A M.P. HIGH COURT BAR ASSOCIATION

v.

UNION OF INDIA AND ORS.

SEPTEMBER 17, 2004

B [R.C. LAHOTI, C.J.I. AND C.K. THAKKER, J.]

M.P. Reorganisation Act, 2000 : Section 74(1).

Abolition of State Administrative Tribunal—Constitutionality of—Held C *: Not* **ultra vires** *Art. 323-A or any other part of the Constitution—Further,* **L. Chandra Kumar's** *case did not lay down that once a Tribunal is constituted, created or established, there was no power either in the Central Government or the State Governments to abolish it—Constitution of India, 1950, Art, 323-A—Administrative Tribunals Act, 1985, S. 4(2).*

D *Abolition of State Administrative Tribunal—Validity of—Held : The essential legislative function is to determine the legislative policy and its formulation as a binding rule of conduct—Once such an essential legislative function is preformed, the Legislative can delegate to the Executive authority necessary ancillary and subordinate powers for carrying out the policy and* E *purposes of the Act—Therefore, authorizing the State Government to take a decision to abolish the State Administrative Tribunal does not suffer from excessive delegation—Hence, High Court rightly held that S. 74(1) was not in the nature of "delegated legislation" but was conditional legislation.*

Abolition of State Administrative Tribunal—Validity of—Held : In view F *of the subsequent development of law in* **L. Chandra Kumar's** *case, the State Government's opinion that the State Administrative Tribunal would be 'one more tier' in the administration of justice and, therefore, it should not be continued is not arbitrary, irrational or unreasonable—Moreover, the State Government had also taken into consideration the decision in* **L. Chandra** G **Kumar's** *case abolishing the Tribunal—Hence, such a decision is not illegal, invalid or improper.*

Abolition of State Administrative Tribunal—Alleged interference by State Government in the judicial functioning of the State Administrative Tribunal being violative of the basic structure of the Constitution—Correctness H *of—Held : There was no interference with a "judicial order" passed by a*

competent court on a tribunal but a "policy decision" to abolish the State Administrative Tribunal—Hence, such abolition valid. A

Abolition of State Administrative Tribunal—Allegation that such a decision was **mala fide** *as it was taken because the Tribunal had passed orders against the State Government and granted relief in transfer matters—Correctness of—Held : There is no concrete material to substantiate the said allegation—Hence, decision to abolish the State Administrative Tribunal not* **mala fide**. B

Abolition of State Administrative Tribunal—Validity of—Held : If a decision is illegal, unconstitutional or **ultra vires**, *it has to be set aside irrespective of the laudable object behind it—But it cannot be set aside merely on the ground that such a decision was not advisable in the facts of the case or that another decision could have been taken—While exercising its power of judicial review, Supreme Court cannot substitute its own decision for the decision of the Government.* C D

Section 74(1) & (4)—Interrelation between—Held : S. 74(1) not subservient to S. 74(4)—Once the provisions of S. 74(1) are attracted and invoked, the provisions of S. 74(4) had no application.

The state of M.P. issued a notification under Section 74(1) of the M.P. Reorganisation Act, 2000 by which the M.P. State Administrative Tribunal was abolished. E

Being aggrieved by the said decision the appellant-Association filed a writ petition before the High Court for a declaration that Section 74 of the Act was unconstitutional and *ultra vires* and for quashing and setting aside of the said notification. F

The High Court held that Section 74(1) of the Act was *intra vires* the Constitution and that the State Government of M.P. was empowered under Section 74(1) of the Act to abolish the State Administrative Tribunal. The High Court further held that no directions from the Central Government were necessary to take the decision to abolish the Tribunal. Hence the appeal. G

On behalf of the appellant, it was contended that the State Administrative Tribunal had been established under the Administrative H

A Tribunals Act, 1985 enacted by Parliament in exercise of power under Article 323-A of the Constitution and, therefore, such a Tribunal could not be abolished by a State; that the delegation of power to abolish the State Administrative Tribunal conferred on the State Government by Parliament under the Act of 2000 was in the nature of "excessive
B delegation"; that the decision to abolish the State Administrative Tribunal was *mala fide* and had been taken because the Tribunal had passed orders against the State Government and granted relief in transfer matters; that the interference by the State Government in the judicial functioning of the Tribunal was violative of the "basic structure" of the Constitution; and that under Section 74(1) of the Act of 2000 only the
C Central Government could issue a notification to abolish the State Administrative Tribunal and since the Central Government had taken no action abolition of the Tribunal was illegal and unlawful.

On behalf of the respondent it was contended that the State
D Government had abolished the State Administrative Tribunal after taking into consideration the decision in *L. Chandra Kumar's* case as it was felt that the Tribunal would be "one more tier" in the administration of justice.

Dismissing the appeal, the Court

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HELD : 1.1. A conjoint reading of Article 323-A of the Constitution, Section 4 of the Administrative Tribunals Act, 1985 and Sections 74(1) and 85 of the M.P. Reorganisation Act, 2000 shows that Parliament had empowered both the successor States to take an appropriate decision to
F continue such Tribunals to abolish them or to constitute separate Tribunals. It cannot be said that by enacting such a provision. Parliament had violated any mandate or the Act of 2000 is *ultra vires* Article 323-A or any other part of the Constitution. [541-B, C]

1.2. From the ratio laid down by this Court in *L. Chandra Kumar's*
G case to the effect that the jurisdiction of this Court under Articles 32 and 136 and also of the High Courts under Articles 226 and 227 of the Constitution is a part of the "basic structure" of the Constitution and could not be ousted by making any provision in the Constitution and that the Tribunals might perform a "supplemental role in the discharge
H of the power conferred upon this Court as well as the High Courts it

could not be said that once a Tribunal was constituted, created or established there was no power either in the Central Government or the State Government to abolish it. There is no constitutional or statutory prohibition against exercise of such power. Parliament which allowed the State Government to request the Central Government for establishment of an Administrative Tribunal under the 1985 Act has authority, power and jurisdiction to enable the State Government to take an appropriate decision to continue or not to continue such Tribunal and such a provision made by Parliament authorizing the State Government to abolish such Tribunal cannot be held *ultra vires* the Constitution. [541-H; 542-A, B, C]

L. Chandra Kumar v. *Union of India,* [1997] 3 SCC 261, relied on.

Mukesh Kumar Misra v. *Union of India,* W.P. No. 2398 of 2001 decided on 3.7.2001 by (MP) (DB), approved.

2. Under the Constitution of India, the power to legislate is with the Legislature. The said power of making laws, therefore, cannot be delegated by the Legislature to the Executive. In other words, a Legislature can neither create a parallel' legislature nor destroy its legislative power. The essential legislative function must be retained by the Legislature itself. Such function consists of the determination of legislative policy and its formulation as a binding rule of conduct. But it is also equally well settled that once the essential legislative function is performed by the Legislature and the policy has been laid down, it is always open to the Legislature to delegate to the Executive authority ancillary and subordinate powers necessary for carrying out the policy and purposes of the Act as may be necessary to make the legislation complete, effective and useful. [542-D, E, F]

3.1. The High Court rightly held that Section 74(1) of the Act of 2000 was not in the nature of "delegated legislation" but was a "conditional legislation". [547-A]

3.2. In the present case, the Act of 2000 as enacted by Parliament was *full* and *complete* when it left the legislative chamber. There was, therefore, no question of delegation of legislative power by the legislature in favour of the executive. What was left to the executive was merely to

A decided whether to continue the Administrative Tribunal or to abolish it. The State Government, after considering the facts and circumstances decided not to continue the Tribunal, which was within the power of the State Government, and, hence, no objection can be raised against exercise of such power. [549-C, D]

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Hamdard Dawakhana v. *Union of India,* [1960] 2 SCR 671, *Sardar Inder Singh* v. *State of Rajasthan,* [1957] SCR 605 and *State of T.N.* v. *K. Sabanayagam,* [1998] SCC 318, relied on.

Hampton & Co. v. *U.S.,* 276 US 394, *R.* v. *Burah,* (1878) 2 AC 889,
C *Russell* v. *R.,* (1882) 7 AC 829, *King Emperor* v. *Benoari Lal Sarma,* (1944) 72 IA 57 and *The Queen* v. *Burah,* (1878) 5 1A 178, cited.

