet to the Press is no crime.

(ii) On 18-3-2001 a letter was sent to the Government of Chhattisgarh informing about the decision taken by the Government of M.P. to abolish Tribunal w.e.f. 30-4-2001.

(iii) On 27-3-2001 a reply from the Government of Chhattisgarh was received seeking further information etc., as the Chhattisgarh Government had no papers.

(iv) On 3-4-2001 second letter from the Government of Chhattisgarh was received reminding that they were waiting for reply of the Government of Madhya Pradesh.

(v) On 3-4-2001 i.e., the same day the reply was sent by the Government of Madhya Pradesh to the Government of Chhattisgarh giving reasons for abolition of the Tribunal and also suggesting to constitute own Tribunal, if so desired.

(vi) On 26-4-2001 both the State Governments agreed to abolish the Tribunal for both the States.

(vii) On 5-5-2001 a letter was written by the Government of Madhya Pradesh to Central Government to abolish the Tribunal w.e.f. 1-6-2001.

(viii) On 17-7-2001 order was passed by the Tribunal which is alleged to be the ground for abolition of the Tribunal.

(ix) On 23-7-2001 a letter was received by the Government of Madhya Pradesh from the Government of Chhattisgarh again reiterating to abolish the Tribunal.

53. On the basis of above facts, the learned Advocate General appearing for the Government of Madhya Pradesh has contended that there was no malafide at all in taking decision to abolish the Tribunal. He has further contended that the State Government approached the Central Government after taking decision to abolish the Tribunal for issuance of the requisite notification because it was of the impression that the notification would be issued by the Central Government. He has, further, contended that in the meanwhile on 13-7-2001 the order in Mukesh Kumar Mishra's case (supra) was passed by this Court holding that the State Government has power to abolish the Tribunal and therefore, instead of approaching the Central Government, the State Government itself issued the notification under challenge. There is, therefore, no malafide in taking decision to abolish the Tribunal and therefore after the pronouncement of the order of this Court in Mukesh Kumar Mishra's case (supra), the Government issued notification abolishing the same. He has also contended that the order of the High Court in Mukesh Kumar Mishra's case (supra) also comes within the ambit of law of the land and since law permitted the State Government to abolish the Tribunal u/s 74(1) of the Act of 2000, the State Government itself abolished the same. The verdict of this Court when no appeal has been preferred is final.

54. As pointed out earlier, the learned Advocate General has also contended that

the Tribunal is not the mandatory and vital organ of the State like the High Court. It is an optional limb. If there had been no Tribunal, the State should not have compelled to constitute the same while the High Court is the vital organ of the State. There is no option whether or not to retain High Court. It is compulsory and therefore the High Court has been retained but the Tribunal being optional limb, the option has been given to both of the successor States to decide whether or not to have Tribunal. There is, therefore, no malafide in taking decision to abolish the Tribunal. If law provides to take decision about the continuance or abolition to a particular limb which is not vital limb of the State, and if the State Government decides in exercise of that power given to it to abolish the optional limb, there is no violation of any provision of the Constitution.

55. It has further been contended by the learned Advocate General appearing for the State of Madhya Pradesh that as per provisions in Entry No. 65 read with Entry No. 41 of State List II in Schedule VII of the Constitution, the State Legislature has ample powers to legislate with regard to the jurisdiction and powers of the Courts including the High Court and, therefore, the ordinance under challenge issued by the Governor is within the ambit of legislative powers of the Governor, it cannot be said that no alternative mechanism for the redressal of the grievances has been provided as alleged by the learned Counsel appearing for the petitioners.

56. Having given thoughtful consideration to the rival contentions raised at the Bar, we are of the considered view that there does not appear to be any malafide in the decision taken by the State Government to abolish the Tribunal. The Tribunal is not a mandatory or vital limb of the State like the High Court. The establishment of the Tribunal solely depends upon the decision of the State Government to have such a Tribunal. Since the State Government has exclusive powers to decide to have a Tribunal, it has also exclusive power to abolish the same. It appears that the concept of alternative mode of dispute resolution and the form of Administrative Tribunal to deliver specialized justice was adopted in the country with enthusiasm. The Malimath Committee also considered the above policy of alternative mode of dispute resolution. In its report the Malimath Committee elaborately dealt with performance of Tribunal in the country. Chapter VIIIth of the IIInd Volume of the report "ALTERNATIVE MODES AND FORMS FOR DISPUTE RESOLUTION" deals with the review of performance of Tribunals at length. The following observations of the Malimath Committee are relevant:--

"Functioning of the Tribunals :

8.63. Several Tribunals are functioning in the country. Not all of them, however, have inspired confidence in the public mind. The reasons are not far to seek. The foremost is the lack of competence, objectively and judicial approach. The next is their constitution, the power and method of appointment of personnel thereto, the inferior status and the casual method of working. The last is their actual composition; men of caliber are not willing to be appointed as presiding officers in view of the uncertainty of tenure, unsatisfactory conditions of service,

executive subordination in matters of administration and political interference injudicial functioning. For these and other reasons, the quality of justice is stated to have suffered and the cause of expedition is not found to have been served by the establishment of such Tribunals.

