

1. The Authority for Advance Ruling (AAR) was in news recently. What is the mandate of AAR? Discuss. Bring out the significance of such institutions in reducing litigation.

अथॉरिटी फॉर एडवांस रूलिंग (AAR) हाल ही में खबरों में थी। AAR का जनादेश क्या है? चर्चा करें। मुकदमेबाजी को कम करने में ऐसे संस्थानों के महत्व को सामने लाएं।

Demand of the question:

It expects students to write about the authority of advance ruling and its mandate along with significance of such institution in reducing litigation.

Introduction:

ID Fresh Foods approached the Authority for Advance Ruling (AAR) in Karnataka to seek clarity on whether the preparation of whole wheat parotta and Malabar parotta should attract 5% GST. The Karnataka bench of AAR in its ruling differentiated between khakhra, plain chapati or roti and the parotta, and observed that ready-to-eat parotta needs additional processing by way of heating for consumption, and hence is liable for 18 percent GST.

Body:

Authority for advance ruling:

- Authority for Advance Rulings (AAR) is distinct quasi-judicial tribunal which delivers advance rulings in India regarding tax applicable.
- It started initially for foreign investments later on both residents and non residents could seek advance ruling where substantial tax impact involved.
- It is for both direct and indirect taxes. Central Board of Direct Taxes (CBDT), the apex organisation of the direct tax administration, issues circulars for advance ruling on direct taxes.
- Regarding indirect tax: As per CGST/SGST Law and UTGST law, 'advance ruling' means a decision provided by the authority or the Appellate Authority to an applicant on matters or on questions specified in CGST/SGST Act as the case may be, in relation to the supply of goods and/or services proposed to be undertaken or being undertaken by the applicant.
- The broad objective for setting up such an authority is to provide certainty in tax liability in advance in relation to an activity proposed to be undertaken by the applicant, attract Foreign Direct Investment (FDI), reduce litigation, pronounce ruling expeditiously in transparent and inexpensive manner.
- Authority for advance ruling' (AAR) shall comprise one member CGST and one member SGST/ UTGST. They will be appointed by the Central and State government respectively.

Mandate of AAR:

Advance ruling can be of two types on direct taxes:

- The tax administration issues public rulings to clarify a particular provision of the tax law for all or a large class, in the form of interpretative ruling or clarification. It is binding on the tax authorities, and taxpayers can rely on them if applicable to their facts. They are not binding on taxpayers.
- Authority of Advance Ruling also issues Private Rulings. These rulings are issued to a taxpayer regarding the tax treatment of a specific transaction. In India, the AAR, an authority independent of the tax administration, gives these rulings, which are typically made public albeit the identity of the taxpayer concerned is kept anonymous.
- The direct tax dispute resolution scheme Vivad se Vishwas would not cover disputes, including those pending before Authority for Advance Ruling (AAR).

Advance Ruling can be sought for the following questions of indirect taxes:

- Classification of any goods or services or both applicability of a notification issued under provisions of the GST Act(s).
- Determination of time and value of supply of goods or services or both.
- Admissibility of input tax credit of tax paid or deemed to have been paid.
- Determination of the liability to pay tax on any goods or services under the Act.
- Whether applicant is required to be registered under the Act.
- Whether any particular thing done by the applicant with respect to any goods or services amounts to or results in a supply of goods or services, within the meaning of that term.

Significance of AAR in reducing litigation:

- A major source of tax uncertainty is the lack of a clear and timely dispute resolution mechanism, especially an advance resolution procedure, which reduces the likelihood of tax disputes arising in the first place.
- Tax authorities try to avoid tax disputes by issuing public rulings; in which they clarify the application of specific tax provisions to all (or a class of) taxpayers. Beyond this, recognising that individual taxpayers may need specific guidance, tax administrations also provide advance rulings.
- Tax litigation take huge time in Indian courts, the proportion of cases resolved in favour of tax administration in India is only 11.5% as against global average of 65%. Therefore, system of advance rulings in India that eliminates reliance on lengthy appeal process and provides certainty to taxpayers in a reasonable period.
- For GST an applicant can apply for advance ruling even before taking up a transaction proposed supply of goods or services or in respect of a supply which is being undertaken.
- Even though, ruling of AAR don't have precedent value, it has persuasive value to avoid unnecessary litigation.
- If the applicant is aggrieved with the finding of the AAR, he can file an appeal with AAAR, similar for the concerned or jurisdictional officer. The CGST /SGST Act do not provide for any appeal against the ruling of Appellate Authority for Advance Rulings.