3.3. The matter can be looked at from another angle also. Article 323A is not self-executory. The said provision did not create or establish
D Administrative Tribunals. It was merely a permissive or an enabling provision allowing Parliament to make law to establish Administrative Tribunal if it wished to do so. Thus, there was no binding requirement on the part of Parliament (or State Legislature) to create such a forum as contemplated by Article 323A of the Constitution of India. It also cannot be overlooked that the Administrative Tribunal in question was
E to be created for a particular State, i.e. State of Madhya Pradesh. Neither under Article 323A of the Constitution nor under the Administrative Tribunals Act, 1985, the Central Government could have created such Tribunal except in accordance with the provisions of Section 4(2) of the said Act. Essentially therefore, it was on the request made by the State
F of Madhya Pradesh to the Central Government that the power to create and establish Administrative Tribunal in the State of Madhya Pradesh was exercised by the Central Government and the Tribunal was established. Therefore, there could be no objection in conferring the power on the State Government to continue or to abolish such Tribunal. Therefore, there is no excessive delegation by Parliament to the State
G Government. [549-E-H; 550-A, B]

In re : *The Delhi Laws Act,* 1912 [1951] SCR 747, relied on.

4. In view of the subsequent development of law in *L. Chandra*
H *Kumar's* case the State Government's opinion that the State

Administrative Tribunal would be "one more tier" in the administration of justice and, therefore, it should not be continued is not arbitrary, irrational or unreasonable. Moreover, the State Government had taken into consideration the decision of this Court in *L. Chandra Kumar's* case for abolishing the State Administrative Tribunal. Such a consideration was relevant, germane and valid. It therefore, cannot be said that the decision was illegal, invalid or improper. [552-E, F, G]

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***S.P. Sampath Kumar* v. *Union of India,* [1987] 1 SCC 124, *R.K. Jain* v. *Union of India,* [1993] 4 SCC 119; *L. Chandra Kumar* v. *Union of India,* [1995] 1 SCC 119 and *L. Chandra Kumar* v. *Union of India,* [1997] 3 SCC 261, referred to.**

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5. In the instant case, there is no interference with a "judicial order" passed by a competent court or a Tribunal, but a "policy decision" has been taken by the State Government to abolish the State Administrative Tribunal allowing aggrieved litigants to approach appropriate authority/court for ventilating their grievances. [555-B]

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***P. Sambamurthy* v. *State of A.P.,* [1987] 1 SCC 362, held inapplicable.**

6. The High Court rightly held that Section 74(1) is not subservient to Section 74(4) of the Act and once the provisions of Section 74(1) of the Act are attracted and invoked, the provisions of Section 74(4) have no application. [557-A-B]

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7.1. There is no concrete material on record to show that the decision to abolish the State Administrative Tribunal was taken because of orders passed by the State Administrative Tribunal. Except bald assertions by the appellants and Press cuttings, there is nothing to substantiate such allegations. On the contrary, sufficient material is available on record to show what weighted with the respondent State in taking a decision to abolish the Tribunal. [557-E, F]

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7.2. It is clear that the State Government took into that after the decision of this Court in *L. Chandra Kumar's* case an aggrieved party could approach the High Court, and the object for establishment of the Tribunal was defeated. In the item of the facts before the Court it cannot be said the decision to abolish the State

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A **Administrative Tribunal taken by the State of Madhya Pradesh can be quashed and set aside as *mala fide*. [558-G, H]**

L. Chandra Kumar v. *Union of India,* **[1997] 3 SCC 261, relied on.**

B **8. If a decision is illegal, unconstitutional or *ultra vires,* it has to be set aside irrespective of the lqudable object behind it. But once it is held that it was within the power of the State Government to continue or not to continue the State Administrative Tribunal and it was open to the State Government to take such a decision, it cannot be set aside merely on the ground that such a decision was not advisable in the facts of the** C **case or that another decision could have been taken. While exercising power of judicial review, this Court cannot substitute its own decision for the decision of the Government. From the record of the case, it is amply clear that relevant, germane, valid and Proper considerations weighed with the State Government and keeping in view development** D **of law and the decision in *L. Chandra Kumar's* case a policy decision was taken by the State Government to abolish the State Administrative Tribunal. Parliament also empowered the State Government to take an appropriate decision by enacting Section 74(1) of the Act of 2000 and in exercise of such power, the State Government had taken a decision. The decision, therefore, cannot be regarded as illegal, unlawful or otherwise** E **objectionable. [559-D, E, F]**

L. Chandra Kumar v. *Union of India,* **[1997] 3 SCC 261, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5327 of 2002.

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From the Judgment and Order dated 14.5.2002 of the Madhya Pradesh High Court at Jabalpur in W.P. No. 3531 of 2001.

WITH

G C.A. Nos. 5328/2002, 6104, 6105-6106/2004, 8292-8295/2002, W.P. (C) Nos. 369 and 374 of 2003.

Prashant Bhushan, Narinder Kumar Verma, Rohit Kumar Singh, Sanjay Pathak for the Appellant in C.A. No. 5327/02, Ajit Puduseery (NP), for H Appellant in C.A. No. 5328/2002.

B. Datta, Additional Solicitor General, P. Parmeshwaran, for the Appellants in C.A. Nos. 6104/2004, 8292-95/2002 and Respondent for Union of India.

Sanjeev Sachdeva, Mukesh Kr. Mishra and Ms. Priya Puri for the Appellant in C.A. Nos. 6105-06/2004.

Shiv Sagar Tiwari, Ms. Pratima, Umesh Babu Chaurasia, M.P. Singh, and Mani Mittal for the Petitioner in W.P. (C) No. 369/2003.

B.B. Dubey, S.K. Bandyopadhyay, Amitav Poddar and C.L. Sahu for the Petitioner in W.P. (C) No. 370/2003.

Satish K. Agnihotri, Anil K. Pandey, Amit Mishra, Prakash Srivastava, (NP), Sanjeev Sachdeva, Mukesh Kr. Mishra, Ms. Priya Puri and Ajit Pudussery, (NP) for the Respondents.

The Judgment of the Court was delivered by

THAKKER, J. : Leave granted in Special Leave Petition (Civil) Nos. 22648 of 2002 and 23615-23616 of 2002.

In the present group of matters, common questions of fact and law have been raised by the parties. It is, therefore, appropriate to decide all the matters by a common judgment.

To appreciate the controversy raised and questions agitated in these matters, few relevant facts in the first matter, i.e., Civil Appeal No. 5327 of 2002 may be stated. The appeal arises out of a judgment and order dated May 14, 2002 passed by the High Court of Madhya Pradesh at Jabalpur in Writ Petition No. 3531 of 2001.

The said petition was filed by the Madhya Pradesh High Court Bar Association and another against the Union of India, State of Madhya Pradesh, State of Chhattisgarh and the Chief Ministers of both the States. The case of the petitioners is that the petitioner No. 1 is an Association of Advocates practising at the High Court of Madhya Pradesh, Madhya Pradesh State Administrative Tribunal at Jabalpur as also Central Administrative Tribunal (Jabalpur Bench). The Association was constituted to look after and protect the interests of its members. One of the prime duties of the Association,

A asserted the petitioners, is to ensure that legal system in the State is not attacked by an outside agency. Its aim is also to advance the cause of justice by speedy trial. It has, therefore, *locus standi* to file a petition. Petitioner No.2 is the President of the Madhya Pradesh Bar Association. He is a practising lawyer at the High Court as well as at two Tribunals. He is a citizen
B of India.

The petitioners have stated that Parliament amended the Constitution by the Constitution (42nd Amendment) Act, 1976 by which several changes had been made. As a consequence thereof, Article 323A came to be inserted in the Constitution with effect from January 3, 1977. The said Article provided
C for constitution and establishment of Administrative Tribunals. Those Tribunals were empowered to adjudicate and decide disputes and complaints relating to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or
D under the control of the Government of India or of any corporation owned or controlled by the Government. It also declared that the provisions of the said Article would have effect notwithstanding anything in any other provision of the Constitution or in any other law for the time being in force. The Article further provided for exclusion of jurisdiction of all courts, "except the jurisdiction of the Supreme Court under Article 136", with
E respect to disputes or complaints to be dealt with by such tribunals. Article 323A, however, is not self-executory inasmuch as it did not take away the jurisdiction of courts. It merely enabled Parliament or appropriate legislature to make laws, to set up such tribunals and to exclude jurisdiction of all courts except the Supreme Court.

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In exercise of the power conferred by Article 323A of the Constitution, Parliament enacted an Act, called the Administrative Tribunals Act, 1985 (hereinafter referred to as "the Act"). In the Statement of Objects and Reasons, it was stated that with a view to give effect to the constitutional provision by providing for the establishment of an Administrative Tribunal,
G the Act has been enacted. The Preamble of the Act also recites that with a view to provide for the adjudication or trials by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority, the
H Act has been enacted. Whereas Section 4 provides for establishment of

Administrative Tribunals, Section 5 deals with composition of Tribunals and Benches. Provisions relating to qualifications for appointment as Chairman, Vice-Chairman and other Members as also their terms of office, salaries and allowances, etc. have been made in Sections 6 to 13. Sections 14 to 18 deal with jurisdiction, power and authority of Tribunals. Sections 19 to 27 lay down the procedure to be followed by such Tribunals. Section 28 excludes jurisdiction of all courts except the Supreme Court.