8.64. Even the experiment of setting up of the Administrative Tribunals under the Administrative Tribunals Act, 1985, has not been widely welcomed. Its members have been selected from all kinds of services including the Indian Police Service.

8.65. The overall picture regarding the tribunalisation of justice in our country is not satisfactory and encouraging."

57. It appears that the above report of Malimath Committee gave sufficient material and reasons to the State to rethink and review the working of the Tribunals afresh as submitted by the learned Advocate General appearing for the State of Madhya Pradesh. It is also clear that initially the orders of the Tribunals were kept out of the judicial review of the High Court as the orders passed by the Tribunals were directly amenable to the appellate jurisdiction of the Supreme Court. The Supreme Court in the case of L. Chandra Kumar Vs. Union of India and others, , held that the Tribunal will be subject to the High Court's supervisory writ jurisdiction and against an order passed by the Tribunal it would be open for an aggrieved party to file a writ petition under Articles 226 and 227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal falls. The learned Advocate General appearing for the State of Madhya Pradesh has also submitted that the entire infrastructure of the Tribunal was created with huge expenses and the maintenance whereof also require recurring huge expenses. He has further contended that in the year of 2000-01 the total budget allocation for the Tribunal was Rs. 3.17 crores and after bifurcation of the State it came to Rs. 2.5 crores.

58. Be that as it may. It is, however, manifest that there is nothing on record to prima facie establish that the decision to abolish the Tribunal has been taken because some of the orders of the Tribunal specially the order in R.K. Mishra's case (supra) were unpalatable. The Parliament has given power to the State Government to decide whether or not to have a Tribunal in the State after reorganisation of the existing State of Madhya Pradesh. This is the policy matter of the State Government to decide whether under various circumstances it is proper to have a Tribunal. Though the State Government is one of the parties in the cases before the Tribunal but the State Government has sovereign power also to decide to abolish the Tribunal. As pointed out earlier, it was the State Government which decided to have a Tribunal for the State of Madhya Pradesh and requested the Central Government to issue notification for establishment of the Tribunal. When the State Government can decide to establish the Tribunal, it can also decide to abolish it and such decision is neither unconstitutional nor illegal nor malafide. The above chronological facts submitted by the learned Advocate General appearing for the State of Madhya Pradesh clearly indicate that the State Government has taken decision to abolish the Tribunal without being

influenced by any ulterior motive. Though the notification abolishing the Tribunal was issued after approaching the Government of India with a request to issue notification, but as submitted by the learned Advocate General appearing for the State of Madhya Pradesh, it was consequent to the decision of this Court in Mukesh Kumar Mishra's case (supra). Whether or not the State Government is empowered to itself issue notification is the matter which shall be considered later on. So far as the malafide is concerned, there is nothing on record to establish that the order in Mukesh Kumar Mishra's case (supra) did prompt the State Government to issue notification. No malafide can, therefore, be imputed in taking such decision.

59. It is also manifest that though in the notification abolishing the Tribunal issued by the State Government (Annexure P-1), no provision has been made regarding the transfer of cases pending before the Tribunal but this is within the legislative powers of the State Government and therefore the State Government could make proper arrangements as per the constitutional provisions envisaged in Entry No. 65 read with Entry No. 41 of the List II i.e., State List of Schedule VII of the Constitution. It cannot, therefore, be said that the cases pending before the Tribunal were left unattended and in abeyance and therefore the decision of the State Government to abolish the Tribunal is illegal. In fact, subsequently the ordinance has also been promulgated by the Government about the transfer of cases. If the Tribunal is validly abolished, the cases pending before it could be transferred before the various Courts including the High Court having jurisdiction to decide such cases. It cannot, therefore, be said that no alternative mechanism has been provided for the redressal of the grievance of the petitioners of the cases pending before the Tribunal.

60. Though the State Legislature can legislate about the jurisdiction of the High Court and other Civil Courts with regard to the cases pending before the Tribunal, in addition thereto there is specific provision in Section 86 of the Act of 2000 which provides that if any difficulty arises in giving effect to the provisions of this Act, the President may by order do anything not inconsistent with such provisions which appears to him to be necessary or expedient for the purpose of removing the difficulty. If the State Administrative Tribunal is validly abolished the necessary arrangements could also be made by the President u/s 86 of the Act of 2000. It cannot, therefore, be said that the powers given to the State of Madhya Pradesh u/s 74(1) of the Act of 2000 to abolish the Tribunal, are without guidelines and therefore cannot be exercised. So far as the insufficient strength of Judges is concerned, that matter can be considered and resolved separately and independently as per provisions of the Constitution and law.

61. So far as the contempt case against the Chief Minister is concerned, there is sufficient material on record to show that the decision to abolish the Tribunal was already taken by the Cabinet before such notice was issued to the Chief Minister. Therefore, no malafide intention could be imputed on the process of decision taken by the Cabinet to abolish the Tribunal. We make it clear that we do not

intend to make any comments on the merits of the notices for contempt issued by the Tribunal.

62. It has been contended by Shri Rajendra Tiwari, learned Senior Advocate for the petitioners that by abolishing the Tribunal, the independence of judiciary is being subjugated which is against the provisions of Constitution of India. The independence of judiciary is one of the basic structures of our Constitution and therefore the independence of judiciary is not to be or allowed to be subjugated by the act of the executive. He has further contended that the decision of the State Government to abolish the Tribunal is an act of tyranny of the State. In support of his contention Shri Rajendra Tiwari, learned Senior Advocate has placed reliance on the decision of the Supreme Court in Shiv Sagar Tiwari Vs. Union of India and others, . It has been held in Shiv Sagar Tiwari's case (supra) that if uncontrolled discretion is vested in executive, the executive shall destroy the independence of judiciary. Having given a thoughtful consideration to the above contentions of the learned Senior Advocate appearing for the petitioners, we are unable to accept it. When the State Government decided to establish the Tribunal, could that decision amount to attack on the independence of judiciary as by the said decision the jurisdiction of the High Court and other Civil Courts was being curtailed ? Was it an act of tyranny of the State Government when the jurisdiction of the High Court and other Civil Courts was being taken away at the time of taking decision to establish a Tribunal ? If the decision to establish a Tribunal did not amount to an act of tyranny, the subsequent decision to abolish the same does not amount to an act of tyranny of the State as by this decision the jurisdiction of the High Court and other Civil Courts is being restored. Is the justice administered by Courts inferior to the Tribunalised justice ? As already noticed the High Court and the Subordinate Courts are the vital organ of the State. A person having qualification of being appointed as Executive Member, or Vice-Chairman, and even Chairman from the cadre of Vice-Chairman of the Tribunal is not qualified to be appointed as Judge of the High Court, and therefore the High Court is comparatively more independent and therefore it cannot be said that the independence of judiciary is being subjugated by the decision of the State Government to abolish the Tribunal. If the earlier decision of the State Government to establish the Tribunal by curtailing the jurisdiction of the Courts was not an act of tyranny and an attack on the independence of the judiciary, the subsequent decision to abolish the same and restore the jurisdiction of the Courts can never be termed as an act of tyranny and an attack on the independence of the judiciary.

63. Shri Rajendra Tiwari, learned Senior Advocate appearing for the petitioners has further submitted that it was the view of the Central Government that the notification abolishing the Tribunal shall be issued by the Central Government while the State Government was of the view that it is within the powers of the State Government to issue such notification. There was, therefore, controversy regarding the powers of the Central Government vis-a-vis State Government. He has, therefore, contended that in such a contingency, the matter should have

been brought to the notice of the Governor as provided in Rules of Business. Shri Tiwari, learned Senior Advocate has drawn our attention to the following rule of the Rules of Business :--

"(1) Any matter likely to bring the State Government into controversy with the Government of India or any other State Government shall, as soon as the possibility of such controversy is seen be brought to the notice of the Governor.

(2) The following classes of cases shall be submitted by the Chief Minister to the Governor before the issue of orders :--

(V) Cases which affect the relations of the State Government with the Government of India, any other State Government, the Supreme Court or the High Court."

64. Shri Rajendra Tiwari, learned Senior Advocate has further contended that since the controversy was not brought to the notice of the Governor as envisaged in the above rule, on this ground alone the notification issued by the State Government abolishing the Tribunal is liable to be quashed.

65. The Rules of Business of the Government have been made under Article 166(3) of the Constitution. As has been held by the Supreme Court in State of Uttar Pradesh Vs. Om Prakash Gupta, , the Rules of Business are merely directive so that substantial compliance with them is sufficient. In Chandrakant Sakhambari Karkhanis and Others Vs. State of Maharashtra and Others, the Bombay High Court has held that at any rate the Rules of Business do not create any right in favour of the citizens so as to enable them to have them enforced under Article 226 of the Constitution. We endorse the above view of the Bombay High Court. In view of above, the contention of Shri Rajendra Tiwari, learned Senior Advocate that on the above ground alone the notification (Annexure P-1) is liable to be quashed.