Sub-section (2) of Section 4 of the Act enabled the Central Government, on receipt of a request from the State Government to establish by a notification an Administrative Tribunal for the State to exercise the jurisdiction, powers and authority conferred on the Administrative Tribunal for the State. According to the petitioners, a request was made by the State of Madhya Pradesh for the establishment of an Administrative Tribunal for the State. The Central Government, in exercise of power under sub-section (2) of Section 4 of the Act, therefore, issued a notification on June 29, 1988 for establishment of a Tribunal known as the Madhya Pradesh Administrative Tribunal with effect from August 2, 1988. The petitioner stated that in pursuance of the notification, the State Administrative Tribunal had been established. It was having a Principal seat at Jabalpur and four Benches at Gwalior, Indore, Bhopal and Raipur.

The petitioners further stated that Parliament enacted an Act called the Madhya Pradesh Re-organisation Act, 2000, (Act 28 of 2000) (hereinafter referred to as "the Act of 2000"). The said Act has been enacted with a view "to provide for the re-organisation of the existing State of Madhya Pradesh and for matters connected therewith". Part II deals with re-organisation of the State of Madhya Pradesh into two States to be known as the State of Madhya Pradesh and the State of Chhattisgarh and their territorial divisions. Part III provides for representation in the Legislatures. Part IV relates to administration of justice. Part VIII deals with services. It provides for All-India services, services in Madhya Pradesh and Chhattisgarh and other services as also power of the Central Government to issue directions. Section 74 of the Act touches jurisdiction of Commissions, Authorities, Tribunals, Universities, Boards and other statutory bodies, constitutional validity and *vires* whereof has been challenged. It is, therefore, appropriate to re-produce the said section in extenso.

"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 State 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.

(2) No suit or other legal proceeding shall be instituted, in case such body is abolished under clause (ii) of sub-section (1), 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 State within any period referred to in sub-section (1).

Section 85 declares that the provisions of the Act shall have overriding effect "notwithstanding anything inconsistent therewith contained in any other law."

Bare reading of sub-section (1) of Section 74 makes it clear that it declares that all Commissions, Authorities, Tribunals, Universities, Boards or other bodies constituted under an Act of Parliament will continue to function in the State of Madhya Pradesh as also in the State of Chhattisgarh. It, however, states that they will continue to function for a maximum period of two years or "till such period as is decided by mutual agreement between the successor States". Sub-sections (2) and (3) enumerate circumstances pursuant to the abolition of such Tribunal. Sub-section (4) allows the Central Government to issue directions.

The petitioners stated in the petition that in purported exercise of the powers under sub-section (1) of Section 74 of the Act, a decision was taken by the State of Madhya Pradesh as well as the State of Chhattisgarh to abolish State Administrative Tribunal. A notification was issued on 25th July, 2001 by the State of Madhya Pradesh by which the Madhya Pradesh State Administrative Tribunal had been abolished. By a circular of even date issued by the State, it had been ordered that existing Chairman, Vice-Chairman and Members of the Tribunal would cease to function with immediate effect irrespective of unexpired period of their tenure, if any. By an order of even date, the State Government terminated the services of all officers and employees other than those on deputation with immediate effect as their services were "no longer required".

Being aggrieved by the said actions, the petitioner-Association approached the High Court of Madhya Pradesh by invoking Articles 226 and 227 of the Constitution. A writ of *Mandamus* was sought to declare Section 74 of the Act of 2000 unconstitutional and *ultra vires.* In the alternative, a prayer was made to issue a writ of *Mandamus* to hold that Section 74 would not apply to State Administrative Tribunal. A further prayer was made to quash and set aside a notification, a circular and an order dated July 25, 2001 by which the State Administrative Tribunal was sought to be abolished and consequential actions were taken.

Similar petitions were filed being W.P. No.3529 of 2001 by A.K. Shrivastava, a Member of the Administrative Tribunal, W.P. No.3525 of 2001 by Sanjay Kumar Misra, W.P. No. 3551 of 2001 by Kamal Joshi, W.P. No.3554 of 2001 by Nemi Chand, all employees of the State Administrative Tribunal, W.P. No. 3597 of 2001 and W.P. No.4129 of 2001 by Madhya Pradesh Class III Government Employees Association.

Notices were issued to the State of Madhya Pradesh and other respondents. The respondents appeared. An affidavit-in-reply was filed by the State of Madhya Pradesh supporting the actions taken by the Government. It was asserted in the counter that establishment of State Administrative Tribunal was not obligatory. The State Government was not bound to constitute the Tribunal. It was, therefore, open to the State Government to create, continue or abolish such Tribunal. Since the power exclusively vested in the State Government to create, continue or abolish the Tribunal, the Central Government had no voice in the matter. It was also stated that the Council of Ministers of the State of Madhya Pradesh took a decision on November 21, 1985 for the establishment of State Administrative Tribunal in the State of Madhya Pradesh. A request was, therefore, made to the Central Government to constitute State Administrative Tribunal and, accordingly, a notification was issued on June 29, 1988 and the Tribunal was constituted on August 2, 1988. Initially there was only a Principal seat at Jabalpur. Later on, three Benches were established at Gwalior, Indore and Bhopal. In 1997, even the fourth Bench was established at Raipur. The deponent stated that over and above State of Madhya Pradesh, seven other States had established State Administrative Tribunals. In the affidavit in reply, it was the case of the respondent-State that despite very laudable object behind the establishment of Administrative Tribunals, the performance of the Tribunals always remained "far from satisfactory and the Tribunals failed to achieve the objects and goals for which they were established". Reference was made to the report of the Arrears Committee (1989-90), known as "Malimath Committee" which elaborately dealt with the functioning of Tribunals in the country. Citing extensively the working of the Tribunals in the report of Malimath Committee, it was asserted by the State that the State Administrative Tribunal failed to fulfill the object for which it was established. Moreover, after the landmark decision of the Supreme Court in *L. Chandra Kumar* v. *Union of India,* [1997] 3 SCC 261 : AIR (1997) SC 1125, wherein it has been held by the Apex Court that the decisions rendered by the Tribunals constituted under Articles 323A and 323B of the Constitution of India would be subject

to the writ/supervisory jurisdiction of the High Courts under Article 226/227 of the Constitution within whose territorial jurisdiction the particular Tribunal is functioning, there was virtually no need to continue such Tribunal. It was the case of the respondent-State that in the light of declaration of law in *L. Chandra Kumar*, Administrative tribunals became "intermediate/additional adjudicatory stratum", "leading to substantial increase in number of pending cases at the level of High Court". Several matters decided by such Tribunals were challenged before High Courts.

Other problems had also been highlighted by the respondent-State in the counter-affidavit which necessitated the State to take a decision to abolish it. It included steep increase in pendency of cases, construction of infrastructure, huge finance, maintenance of recurring expenses, etc. The policy makers of the State had been continuously monitoring the Tribunal's progress and performance as dispensation of justice was an important priority of the State.

Parliament meanwhile passed the Act of 2000 on 18th September, 2000 providing re-organisation of the erstwhile State of Madhya Pradesh into two States. Sub-section (1) of Section 74 of the Act allowed both the States to continue functioning of the Tribunal in the successor States. It, however, authorized them to take a decision to abolish State Administrative Tribunal by mutual agreement. Thus, the power had been conferred by Parliament on States of Madhya Pradesh and Chhattisgarh to take an appropriate decision with regard to continuation or abolition of State Administrative Tribunal. Such action, therefore, cannot be said to be illegal or contrary to law. The Act of 2000 has been enacted by Parliament in exercise of powers under Articles 2 to 4 of the Constitution of India. The Act, therefore, cannot be said to be unconstitutional or *ultra vires*.

Respondent No.1 Government of India also filed a counter-affidavit confirming that the State of Madhya Pradesh was "free to recommend abolition of the Madhya Pradesh Administrative Tribunal". It was stated that the Central Government would examine the proposal of the State Government to abolish State Administrative Tribunal keeping in view several factors, such as, alternative forum proposed by the State Government for disposal of pending cases, compensation/rehabilitation of various functionaries of the Tribunal, etc. On interpretation of Section 74 of the Act of 2000, the Central Government stated that the State of Madhya Pradesh cannot of its own abolish State Administrative Tribunal which was set up by the Central

A Government under Section 4(2) of the Administrative Tribunals Act, 1985. According to the deponent, Section 74(1) of the Act of 2000 was "only an enabling provision to facilitate the State Government to take a decision about the continuance or otherwise of the Madhya Pradesh Administrative Tribunal".

B Further affidavit was also filed by the State of Madhya Pradesh wherein a reference was made to an order of Council of Ministers dated 8th March, 2001 to abolish the Madhya Pradesh Administrative Tribunal.