66. It has been contended by Shri N.C. Jain, learned Senior Advocate appearing for the petitioners that the Tribunal being judicial body could not be abolished by the State in view of provisions of Article 323A of the Constitution. He has further contended that law is that service matter shall be heard by the Tribunal only and under Sections 68 and 69 of the Act of 2000, law shall continue to prevail after the reorganisation of the State of Madhya Pradesh, hence the Tribunal shall continue to function. He has also contended that the Madhya Pradesh Electricity Board is also governed by Section 74 of the Act of 2000 but there are specific provisions with regard to the M.P. Electricity Board in Section 58 of the Act of 2000. On this analogy, he has contended that it is not necessary to apply the provisions of Section 74 of the Act of 2000 while deciding to abolish the Tribunal. We are of the considered opinion that the above contentions of the learned Senior Advocate can not be accepted. As pointed out earlier, though the Tribunal is judicial body but it was constituted as per decision of the State Government. The same Government could decide to abolish it by virtue of the provisions of Section 74 of the Act of 2000. As pointed out earlier, as per provisions of Section

85 of the Act of 2000 the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained with any other law. Therefore the provisions of Section 74 of the Act of 2000 shall have overriding effect over the provisions of Administrative Tribunals Act under which the Tribunal was established. As pointed out earlier, the provisions of Section 74 of the Act of 2000 are not repugnant to the provisions of Article 323A of the Constitution. The provisions of Sections 68 and 69 of the Act of 2000, relate to the law already prevailing in the existing State of Madhya Pradesh. The provisions of Sections 68 and 69 of the Act of 2000 do not debar the exercise of the power given to the State Government u/s 74 of the Act of 2000. So far as the M.P. Electricity Board is concerned, it can also be abolished u/s 74 of the Act of 2000, though it is also governed by Section 58 of the Act of 2000. There is no clash between the provisions of Sections 74 and 58 of the Act of 2000.

67. For the reasons stated above, we are of the considered opinion that it is competent for the State Government u/s 74(1) of the Act of 2000 in its discretion to decide one or the other way i.e., whether or not to abolish the Tribunal. The decision to abolish the Tribunal taken by the State Government is neither malafide nor arbitrary nor improper.

68. Now we come to the other contentions raised by the learned counsel appearing for the petitioners. It has been submitted that if it is assumed that the State is empowered to decide to abolish the Tribunal, the notification is to be issued by the Central Government as per provisions of Section 74(4) of the Act of 2000.

69. Shri Vivek Tankha, learned Advocate General appearing for the State of Madhya Pradesh has, however, contended that u/s 74(4) of the Act of 2000, there is no need for interference by the Central Government. He has further contended that the above Section 74(4) of the Act of 2000 empowers the Central Government to give direction alone to resolve any matter within the period mentioned in Sub-section (1) of Section 74 of the Act of 2000. He has again drawn our attention to the provisions in Principles of Statutory Interpretation by Justice G.P. Singh (Eighth Edition 2001 page 42) that when the words of a statute are clear, plain or unambiguous i.e., there are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences. Shri Ravindra Shrivastava, learned Advocate General for the State of Chhattisgarh has submitted that decision to abolish the Tribunal u/s 74(1) of the Act of 2000 requires no direction u/s 74(4) of the Act of 2000 from the Central Government.

70. A fair reading of the above Sub-section (4) of Section 74 of the Act of 2000 makes it clear that the above contention raised by the learned counsel appearing for the petitioners is not based on proper and correct interpretation of Sub-section (4) of Section 74 of the Act of 2000. If both the successor States decide by mutual agreement to abolish the Tribunal, as envisaged in Sub-section (1) of Section 74 of the Act of 2000, it is not obligatory for the Central Government to

issue directions as envisaged in above Sub-section (4) of Section 74. This sub-section does not contain any provision about the issuance of notification by the Central Government for the abolition of the Tribunal. An issuance of notification is a mandatory requirement as the Tribunal was established by a notification issued by the Central Government. The Sub-section (4) of Section 74 of the Act of 2000 begins with a non-obstante clause which indicates that the provisions of this sub-section are independent. The provisions of Sub-section (1) of Section 74 of the Act of 2000 are not subservient to the provisions of Sub-section (4) of Section 74 of the Act of 2000. If it had been so, the word "subject to the provisions of Sub-section (4)" would have been used in Sub-section (1) of Section 74 of the Act of 2000. Moreover, above Sub-section (4) provides that the Central Government shall issue directions for the resolution of any matter relating to any body referred to in Sub-section (1) within any period referred to in Sub-section (1) in accordance with any mutual agreement between the successor States or if there is no such agreement after consultation with the Governments of successor States. Obviously if on any matter relating to anybody referred to in Sub-section (1), there is no mutual agreement then the directions could also be issued by the Central Government after consultation with the Governments of both the successor States. A fair reading of Sub-section (1) of Section 74 of the Act of 2000, however, makes it clear that the decision to abolish any of the bodies referred to in that clause can be taken only by mutual agreement between the successor States, therefore the issuance of "directions" by the Central Government under subsection (4) does not include the issuance of "notification" for the abolition of any of the body referred to in Sub-section (1). The abolition of the Tribunal does not require any "direction" from the Central Government under Sub-section (4) of Section 74 of the Act of 2000. Such direction can only be issued for the "resolution" of any matter and the decision to abolish the Tribunal taken by the successor States by mutual agreement does not amount to a "resolution" of any matter relating to the Tribunal. The provision of Sub-section (4) is only in the nature of further supplemental, ancillary, or consequential provisions to further the aims, object and stop-gap arrangement envisaged under Sub-section (1) Section 74 of the Act of 2000. The word "direction for resolution" means direction regarding some defect or deadlock persists requiring intervention of the Central Government in relation to the functioning of that body within a period referred to in Sub-section (1). Shri Ravindra Shrivastava, learned Advocate General appearing for the State of Chhattisgarh has rightly contended that such direction may take within its fold contingency such as joint sharing of expenditure, sharing or deployment of personnel or such other needs which are necessary to give effect to the stop-gap arrangement envisaged under Sub-section (1) of Section 74 for which there is either already mutual agreement or in absence thereof the consultation of both the successor States.

71. From the above analysis irresistible conclusion is that provision of Section 74(1) of the Act of 2000 are not subservient to the provisions of Sub-section (4) of Section 74 of the Act of 2000 and therefore it cannot be said that the

directions as envisaged in Sub-section (4) of Section 74 of the Act of 2000 are necessary for abolition of the Tribunal.

72. The above conclusion leads to the other controversy. Whether the State Government itself is empowered to issue the notification to abolish the Tribunal after taking decision to abolish the same by mutual agreement of the Government of Chhattisgarh. The submissions made by the learned Counsel appearing for both the parties in this connection are as under.

73. Shri Rajendra Tiwari, learned Senior Advocate has submitted that the State Government can decide to abolish the Tribunal, After such decision the State Government shall have to make a request to the Central Government to issue notification for its abolition. He has further submitted that for the abolition of the Tribunal, similar request as is required for its establishment by the State Government to the Central Government is necessary.

74. Shri S.L. Saxena, learned Senior Advocate appearing for the petitioners (in W.P. No. 3551/2001 and W.P. No. 3559/2001) has contended that Section 74 of the Act of 2000 is not ultra vires to the constitutional provisions and for abolition of the Tribunal amendment in Administrative Tribunals Act is not necessary. He has also contended that this Bench is bound to follow the order of this Court in Mukesh Kumar Mishra's case (supra) to the extent that the State Government has powers to abolish the Tribunal. Assuming the State Government has such powers, it should have referred the matter to the Central Government for issuance of the notification to abolish the Tribunal.

75. Shri R.S. Patel, learned Senior Advocate appearing for the Central Government has submitted that the Tribunal was established by the Central Government by issuance of a notification and therefore for its abolition, the same procedure will have to be followed and consequently the notification will have to be issued by the Central Government alone and not by the State Government. Shri S.S. Ali, learned Counsel appearing for the petitioners has submitted that provisions of Section 74 of the Act of 2000 empowers the State Government to abolish the Tribunal but they do not empower the State Government to abolish the same by itself. He has further contended that u/s 21 of the General Clauses Act, the Central Government alone is empowered to issue notification to abolish the Tribunal. He has also contended that abolition of the Tribunal by the State Government amounts to an abolition of rule of law.

76. Shri Ravindra Shrivastava, learned Advocate General appearing for the State of Chhattisgarh has contended that decision to abolish the Tribunal empowered u/s 74(1) of the Act of 2000 takes effect on its own force. Shri Vivek Tankha, learned Advocate General appearing for the State of M.P. has contended that if both the successor States decide by mutual agreement to abolish the Tribunal, as per provision of Section 74(1) of the Act of 2000, the matter ends.