The Division Bench of the High Court of Madhya Pradesh, after hearing C the parties, held that the provisions of sub-section (1) of Section 74 of the Act of 2000 are *intra vires* the Constitution and the State of Madhya Pradesh possessed power to abolish the State Administrative Tribunal. No direction from the Central Government as envisaged by sub-section (4) of Section 74 was required. According to the Court, Section 74(1) conferred unfettered power on both successor States to take a decision in regard to the abolition D of Tribunal. It was thus in the exclusive discretion of the successor States and no power or authority had been given to the Central Government in the said process. The Court also indicated that Parliament appeared to have granted "an opportunity of re-determination to both the successor States in view of substantial changed circumstances necessitating review of all existing E bodies keeping the experience of the old State".

Regarding sub-sections (2) and (3) of Section 74 of the Act of 2000, however, after considering Articles 309 and 310 of the Constitution of India and Sections 8, 9 and 10 of the Administrative Tribunals Act, 1985, the High Court held that the State could not have ignored statutory and constitutional F provisions. Sub-sections (2) and (3) of Section 74 were thus *ultra vires* Articles 14, 16 and 21 of the Constitution. The High Court, however, recorded the statement of the learned Advocate General of the State of Madhya Pradesh that the State Government shall abide by the decision of the court with regard to officers and employees of the Government.

G The High Court also held that after taking a decision to abolish the Madhya Pradesh State Administrative Tribunal, the State Government had to request the Central Government for issuance of necessary notification for abolition of such Tribunal since it has been established by the Central Government. According to the Court, however, the Central Government had H no option but to accept the request of the State Government. In the light

of the said decision, notification, circular and order dated 25th July, 2001 were quashed by the Court.

In the operative part of the judgment, the High Court issued following directions:-

(i) The State Government of Madhya Pradesh is empowered under Section 74(1) of the M.P. Re-organisation 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 abolish 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

A 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.

B (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.

C Being aggrieved by the order passed by the High Court, the Bar Association instituted Special Leave Petition (Civil) No.16108 of 2002 on July 11, 2002. It may be stated that in other matters also, leave was sought by the petitioners to approach this Court by filing Special Leave Petitions. In Special Leave Petition Nos.23615 and 23616 of 2002, the decision upholding constitutional validity of sub-section (1) of Section 74 of the Act D of 2000 is challenged. We may also observe at this stage that Writ Petition No. 374 of 2003 was filed by one Chhadami Lal and Writ Petition No. 369 of 2003 by the Government Employees Class III Association. Union of India has also challenged the decision of the High Court of Madhya Pradesh in Civil Appeal Nos.8292-95 of 2002 against certain directions of the High Court.

E

On August 26, 2002, leave was granted by this Court and hearing was ordered to be expedited. Other matters which were subsequently filed were also ordered to be heard along with Civil Appeal No.5327 of 2002.

F We have heard the learned counsel for all the parties.

Mr. Prashant Bhushan, learned counsel for the appellant contended that the action of abolishing Madhya Pradesh State Administrative Tribunal is illegal, improper and unlawful. According to him, the State Administrative Tribunal had been established under the Administrative Tribunals Act, 1985 G enacted by Parliament in exercise of power under Article 323A of the Constitution. Such Tribunal, therefore, cannot be abolished by a State. It was further submitted that Section 74 of the Act of 2000 by which Parliament authorized the State Government to discontinue or abolish State Administrative Tribunal is *ultra vires* the Constitution as no such power could have been H delegated to the State. It was also urged that the delegation of power to

abolish State Administrative Tribunal conferred on the State Government by Parliament under the Act of 2000 is in the nature of "excessive delegation" and would be inconsistent with the provisions of the Constitution as also contrary to several decisions rendered by this Court wherein it has been observed that a competent legislature cannot delegate essential legislative function or legislative policy. The High Court, in the circumstances, ought to have declared sub-section (1) of Section 74 *ultra vires.*

Alternatively, it was submitted that even if this Court holds that Parliament was competent to delegate its power to the State Government to discontinue the State Administrative Tribunal, the impugned action of the State of Madhya Pradesh is illegal, unlawful and *mala fide.* It was contended that the Tribunal has been abolished as, according to the Government, in many matters it had passed orders against the Government and granted interim relief in "transfer" matters. It was, therefore, contended that what weighed with the State Government for abolishing the State Administrative Tribunal was "judicial orders" passed by a competent Tribunal in exercise of its undoubted jurisdiction thereby taking into account irrelevant consideration and such a decision cannot be said to be a decision in the eye of law and the action deserves to be set aside.

It was also urged that from the affidavit in reply filed on behalf of the State, it was clear that it had also considered the criticism against working of Tribunals by Malimath Committee. The report of the said Committee, however, has been commented upon by this Court in *L. Chandra Kumar* and the criticism by the said Committee against the working of the Tribunals was not approved. It was, therefore, submitted that if on the basis of such criticism an action is taken, the same deserves to be quashed.

On merits, counsel contended that there was no need for abolishing the Tribunal. No reasons for such abolition have been mentioned anywhere. No study was conducted regarding functioning of the Tribunal. Statistics had shown that several cases had been adjudicated and decided by the Tribunal and even after the decision of this Court in *L. Chandra Kumar*, only few matters had reached the High Court and in the rest of the matters, the decisions of the Tribunal had not been challenged. Thus, it was not right, as stated by the State of Madhya Pradesh, that after the decision in *L. Chandra Kumar*, the Tribunal remained as "additional tier" in the administration of justice. If that was the basis and foundation on which the State had taken

A a decision, the same being incorrect in fact and untenable at law, the order of abolishing the Tribunal deserves to be set aside. In this connection, the counsel submitted that ambit and scope of jurisdiction of Administrative Tribunals exercising power under the Act and of the High Court under Articles 226 and 227 of the Constitution is totally different and distinct. Even B if the decision rendered by the Tribunal can be made subject matter of writ jurisdiction/supervisory jurisdiction of a High Court under Article 226/227 of the Constitution, the later exercises the power of "judicial review" and neither original nor appellate power. The sweep and extent of two jurisdictions cannot be compared. The learned counsel submitted that all these points have not been appreciated in their proper perspective by the High Court and the C decision of the High Court suffers from non-application of mind and non-consideration of relevant aspects and needs interference.

Other counsel appearing in the remaining matters supported Mr. Prashant Bhushan and adopted the arguments put forward by him. They also D submitted that an attempt has been made by the State of Madhya Pradesh to interfere with judicial functioning of the Tribunal which is violative of the "basic feature of the Constitution" which protects and safeguards the independence of judiciary and such action deserves to be quashed and set aside by this Court.

E Mr. B. Datta, learned Additional Solicitor General for the Union of India has voiced grievance against some of the conclusions reached by the High Court, particularly, that the State of Madhya Pradesh has the authority to abolish the State Administrative Tribunal and if a request is made by the State Government to the Central Government to abolish the Tribunal, the latter has F no option but to accept such request.

The learned counsel appearing for the State of Madhya Pradesh, on the other hand, supported the order passed by the High Court. According to him, the State Administrative Tribunal was constituted and established in the State only at the request of the State of Madhya Pradesh. It was, therefore, clear G that the State of Madhya Pradesh wanted establishment of such Tribunal. Obviously, therefore, it was open to the State if it felt that continuance of such Tribunal would not be in the larger interest. It was also urged by the counsel that the State Government realised the need and necessity of such Tribunal in the light of the provisions of Article 323A of the Constitution H as amended by the Constitution (42nd Amendment) Act, 1976 and after 1985

Act by Parliament. The counsel also submitted that the validity of 1985 Act came up for consideration before this Court in *S.P. Sampath Kumar* v. *Union of India,* [1987] 1 SCC 124 : AIR (1987) SC 386 and the constitutional validity of the Act had been upheld. Virtually therefore, after the decision in *S.P. Sampath Kumar,* the Administrative Tribunal was held "substitute" of the High Court. The State of Madhya Pradesh, therefore, thought it proper to have such Tribunal. Accordingly, a request was made and the Tribunal was established in 1988. But the position was substantially altered after the decision in *L.Chandra Kumar.* In the said case, this Court held that the power of "judicial review" conferred on all High Courts by the Constitution is a basic feature of the Constitution. Such power cannot be taken away even by an amendment in the Constitution. Clause (d) of Article 323A(2) and Clause (d) of Article 323B(3) of the Constitution were, therefore, held *ultra vires.* The consequence of the decision in *L. Chandra Kumar* was that after a decision by the State Administrative Tribunal, an aggrieved party can approach the High Court within the territorial jurisdiction of which a decision has been rendered by such Tribunal and such decision could be made subject matter of judicial review before the High Court. Considering the above fact, the Council of Ministers thought that it would not be appropriate to have such Tribunal in view of the decision in *L. Chandra Kumar.* According to the counsel, such a decision could never be termed as arbitrary, unreasonable or *mala fide.* Therefore, even if it is assumed that all the matters which had been decided by an Administrative Tribunal may not be taken to High Court, it cannot prevent the Council of Ministers to take an appropriate decision as to continuance or otherwise of the State Administrative Tribunal. It was a policy decision. The question is not of advisability or propriety of such decision, but legality and constitutionality thereof. If the decision is otherwise legal, valid and in accordance with law, it cannot be set aside. A court of law can interfere with such decision only if it is unconstitutional or without authority of law. It was submitted that even Parliament considered the fact that the Tribunal was established for adjudication of service disputes in the State of Madhya Pradesh and at the request of the State, such Tribunal was constituted. Hence, a provision was made in Section 74 of the Act enabling the State Governments to continue or not to continue such Tribunal. Such a provision cannot be termed arbitrary or unreasonable. There is no delegation of legislative power by Parliament on the State. Since, the State Government had requested the Central Government to constitute a Tribunal and a Tribunal had been constituted, Parliament thought it appropriate to authorize the State Government to decide as to whether such Tribunal should

A be continued or abolished. There is, thus, no "excessive delegation" in such matters and the High Court was fully justified in repelling the contention of the petitioners-appellants and in dismissing the petition.