77. A fair reading of Sub-section (1) of Section 74 of the Act of 2000 makes it abundantly clear that by virtue of powers given by this sub-section, the Tribunal

shall continue to function in the successor State of Madhya Pradesh and also exercise jurisdiction over the State of Chhattisgarh for a maximum period of two years from the appointed date or till such period as is decided by mutual agreement between the successor States to abolish the same, on the expiry of that period whichever is earlier. It is, therefore, manifest that both the successor States will decide as to when the Tribunal shall cease to function by mutual agreement and unless it is so decided it shall continue to function for a period of two years. Sub-section (1) of Section 74 does not provide the mode of actual abolition of the Tribunal. Since no specific procedure has been provided for abolition of a Tribunal in the Administrative Tribunals Act, the decision to abolish the Tribunal can be executed in the same way as the decision to establish the Tribunal was executed as per provisions of Section 21 of the General Clauses Act, 1897. Section 21 of the General Clauses Act runs as under :--

"21. Power to issue, to include power to add to, amend, vary or rescind, notifications, orders, rules or bye-laws.-- Where, by any Central Act or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction, and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

78. It is the settled law that power to create includes the power to destroy, and also the power to alter what is created. There is no gainsaying that the power to rescind a notification is inherent in the power to issue the notification. It is also well settled that the specific provision regarding the power to vary, amend, or rescind notification etc. could also be made in the Act itself. Such specific provisions may be co-extensive with or narrower or wider than provision contained in Section 21 of the General Clauses Act. It is also well settled that where the specific provision is made in the Act itself, the specific provision would prevail and in that case there is no need to invoke Section 21 of the General Clauses Act. Since there is no provision at all in the Administrative Tribunals Act regarding the mode of abolition of the Tribunal, the provisions of Section 21 of the General Clauses Act would be invoked. If any notification issued by the Government is to be rescinded by virtue of the powers given u/s 21 of the General Clauses Act, such power to rescind the notification must be exercised in like manner and subject to the like sanction and condition as in the case of issuing the notification.

79. In view of the above, we are of the considered opinion that since no mode to rescind the notification establishing the Tribunal has been provided in the Administrative Tribunals Act, the provisions of Section 21 of the General Clauses Act will have to be invoked for rescinding the Notification establishing the Tribunal. Since the notification for establishment of the Tribunal was issued u/s 4(2) of the Administrative Tribunals Act by the Central Government on the receipt of a request from the State Government, the notification rescinding the earlier notification establishing the Tribunal shall invariably be issued by the

Central Government on the receipt of a request in this behalf of the State Government. If the Central Government accepts the request of the State Government, and consequently issues Notification establishing the Tribunal for the State, and at subsequent stage the State Government makes a request to abolish the Tribunal, in that case the Central Government is under obligation to accept the subsequent request of the State Government and in consequence thereof to issue Notification rescinding the earlier Notification whereby the Tribunal was established. Moreover, Section 74(1) of the Act of 2000 empowers the State Government, not the Central Government, to take decision for continuance or abolition of the Tribunal, and therefore, in our considered opinion, the Central Government, on receiving request from the State Government to abolish the Tribunal, has no other option but to accept the above request of the State Government and in consequence thereof, to issue a Notification rescinding the earlier Notification whereby the Tribunal was established.

80. For the reasons stated above, we are of the considered view that the issuance of notification (Annexure P-1) abolishing the Tribunal by the State Government is not within the powers of the State Government. The notification issued by the Central Government on the request of the State Government establishing the Tribunal shall have to be rescinded by the Central Government itself though on the request of the State Government. As discussed earlier, we are also of the considered view that on receipt of such a request from the State Government, the Central Government has no option but to accept it and to issue a notification as per request of the State Government rescinding the earlier notification issued by the Central Government establishing the Tribunal. The view taken by the Central Government that there being no provision for abolishing the Tribunal in the Administrative Tribunals Act, no notification abolishing the Tribunal can be issued on the request of the State Government, cannot be accepted. What the Central Government lost sight of is the provision of Section 21 of the General Clauses Act. Moreover, assuming that there is no provision for abolition of the Tribunal once established u/s 4(2) of the Administrative Tribunals Act, there is specific provision in Section 74(1) of the Act of 2000 empowering the successor States to decide to abolish the Tribunal and since the provisions of the Act of 2000 shall have overriding effect over the provisions of Administrative Tribunals Act by virtue of Section 85 of the Act of 2000, the Central Government has no option but to accept the request of the State Government to issue notification abolishing the Tribunal exercising powers given u/s 21 of the General Clauses Act. In view of the specific provisions of Section 74(1) of the Act of 2000, the Central Government cannot say that since there is no provision to abolish the Tribunal in Administrative Tribunals Act, it has no power to issue notification.

81. Now we come to the last submission of the learned counsel for the petitioners pertaining to the validity of Sub-sections (2) and (3) of Section 74 of the Act of 2000.