Regarding *mala fide* exercise of power, it was submitted that there was
B no material to show that the action was not *bona fide* or has been taken in colourable exercise of power. There is nothing to substantiate such bald allegations. Though it was asserted that the Tribunal has been abolished because it had passed certain "judicial orders", it is merely *ipse dixit* and based on newspaper reports. From the record, it is clear that the State considered the decision in *L. Chandra Kumar* and a satisfaction had been
C reached by the Council of Ministers that there would be "one more tier" if Administrative Tribunal would be continued. Accordingly, it was resolved to abolish the Tribunal. Such a decision cannot be said malicious or *mala fide*. It was, therefore, submitted that the appeal deserves to be dismissed.

D So far as constitutional validity and *vires* of sub-section (1) of Section 74 of the Act is concerned, in *Mukesh Kumar Misra and Another* v. *Union of India and Others,* (W.P. No. 2398 of 2001 decided on 3rd July, 2001), the Division Bench of the High Court of Madhya Pradesh upheld the validity thereof. Considering the provisions of the Constitution including Article 323A and the relevant provisions of the Act, the Court held that Parliament
E was competent to enact the Act of 2000 and it was open to Parliament to confer power on the States of Madhya Pradesh and Chhattisgarh to take an appropriate decision as to continuance or otherwise of any Commission, Authority, Tribunal, University, Board or any other body constituted under the Central Act, State Act or Provincial Act "having jurisdiction over the
F existing State of Madhya Pradesh". The Court also held that discretion had been conferred on both the State Governments to abolish the Tribunal if they wished to do so. The Court noted that Article 323A of the Constitution was merely an enabling provision and it was not incumbent on State Governments to constitute a Tribunal under the Act of 1985. In the opinion of the Court, there was no inconsistency or conflict between Section 74(1) of the Act of
G 2000 and Article 323A of the Constitution or Section 4 of the Administrative Tribunals Act, 1985. It was also observed that sub-section (1) of Section 74 of the Act of 2000 opens with *non obstante* clause ("Notwithstanding anything contained in any other law for the time being in force") and allows the States of Madhya Pradesh and Chhattisgarh to continue or to abolish
H Tribunals in the respective States. In this connection, it is also profitable to

refer to Section 85 which declares that the provisions of "this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law". Conjoint reading of Article 323A of the Constitution, Section 4 of the Administrative Tribunals Act 1985 and Sections 74(1) and 85 of the Act of 2000, in our considered opinion, leaves no room of doubt that Parliament authorized the State of Madhya Pradesh as well as the new State of Chhattisgarh to take an appropriate decision with regard to State Administrative Tribunals having jurisdiction over those States. Parliament empowered both the successor States to take an appropriate decision to continue such Tribunals, to abolish them or to constitute separate Tribunals. It cannot be said that by enacting such a provision, Parliament had violated any mandate or the Act of 2000 is *ultra vires* Article 323A or any other part of the Constitution.

It was then contended that once the power to constitute a Tribunal had been exercised, Parliament was denuded of any power to make any legislation providing for abolition of such Tribunal. The Division Bench negatived the contention and observed :

> "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 exhaustation is unknown so far as the legislative powers are concerned. What Parliament has done, Parliament can undo."

The above observations, in our view, are in consonance with law and lay down correct proposition of law.

We are also not impressed by the argument of the learned counsel for the appellants that in the light of the ratio laid down by this Court in *L. Chandra Kumar*, an Administrative Tribunal constituted under the 1985 Act cannot be abolished. What has been held by this Court in *L. Chandra Kumar* was that the jurisdiction conferred on this Court under Articles 32 and 136 of the Constitution as also of the High Courts under Articles 226 and 227

A of the Constitution is a part of the "basic structure" of our Constitution. That jurisdiction cannot be ousted by making any provision in the Constitution also. So far as Tribunals are concerned, they may perform a "supplemental role" in the discharge of power conferred upon the Supreme Court as well as upon High Courts. From that, however, it cannot be said that once a B Tribunal is constituted, created or established, there is no power either in the Central Government or State Governments to abolish it. There is no constitutional or statutory prohibition against exercise of such power. To us, it is clear that Parliament which allowed the State Government to request the Central Government for establishment of an Administrative Tribunal under the 1985 Act has authority, power and jurisdiction to enable the State C Government to take an appropriate decision to continue or not to continue such Tribunal and a provision by Parliament authorizing the State Government to abolish such Tribunal, by no stretch of imagination, can be held *ultra vires* the Constitution or inconsistent with the law laid down by this Court in *L. Chandra Kumar.*

D

Under the Constitution of India, the power to legislate is with the Legislature. The said power of making laws, therefore, cannot be delegated by the Legislature to the Executive. In other words, a Legislature can neither create a parallel legislature nor destroy its legislative power. The essential legislative function must be retained by the Legislature itself. Such function E consists of the determination of legislative policy and its formulation as a binding rule of conduct. But it is also equally well-settled that once the essential legislative function is performed by the Legislature and the policy has been laid down, it is *always* open to the Legislature to delegate to the Executive authority ancillary and subordinate powers necessary for carrying F out the policy and purposes of the Act as may be necessary to make the legislation complete, effective and useful.

Mr. Bhushan, learned counsel for the appellants invited our attention to the leading case of *In re: The Delhi Laws Act,* 1912 (1951 SCR 747). The question which arose before this Court in that case was of "great public G importance" and was "first of its kind". The Central Government was authorized by Section 2 of Part C States (Laws) Act, 1950 to extend to any Part C State with such modifications and restrictions as it thinks fit, any enactment in force in Part A State. While doing so, the Government was also authorized to repeal or amend any corresponding law (other than a H Central Act) which might be in force in Part C State. While dealing with

the Reference under Article 143 of the Constitution of India, this Court opined that keeping the exigencies of the modern Government in view, Parliament and State Legislatures in India needed to delegate legislative power, if they were to be able to face the multitudinous problems facing the country, as it was neither practicable nor feasible to expect each of the legislative bodies to enact complete and comprehensive legislation on all subjects sought to be legislated upon. It was also observed that since the legislatures in India derive their powers from written Constitution, they could not be allowed the same freedom as the British Parliament has in the matter of delegation.

Relying on some of the observations, the learned counsel submitted that the provisions of sub-section (1) of Section 74 of the Act of 2000 must be held *ultra vires*. The counsel referred to the following observations of Kania, C.J.:

> "A fair and close reading and analysis of all these decisions of the Privy Council, the judgments of the Supreme Courts of Canada and Australia without stretching and straining the words and expressions used therein lead me to the conclusion that while a legislature, as a part of its legislative functions, can confer powers to make rules and regulations for carrying the enactment into operation and effect, and while a legislature has power to lay down the policy and principles providing the rule of conduct, and while it may further provide that on certain date or facts being found and ascertained by an executive authority, the operation of the Act can be extended to certain areas or may be brought into force on such determination which is described as conditional legislation the power to delegate legislative functions generally is not warranted under the Constitution of India at any stage. In cases of emergency, like war where a large latitude has to be necessarily left in the matter of enforcing regulations to the executive, the scope of the power to make regulations is very wide, but even in those case the suggestion that there was delegation of "legislative fctions" has been repudiated. Similarly, varying according to the necessities of the case and the nature of the legislation, the doctrine of conditional legislation or subsidiary legislation or ancillary legislation is equally upheld under all the Constitutions. In my opinion, therefore, the contention urged by the learned Attorney General that legislative power carries with

A it a general power to delegate legislative functions, so that the legislature may not define its policy at all and may lay down no rule of conduct but that whole thing may be left either to the executive authority or administrative or other body, is unsound and not supported by the authorities on which he relies. *I do not think that*
B *apart from the sovereign character of the British Parliament which is established as a matter of convention and whose powers are also therefore absolute and unlimited in any legislature of any other country. such general powers of delegation as claimed by the Attorney-General for a legislature have been recognized or permitted."*
C

(emphasis supplied)

Keeping in view the Parliamentary position in India in juxtaposition of British system, His Lordship proceeded to state:

D "Having regard to the position of the British Parliament, the question whether it can validly delegate its legislative functions cannot be raised in the court of law. Therefore from the fact that the British Parliament has delegated legislative powers it does not follow that the power of delegation is recognized in law as necessarily include din the power of legislation. Although in the
E Constitution of India there is no express separation of powers, it is clear that a legislature is created by the Constitution and detailed provisions are made for making that legislature pass laws. Is it then too much to say that under the Constitution the duty to make laws, the duty to exercise its own wisdom, judgment and patriotism in
F making laws is primarily cast on the legislatures? Does it not imply that unless it can be gathered from other provisions of the Constitution, other bodies, executive or judicial, are not intended to discharge legislative functions? I am unable to read the decisions to which our attention has been drawn as laying down that once a legislature observes the procedure prescribed for passing a bill into an Act, it
G becomes a valid law, unless it is outside the Legislative Lists in the Seventh Schedule prescribing its respective powers. I do not read articles 245 and 246 as covering the question of delegation of legislative powers. In my opinion, on a true construction of articles 245 and 246 and the Lists in the Seventh Schedule, construed in the
H light of the judicial decisions mentioned above, legislation delegating

legislative powers on some other bodies is not a law on any of the subjects or entries mentioned in the Legislative Lists. It amounts to a law which states that instead of the legislature passing laws on any subject covered by the entries, it confers on the body mentioned in the legislation the power to lay down the policy of the law and make a rule of conduct binding on the persons covered by the law." A B

Our attention has also been invited to similar observations of Fazl Ali, J., who said:

> *"There can be no doubt that if the legislature completely abdicates its functions and sets up a parallel legislature transferring all its power to it, that would undoubtedly be a real instance of delegation of its power.* In other words, there will be delegation in the strict sense if legislative power with all its attributes is transferred to another authority. But the Privy Council have repeatedly pointed out that when the legislature retains its dominant power intact and can whenever it pleases destroy the agency it has created and set up another or take the matter directly into its own hands, it has not parted with its own legislative power. They have also pointed out that the act of the subordinate authority does not possess the true legislative attribute, if the efficacy of the act done by it is not derived from the subordinate authority but from the legislature by which the subordinate authority was entrusted with the power to do the act. In some of the cases to which reference has been made, the Privy Council have referred to the nature and principles of legislation and pointed out the conditional legislation simply amounts to entrusting a limited discretionary authority to others, and that to seek the aid of subordinate agencies in carrying out the object of the legislation is ancillary to legislation and properly lies within the scope of the powers which every legislature must possess to function effectively."
>
> *(emphasis supplied)*

C D E F G

Reference was also made to the following conclusions reached by His Lordship:

> "The conclusions at which I have arrived so far may now be summed up: H

A (1) The legislature must normally discharge its primary legislative function itself and not through others.

(2) Once it is established that it has sovereign powers within a certain sphere, it must follow as a corollary that it is free to legislate within that sphere in any way which appears to it to B be the best way to give effect to its intention and policy in making, a particular law, and that it may utilize any outside agency to any extent it finds necessary for doing things which it is unable to do itself or finds it inconvenience to do. In other words it can do everything which is ancillary to and necessary C for the full and effective exercise of its power of legislation.

(3) It cannot abdicate its legislative functions, and therefore while entrusting power to an outside agency it must see that such agency, acts as a subordinate authority and does not become a parallel legislature. D

(4) The doctrine of separation of powers and the judicial interpretation it has received in America ever since the American Constitution was framed, enables the American courts to check undue and excessive delegation but the courts of this country E are not committed to that doctrine and cannot apply it in the same way as it has been applied in America. Therefore, there are only two main checks in this country on the power of legislature to delegate, these being its good sense and the principal that it should not cross the line beyond which delegation amounts to "abdication and self-effacement." F

On the basis of the above observations, it was submitted by Mr. Prashant Bhushan that by the impugned legislation, Parliament has delegated essential legislative functions in favour of the State Government. Such delegation is blanket and unchartered and is of essential legislative function and legislative policy which could not have been done. The High Court has committed an G error of law in upholding such delegation which was in substance and reality "excessive delegation". The order passed by the High Court to that extent suffers from legal infirmity and deserves to be interfered with by holding sub-section (1) of Section 74 of the Act of 2000 *ultra vires*.

H The High Court, however, was not impressed by the argument. In the

opinion of the High Court, sub-section (1) of Section 74 of the Act of 2000 was not in the nature of *"delegated legislation" but was "conditional legislation"*. Taking note of distinction between delegated legislation and conditional legislation, the High Court held that the power conferred by Parliament on the State Government to abolish Tribunal on fulfillment of conditions specified in sub-section (1) of Section 74 of the Act of 2000 could not be objected.

We find no infirmity in the approach of the High Court. In *Hamdard Dawakhana* v. *Union of India,* [1960] 2 SCR 671, speaking for the Constitution Bench, Kapur, J., said;

> "The distinction between conditional legislation and delegated legislation is that in the former the delegate's power is that of determining when a legislative declared rule of conduct shall become effective; *Hampton & Co.* v. *U.S.*, 276 US 394 : 72 L Ed 624 (1928) and the latter involves delegation of rule-making power which constitutionally may be exercised by the administrative agent. This means that the legislature having laid down the broad principles of its policy in the legislation can then leave the details to be supplied by the administrative authority. In other words by delegated legislation the delegate completes the legislation by supplying details within the limits prescribed by the statute and in the case of conditional legislation the power of delegation is exercised by the legislature conditionally leaving to the discretion of an external authority the time and manner of carrying its legislation into effect as also the determination of the area to which it is to extend; (*R.* v. *Burah,* [1878] 3 AC 889, PC; *Russell* v. *R.,* [1882] 7 AC 829 at p. 835 : 51 LJPC 77, PC; *King Emperor* v. *Benoari Lal Sarma,* [1944] 72 IA 57 : AIR (1945) PC 48; *Sardar Inder Singh* v. *State of Rajasthan,* AIR (1957) SC 510 : [1857] SCR 605. Thus *when the delegate is given the power of making rules and regulations in order to fill in the details to carry out and subserve the purposes of the legislation the manner in which the requirements of the statute are to be met and the rights therein created to be enjoyed it is an exercise of delegated legislation. But when the legislation is complete in itself and the legislature has itself made the law and the only function left to the delegate is to apply the law to an area or to determine the time and manner of carrying*

it into effect, it is conditional legislation."

(emphasis supplied)

We may also refer in this connection to a decision of this Court in *Sardar Inder Singh* v. *State of Rajasthan,* [1957] SCR 605. There the Rajasthan Tenants' Protection Ordinance was promulgated for two years. By Section 3, the Rajpramukh was empowered to extend the life of the Ordinance by issuing a notification, if required. The duration of the Ordinance was extended by issuing a notification which was challenged. This Court, however, upheld the provision observing that it was a case of conditional legislation.

The Court said;

> "In the present case, the preamble to the Ordinance clearly recites the state of facts which necessitated the enactment of the law in question, and s.3 fixed the duration of the Act as two years, on an understanding of the situation as it then existed. At the same time, it conferred a power on the Rajpramukh to extend the life of the Ordinance beyond that period, if the state of affairs then should require it. When such extension is decided by the Rajpramukh and notified, the law that will operate is the law which was enacted by the legislative authority in respect of "place, person, laws, powers", and it is clearly conditional and not delegated legislation as laid down in *The Queen* v. *Burah,* [1878] 5 I.A. 178, and must, in consequence, be held to be valid."

Referring to *Sardar Inder Singh* and reiterating the principle laid down therein, this Court in *State of T.N. represented by Secretary, Housing Department, Madras* v. *K. Sabanayagam & Anr.,* [1998] 1 SCC 318, speaking through S.B. Majmudar, J., stated;

> "It is thus obvious that in the case of conditional legislation, the legislation is complete in itself but its operation is made to depend on fulfillment 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 does confer some legislative power on some outside authority and is therefore open to attack on the ground of excessive delegation."

In the case on hand also, the Act of 2000 as enacted by Parliament was *full* and *complete* when it left legislative chamber. There was, therefore, no question of delegation of legislative power by the legislature in favour of the executive. What was left to the executive was merely to decide whether to continue the Administrative Tribunal or to abolish it. The State Government, after considering the facts and circumstances decided not to continue the Tribunal which was within the power of the State Government and, hence, no objection can be raised against exercise of such power. The contention of the appellants, therefore, cannot be upheld.