82. As already noticed, though unlike the High Court and other Subordinate Courts, the Tribunal is not a mandatory limb of the judiciary, yet when the Chairman, Vice-Chairman and Members of the Tribunal are appointed they perform duties which are to be performed by the High Court and other Subordinate Courts. Undisputably the Courts are integral part of judiciary, a limb of the State. In that way, Chairman, Vice-Chairman and Members of the Tribunal perform the function of judiciary and therefore their independence must be protected as independence of judiciary is one of the forms of basic structure of our Constitution. The executive can be given authority by the Parliament to decide whether to continue or abolish the Tribunal. This right of the State Government is within the domain of sovereign power of the State. If the State Government decides to abolish the Tribunal, the Chairman, Vice-Chairman and Members thereof have constitutional right to have compensation for unexpired period of their terms. Since the provisions of Sub-section (3) of Section 74 of the Act of 2000 prohibit them to do so, the said subsection appears to be unconstitutional and deserves to be struck down.

83. The Chairman, Vice-Chairman and Members of the Tribunal hold a civil post under the State. In this respect the provisions of Article 310(2) of the Constitution are relevant which run as under :--

"Article 310. Tenure of office of persons serving the Union or a State.-

(1) *** **

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor of the State, any contract under which a person, not being a member of a defence service or of an All India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post."

84. No sooner the State Government decides to abolish the Tribunal and in consequence of such decision, the Central Government issues relevant notifications, the posts of Chairman, Vice-Chairman and Members of the Tribunal shall stand abolished before the expiration of their contractual period of service. Obviously they shall be required to relinquish their posts before the expiry of their contractual period of service for reasons unconnected with misconduct. The scope of Clause (2) of Article 310 of the Constitution is limited to those cases where the Government is obliged to enter into a special contract for securing the services of a person having special qualifications. If the services of such persons are terminated within the contractual period on the ground of abolition of the posts or if they are required to vacate their posts before the expiry of the

contractual period for reason unconnected with misconduct, they deserve to be paid compensation. Though there does not appear to be a contract between the Chairman, Vice-Chairman and the Members on one hand and the State Government on the other, regarding the payment of compensation in case they are required to relinquish their posts before the expiry term of the contract, but, in our considered view, since they are performing the judicial work, in the interest of independence of judiciary, they deserve to be paid compensation for the unexpired period of their terms.

85. Moreover, as per provisions of Section 9 of the Administrative Tribunals Act, Chairman etc. cannot be removed from their services except by an order made by the President on the ground of proved mis-behaviour or incapacity after an inquiry made by a Judge of Supreme Court. It has further been provided in Section 10 of the Administrative Tribunals Act that neither the salary and allowances nor the other terms and conditions of services of the Chairman, Vice-Chairman or Members shall be varied to their disadvantage after their appointments. These provisions clearly show that there will be no control of executive over them. In case the State Government decides to abolish the Tribunal they will cease to function with the abolition thereof. In such a situation the provision debarring them from claiming compensation for unexpired period is arbitrary, unreasonable, unfair and unjust and against the principles of natural justice. Consequently Sub-section (3) of Section 74 of the Act of 2000 which debars them from claiming compensation is violative of Article 14 of the Constitution and also affects the independence of judiciary which is one of the basic features of our Constitution.

86. It is also manifest that the Chairman, Vice-Chairman and Members while entering into a contract of employment under the State had legitimate expectation that they would continue to serve as such till the last date of stipulated period of contract. If the State Government decides not to abolish the Tribunal, the Chairman, Vice-Chairman and Members shall continue to function and they could only be removed by process of law as envisaged in Sections 8 and 9 of Administrative Tribunals Act. If the State Government on the other hand decides to abolish the Tribunal, they cease to function with immediate effect and therefore they are legally entitled to get compensation for their unexpired period of contract.

87. It is also manifest that the Chairman, Vice-Chairman and Members by virtue of their having been appointed to their posts, have become ineligible for performing any other duty under the Government. The officers and employees of the Tribunal who have crossed the age of entering in Government employment have also become ineligible to get recruited in any other Government employment. The provisions debarring Chairman, Vice-Chairman and Members of the Tribunal from claiming compensation and officers and employees from absorption in other departments of the State Government are, thus, unjust, unfair, discriminatory and arbitrary and therefore violative of Articles 14 and 16

of the Constitution.

88. Undisputably the services of Officers and Employees of the Tribunal, on abolition of the Tribunal, shall stand terminated not because of reduction of work in the Tribunal but because of the discretionary abolition of the Tribunal and therefore the provisions of Sub-section (2) of Section 74 of the Act of 2000 are detrimental to the conditions of their services. We can profitably quote Shri Vivek Tankha, the learned Advocate General of Madhya Pradesh, who during the argument contended that the State Government shall abide by the decision of this Court with regard to officers and employees of the Tribunal.

89. The State Government no doubt has constitutional right under Article 309 to regulate the conditions of service of the officers and employees of the State Government. The State Government can, therefore, impose certain restrictions also on such officers and employees but such restrictions cannot travel the area beyond constitutional safeguards. The provisions under Sub-section (2) of Section 74 of the Act of 2000 imposing restrictions upon the officers and employees do not come within the ambit of reasonable restrictions and are therefore violative of Article 309 read with Article 14 of the Constitution.

90. We are also of the opinion that once the State Government opted for establishment of a Tribunal and consequently recruited officers and employees and also appointed Chairman, Vice-Chairman and Members thereof, if subsequently the Government changes its policy and opts for abolition of the Tribunal, the officers and employees and also Chairman, Vice-Chairman and Members shall be entitled to get their constitutional and legal rights enforced. The Chairman, Vice-Chairman, Members and the Officers and Employees of the Tribunal, in case of abolition of the Tribunal, could not and should not be subjected to unjust, unfair and unreasonable situation on account of change of discretionary policy as opposed to compulsive. Obviously if there is conflict between the statutory provisions and constitutional provisions, the latter shall prevail over the former. The provisions of Sub-sections (2) and (3) of Section 74 of the Act of 2000 prejudicially affect the constitutional and legal rights of the Chairman, Vice-Chairman, Members and also Officers and Employees of the Tribunal and are, therefore, unfair, unjust, and unreasonable, and consequently they are void as they contravene Articles 14, 16 and 309 of the Constitution. These Sub-sections (2) and (3) are, therefore, liable to be struck out.

91. We are also of the view that as per Fundamental Rules which have statutory force under Article 313 of the Constitution, a substantive appointment to a permanent post in public services confers normally on the servant, so appointed a substantive right to the post and he acquires a lien on the post. The officers and employees of the Tribunal who have been confirmed and made permanent must have thus acquired lien on their posts. The provisions of Article 21 of the Constitution of India provide that a public employment can not be taken away in procedure prescribed by law which is not reasonable, fair and just. The provisions of Sub-section (2) of Section 74 of the Act of 2000 being arbitrary,

fanciful, oppressive, unreasonable, unfair and unjust and also against the principles of natural justice could not be said to be in conformity with Articles 14 and 21 of our Constitution.

92. It may also be noticed that though it is within the domain of the State Government to take decision one or the other way regarding the continuance or abolition of the Tribunal but it is not within its domain to refuse the officers and employees of the Tribunal, the benefits based on principles governing their services under the cover of the provisions of Sub-section (2) of Section 74 of the Act of 2000 which are unreasonable and arbitrary and therefore violative of Article 14. Though the provisions of the Act of 2000 have overriding effect by virtue of Section 85 thereof over any other law for the time being in force but they could not have overriding effect over the constitutional provisions as enumerated in Articles 14, 16, 21 and 309 of the Constitution.

93. As already noticed the Parliament by law can confer powers on the State Government to decide whether or not to abolish the Tribunal but the Parliament can not make provisions with regard to Chairman, Vice-Chairman, Members, Officers and Employees of the Tribunals which are against the provisions of Articles 14, 16, 21 and 309 of the Constitution.

94. The ratio of other decisions cited at the Bar has been taken into consideration in arriving at the above conclusions.

95. In view of above, we arrive at the following conclusions :--

(i) The State Government of Madhya Pradesh is empowered u/s 74(1) of the M.P. Reorganisation Act to abolish the State Administrative Tribunal.

(ii) No directions from the Central Government as envisaged under Sub-section (4) of Section 74 of the Act of 2000 are necessary to take the above decision to abolish the Tribunal.

(iii) After taking decision to abolish the State Administrative Tribunal, the State Government will have to make request to the Central Government to issue notification for abolition of the State Administrative Tribunal.

(iv) The Central Government has no option but to accept the request received from the State Government to abolish the State Administrative Tribunal and accordingly issue a notification rescinding the earlier Notification establishing the same.

(v) The Sub-sections (2) and (3) of Section 74 of the M.P. Reorganisation Act are declared ultra vires.

(vi) Since the notification (Annexure P-1) abolishing the State Administrative Tribunal has been issued by the State Government itself, and not by the Central Government, the notification (Annexure P-1) shall stand quashed.

(vii) Consequent to quashment of the Notification (Annexure P-1), the Circular

(Annexure P-2) and the Order (Annexure P-3) also stand quashed.

(viii) Since the Madhya Pradesh Ordinance No. 3 of 2001 has lapsed, no order is necessary to quash the same.

(ix) On abolition of the Tribunal, the Chairman, Vice-Chairman, and Members shall be entitled to have compensation for unexpired term of their services from the State Government. The details shall be worked out as per principles of natural justice.

(x) On abolition of the Tribunal, the officers and employees thereof shall be dealt with by the State Government as per their service conditions, including their absorption in other Departments of the State Government.

No order as to costs.