The matter can be looked at from another angle also. As already indicated in the earlier part of the judgment, Article 323A is not self-executory. The said provision did not create or establish Administrative Tribunals. It was merely a permissive or an enabling provision allowing Parliament to make law to establish Administrative Tribunal if it wished to do so. Thus, there was no binding requirement on the part of the Parliament (or State Legislature) to create such a forum as contemplated by Article 323A of the Constitution of India. It also cannot be overlooked that the Administrative Tribunal in question was to be created for a particular State, i.e. State of Madhya Pradesh. Neither under Article 323A of the Constitution nor under the Administrative Tribunals Act, 1985, the Central Government could have created such Tribunal except in accordance with the provisions of sub-section (2) of Section 4 of the said Act. As already noted, the Central Government could exercise the jurisdiction, power and authority conferred on the Administrative Tribunal for the State by or under the said Act only "on receipt of a request in this behalf from any State Government". Essentially therefore, it was on the request made by the State of Madhya Pradesh to the Central Government that the power to create and establish

A Administrative Tribunal in the State of Madhya Pradesh was exercised by the Central Government and the Tribunal was established. We, therefore, see no objection in conferring the power on the State Government to continue or to abolish such Tribunal. In our considered opinion, there is no excessive delegation by Parliament to the State Government which would be hit either
B by the provisions of the Constitution or the law laid down in *In re: The Delhi Laws Act,* 1912 or other decisions of this Court.

The learned counsel for the appellants contended that for abolishing State Administrative Tribunal, the State of Madhya Pradesh took into account the report of the Arrears Committee (Malimath Committee). Even in the
C affidavit in reply, reliance was placed on the report of the said Committee. It was urged that this Court in *L. Chandra Kumar* did not fully endorse the views expressed by the Malimath Committee. Quoting certain recommendations on "functioning of Tribunals", the Malimath Committee specifically recommended that the theory of alternative institutional
D mechanisms should be abandoned. It also suggested that institutional changes should be carried out within the High Courts dividing them into separate divisions for different branches of law as has been done in England. According to the Committee, appointment of more Judges would be a better way of remedying the problem of pendency in High Courts.

E This Court, while dealing with the constitutional validity of Article 323A of the Constitution and ouster of jurisdiction of High Courts considered the report of the Committee and observed that "its recommendation is not suited to our present context". The Court, however, conceded that various Tribunals have not performed up to the expectation was "self-evident and
F widely acknowledged truth". But, the Court proceeded to state that "to draw an inference that their unsatisfactory performance points to their being founded on a fundamentally unsound principle would not be correct". According to the Court, "the reasons for which the Tribunals were constituted still persist; indeed those reasons have become even more pronounced in our times".

G

The endeavor of the learned counsel is to impress upon the Court that the reasons which weighed with the State Government in taking a decision to abolish the State Administrative Tribunal were illegal, non-existent, irrelevant and ill-founded. Once this Court has held that existence of such
H Tribunals is a "need for the day" and the observations of the Arrears

Committee could not be said to be well-founded, no action of abolishing the State Administrative Tribunal could be taken by the State Government. A

The contention of the learned counsel cannot be upheld. It is true that the State of Madhya Pradesh had considered the report of the Arrears Committee and the functioning of State Administrative Tribunal in the State of Madhya Pradesh, but it is equally true that when a request was made by the State of Madhya Pradesh to the Central Government for establishment of State Administrative Tribunal and the decision was taken by the Central Government to create such Tribunal and a notification was issued in 1988 and the Tribunal was established, the law governing the field was as laid down in *S.P. Sampath Kumar. L. Chandra Kumar* had not seen the light of the day. It was after the order of Reference in *R.K. Jain* v. *Union of India,* [1993] 4 SCC 119 that a Division Bench of this Court in *L. Chandra Kumar* v. *Union of India,* [1995] 1 SCC 400 referred the matter to a Bench of seven Judges concluding that "the decision rendered by five-Judge Constitution Bench in *S.P. Sampath Kumar* needs to be comprehensively reconsidered". It is also pertinent to note that seven-Judge Bench overruled *S.P. Sampath Kumar* and unanimously held that power, authority and jurisdiction of High Courts under Articles 226 and 227 cannot be taken away even by an amendment in the Constitution. Clause (d) of Article 323A (2) and Clause (d) of Article 323B (3) of the Constitution, therefore, were held *ultra vires.* The resultant effect of *L. Chandra Kumar* was that after an order is passed by State Administrative Tribunal, an aggrieved party could approach the High Court by invoking writ/supervisory jurisdiction under Article 226/227 of the Constitution of India. So much so that after the decision by the Administrative Tribunal, the aggrieved party was required to approach the High Court before approaching this Court under Article 136 of the Constitution. B C D E F

In this connection, it may be necessary to bear in mind the following observations in *L. Chandra Kumar:*—

> "We may add here that under the existing system, direct appeals have been provided from the decisions of all Tribunals to the Supreme Court under Article 136 of the Constitution. In view of our above-mentioned observations, this situation will also stand modified. In the view that we have taken, no appeal from the decision of a Tribunal will directly lie before the Supreme Court under Article 136 of the Constitution; but instead, the aggrieved G H

A party will be entitled to move the High Court under Articles 226/ 227 of the Constitution and from the decision of the Division Bench of the High Court the aggrieved party could move this Court under Article 136 of the Constitution."

B From the discussion hereinabove, it is clear that after the Constitution (42nd Amendment) Act, 1976, the Administrative Tribunals Act, 1985 came to be enacted by Parliament. The position prevailed at that time was the law laid down by the Constitution Bench of this Court in *S.P. Sampath Kumar.* Invoking sub-section (2) of Section 4 of the Administrative Tribunals Act, 1985, the State of Madhya Pradesh requested the Central Government C to constitute a Tribunal for civil servants in the State. It was also on the basis of pronouncement of law in *S.P. Sampath Kumar.* The notification was issued by the Central Government in 1988 and the State Administrative Tribunal was established for the State of Madhya Pradesh. At that time, as per well-settled legal position, decisions rendered by the Administrative D Tribunals constituted under the Act of 1985 were "final" subject to jurisdiction of this Court under Article 136 of the Constitution. No person aggrieved by a decision of State Administrative Tribunal could approach the High Court of Madhya Pradesh in view of Clause (d) of Article 323A (2) of the Constitution read with Section 28 of the Act of 1985 and the declaration of law in *S.P. Sampath Kumar.* If, in view of subsequent development of law E in *L. Chandra Kumar,* the State of Madhya Pradesh felt that continuation of State Administrative Tribunal would be "one more tier" in the administration of justice inasmuch as after a decision is rendered by the State Administrative Tribunal, an aggrieved party could approach the High Court under Article 226/227 of the Constitution of India and, hence, it felt that such tribunal F should not be continued further, in our opinion, it cannot be said that such a decision is arbitrary, irrational or unreasonable. From the correspondence between the State of Madhya Pradesh and Central Government as well as from the affidavit in reply, it is clear that the decision of this Court in *L. Chandra Kumar* had been considered by the State of Madhya Pradesh in arriving at a decision to abolish State Administrative Tribunal. Such a G consideration, in our opinion, was relevant, germane and valid. It, therefore cannot be said that the decision was illegal, invalid or improper.

It was also contended that there is interference with judicial functioning of the Tribunal by the Executive and such interference would be violative H of "basic structure of the Constitution" and would result in death knell of Rule

of Law. The counsel in this connection, placed reliance on a decision of this Court in *P. Sambamurthy & Others* v. *State of Andhra Pradesh and Another,* [1987] 1 SCC 362. In that case, *vires* of Clause (5) of Article 371D of the Constitution was challenged before this Court. Article 371D was inserted in the Constitution by the Constitution (32nd Amendment) Act, 1983.

The said clause read as under:-

> *"371D. Special provisions with respect to the State of Andhra Pradesh—*
>
> (5) The order of Administrative Tribunal finally disposing of any case shall become effective upon its confirmation by the State Government or on the expiry of three months from the date on which the order is made, whichever is earlier.
>
> Provided that the State Government may, by special order made in writing and for reasons to be specified therein, modify or annul any order of the Administrative Tribunal before it becomes effective and in such a case, *the order of the Administrative Tribunal shall have effect only in such modified form or be of no effect, as the case may be."*
>
> *(emphasis supplied)*

The reading of above clause makes it clear that it empowered the State Government to decide whether it would *confirm* the order, to *modify* it or even to *annul* it. Taking judicial notice of the fact that "almost invariably in every service dispute before the Administrative Tribunal" the State Government was a party, this Court noted with concern that the said party was granted ultimate authority to uphold or reject the determination of Administrative Tribunal. This Court, in the circumstances, held the provision unconstitutional and *ultra vires.*

Speaking for the Court, Bhagwati, C.J. observed:

> "It would be open to the State Government, after it has lost before the Administrative Tribunal, to set at naught the decision given by the Administrative Tribunal against it. Such a provision is, to say the least, shocking and is clearly subversive of the principles of justice. How can a party to litigation be given the

power to override the decision given by the Tribunal in the litigation, without violating the basic concept of justice? *It would make a mockery of the entire adjudicative process. Not only is the power conferred on the State Government to modify or annul the decision of the Administrative Tribunal starling and wholly repugnant to our notion of justice but it is also a power which can be abused misused."*

(emphasis supplied)

Putting the problem on a high pedestal, the Court added;

"This power of modifying or annulling an order of the Administrative Tribunal conferred on the State Government under the proviso to clause (5) is violative of the rule of law which is clearly a basic and essential feature of the Constitution. It is a basic principle of the rule of law that the exercise of power by the executive or any other authority must not only be conditioned by the Constitution but must also be in accordance with law and the power of judicial review is conferred by the Constitution with a view to ensuring that the law is observed and there is compliance with the requirement of law on the part of the executive and other authorities. It is through the power of judicial review conferred on an independent institutional authority such as the High Court that the rule of law is maintained and every organ of the State is kept within the limits of the law. Now if the exercise of the power of judicial review can be set at naught by the State Government by overriding the decision given against it, it would sound the death-knell of the rule of law. *The rule of law would cease to have any meaning, because then it would be open to the State Government to defy the law and yet to get away with it. The proviso to clause (5) of Article 371-D is therefore clearly violative of the basic structure doctrine".*

(emphasis supplied)

In our considered opinion, *P. Sambamurthy* has no application to the facts of the case. In that case, the Executive (Government), a party to the proceeding was authorized to interfere with a decision rendered by a quasi-judicial authority (Tribunal). Such a course cannot be allowed in a democratic country and in a judicial system governed by Rule of Law. It would totally

destroy the independence of judiciary. It was in the light of the said fact that the provision was held *ultra vires* and unconstitutional. A

In the instant case, there is no interference with a "judicial order" passed by a competent court or a Tribunal, but a "policy decision" has been taken by the State Government to abolish State Administrative Tribunal allowing aggrieved litigants to approach appropriate authority/court for ventilating their grievances. The ratio laid down in *P. Sambamurthy,* therefore, does not apply and the contention cannot be upheld. B

It was also contended that it is the Central Government which can issue a notification under sub-section (4) of Section 74 of the Act of 2000. Hence, even if it is assumed that the Tribunal can be abolished, the power has been vested in the Central Government. It is the Central Government which is required to issue directions for resolution of any matter relating to any body referred to in sub-section (1) of Section 74. Since no action has been taken by the Central Government, abolition of the Tribunal is illegal and unlawful. C D

On behalf of the State of Madhya Pradesh, however, it was submitted that the interpretation put forward by the appellants was not correct and reliance on sub-section (4) of Section 74 was misconceived and ill-founded. Sub-section (4) of Section 74 of the Act of 2000 has limited application and could be invoked in case there is dispute between the successor States, but not otherwise. "When both the States mutually agreed for a decision, the Central Government has neither any discretion nor any role has been given to the Central Government". The contention, therefore, has no force. E

Considering the provisions of sub-section (4) of Section 74, the High Court stated; F

> "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 G H

A 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 B 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 words "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 C 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* (emphasis supplied) after consultation with the Governments of successor States. Obviously if on any D matter relating to any body 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 E be taken only by mutual agreement between the successor States, therefore the issuance of "directions" by the Central Government under sub-section (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 F 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 provisions of sub-section (4) is only in the nature of further supplemental G ancillary, or consequential provisions to further the aims, objects and stopgap arrangement envisaged under sub-section (1) of 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 H of that body within a period referred to in sub-section (1)."

We fully agree with the interpretation of the High Court. In our judgment, the High Court was right in observing that Section 74(1) is not subservient to Section 74(4) of the Act and once the provisions of sub-section (1) of Section 74 of the Act are attracted and invoked, the provisions of sub-section (4) of Section 74 has no application. The contention of the appellants, therefore, has no force and has to be rejected.

It was also argued that even if this Court comes to the conclusion that sub-section (1) of Section 74 of the Act of 2000 is *intra-vires* and constitutional confirming the view taken by the High Court, the impugned action of abolishing State Administrative Tribunal is *mala fide* and malicious. For this, learned counsel referred to certain press reports wherein it had been alleged that a decision had been taken at the Cabinet Meeting of the State Government to abolish State Administrative Tribunal as the Chief Minister and all the Ministers were of the view that State Administrative Tribunal had granted stay in many transfer matters. The attempt on the part of the learned counsel for the appellants was that the action has been taken by the State of Madhya Pradesh because of adverse verdicts by the State Administrative Tribunal. In other words, according to the appellants, action of abolishing State Administrative Tribunal was taken because of "judicial orders" passed by the Tribunal which was not liked by the State Government. Such an action, submitted the learned counsel, cannot be sustained in law.

Now, it may be stated that there is no concrete material on record to show that the decision to abolish State Administrative Tribunal was taken because of orders passed by the State Administrative Tribunal. Except bald assertions by the appellants and Press cuttings, there is nothing to substantiate such allegations. On the contrary, sufficient material is available on record to show what weighed with the respondent-State in taking a decision to abolish the Tribunal. So far as allegations by the appellants are concerned, they were emphatically denied by the State of Madhya Pradesh by filing a counter-affidavit. Moreover, the Advocate General, appearing for the State of Madhya Pradesh placed chronological events in detail before the High Court which were 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 power.

(iv) On 3.4.2001 second letter from the Government of Chhattisgarh was received reminding that they were waiting fro 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 Government 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."

Thus, from the correspondence between the State of Madhya Pradesh and the Central Government and from various letters and communications and also from the decision which has been taken by the Cabinet, it is clear that the State Government took into account a vital consideration that after the decision of this Court in *L. Chandra Kumar,* an aggrieved party could approach the High Court, the object for establishment of the Tribunal was defeated. In our opinion, in the light of the facts before the Court, it cannot be said that the decision to abolish State Administrative Tribunal taken by the State of Madhya Pradesh can be quashed and set aside as *mala fide.*

It was finally submitted that even on merits, the action of abolition of State Administrative Tribunal was unwarranted and uncalled for. For that, the counsel invited our attention to facts and figures and stated that it is not that all the cases decided by the State Administrative Tribunal reached the High Court of Madhya Pradesh. In most of the cases dealt with by the State Administrative Tribunal, the parties accepted the orders of the Tribunal. It is only in few cases that the aggrieved party - public servant or government - approached the High Court. It was also stated that no survey has been made by the State. No reasons have been recorded why continuance of Tribunal was not necessary. There was non-application of mind to this very important aspect and on that ground also, the action deserves to be set aside at least with a limited direction to the State to reconsider the matter and take an appropriate decision afresh keeping in mind all relevant factors.

We are unable to uphold even this argument. In our judgment, if a decision is illegal, unconstitutional or *ultra vires*, it has to be set aside irrespective of laudable object behind it. But once we hold that it was within the power of the State Government to continue or not to continue State Administrative Tribunal and it was open to the State Government to take such a decision, it cannot be set aside *merely* on the ground that such a decision was not advisable in the facts of the case or that other decision could have been taken. While exercising power of judicial review, this Court cannot substitute its own decision for the decision of the Government. The Court, no doubt, can quash and set aside the decision, if it is illegal, *ultra vires*, unreasonable or otherwise objectionable. But that is not the situation here. To repeat, from the record of the case, it is amply clear that relevant, germane, valid and proper considerations weighed with the State Government and keeping in view development of law and the decision of the larger Bench of this Court in *L. Chandra Kumar,* a policy decision has been taken by the State Government to abolish State Administrative Tribunal. Parliament also empowered the State Government to take an appropriate decision by enacting sub-section (1) of Section 74 of the Act of 2000 and in exercise of such power, the State Government had taken a decision. The decision, in our opinion, cannot be regarded as illegal, unlawful or otherwise objectionable. The contention, therefore, has no force and has to be negatived.

For the foregoing reasons, Civil Appeal No. 5327 of 2002 deserves to be dismissed and is, accordingly, dismissed.

A In view of the above, Civil Appeal Nos. 8292-8295 of 2002 and Civil Appeal arising out of Special Leave Petition No.22648 of 2002 filed by the Union of India stand disposed of and Civil Appeal No. 5328 of 2002, Civil Appeal arising out of Special Leave Petition Nos. 23615-23616 of 2002, Writ Petition No. 369 of 2003, Writ Petition No. 374 of 2003 stand dismissed.

B In the facts and circumstances of the case, however, there shall be no order as to costs in all these matters.

V.S.S. Appeals/Petitions dismissed.