- However, regarding direct tax AAR, in the initial years, with timely and noteworthy decision making, the functioning of the authority addressed the needs of the taxpayers.
- The disposal rate was 80 percent in FY 2006- 07. From FY 2010-11 onwards the disposal rate came down as low as 6 percent in FY 2010-11 and 7 percent in 2014-15. Disposal rate remained in single digit after that except FY-17 even though number of new applications has reduced in recent five years and pendency has increased.

Original intention was to make the AAR ruling non-appealable by both the taxpayer and the tax administration. The actual situation now is that either party can institute an appeal against an AAR ruling as per Indian constitution, writ Jurisdiction may lay before Hon'ble High Court or the Supreme Court. The SC ruled that an appeal against an AAR ruling should be first made before the HC.

Conclusion:

Issue of ID food product is not one off, disputes about Dabur, Nestle and Marico also exposed confusion of categorisation of products. There is need of more widespread thinking and broad categorisation to avoid disputes. About direct tax AAR, there is need to increase bench, term of members and reduce vacancy to reduce pendency.

2. What are your views on the frequent directions issued by the courts to the central and state governments with respect to governance and administration? Is it a good practice? Critically comment.

न्यायालयों द्वारा केंद्र और राज्य सरकारों को प्रशासन सम्बंधित में मुद्दों में जारी किए गए निर्देशों पर आपके क्या विचार हैं? क्या यह एक सही है? समालोचनात्मक टिप्पणी करें।

Demand of the question:

It expects students to write about views about frequent directions issued by the courts to the central and state governments with respect to the governance and administration along with critical analysis about whether such practice is good.

Introduction:

Supreme Court directed Delhi government based on suo motu cognisance about treatment meted out to COVID-19 patients and the bodies of those who lost the battle with the disease. In recent time Supreme Court issued various orders and direction to states and centre about the response to the pandemic of COVID-19, which remains turf of administration and governance.

Body:

In State of Tamilnadu v K. Balu, the Supreme Court banned liquor shops within 500 m of highways, which was a legislative order. In Subhash Kashinath Mahajan case it amended the SC/ST Act. Supreme Court earlier fixed timings for bursting crackers on Deepavali, directed interlinking rivers and laid down regulations for the Board of Control for Cricket in India.

Case of judicial activism:

- Supreme Court being apex court in the country under article 142 of Indian constitution allowed passing any order necessary for doing complete justice in any cause or matter pending before it.
- Judicial activism makes the top court the most powerful Supreme Court in the world in words of former CJI PN Bhagwati.
- Instrument of PIL- Public Interest Litigation has done tremendous amount of good. It has practically tried to wipe away every tear of the underprivileged, disadvantaged and illiterate sections of the society.
- Progressive societal change led by judicial activism like women entry into temple and rights of LGBTQ community were long ignored by state.
- Many times inadequacy of the law or regulation in concerned matter obliges court to issue guidelines regarding. E.g. Vishakha guidelines issued by Supreme Court because there was no Sexual harassment at workplace act put in place.

However, the court is resorting more to judicial activism rather than judicial restraint, which is problematic. Recently, The Supreme Court asked Uttar Pradesh government to file a response on the quarantine norms being followed in the State.

- In positivist jurisprudence, the centre of gravity of the legal system is statutory law, i.e., law made by the legislature. It holds that lawmaking is not the job of the judges, but of the legislature. Hence, judges should be restrained and not activist in their approach.
- In view of the well-established principle of separation of powers of the three organs of the state, judges should not perform legislative or executive functions, and each organ of the state should remain within its own domain, in order to avoid chaos.
- Incursion on other's turf entails unpredictability in the law. In the process, some of the personal opinions of the judges metamorphose into legal principles and constitutional values.
- In a parliamentary democracy, citizens are represented by Members of Parliament. The Supreme Court was never envisaged to perform the role of an unelected, third legislative chamber.
- Of all the three organs of the state, it is only the judiciary that can define the limits of all the three organs.

The usage of judicial activism can be justified in very rare circumstances, such as in the Supreme Court's decision to strike down Section 377 of the Indian Penal Code.

Conclusion:

The Supreme Court should limit its usage of the sociological school of jurisprudence to only the most exceptional situations, and employ the positivist school as far as possible as three pillars of the state are equal and coordinate departments. They cannot encroach upon each other's powers

3. The mass exodus of migrant labourers and the resulting economic slump have brought in focus the need to create robust institutions that can handle such crises with more deft and compassion. Discuss.

प्रवासी मजदूरों के बड़े पैमाने पर पलायन और इसके परिणामस्वरूप आर्थिक मंदी ने मजबूत संस्थानों को बनाने की आवश्यकता को और अधिक उभारा है जो इस तरह के संकटों को अधिक निपुणता और करुणा के साथ संभाल सकते हैं। चर्चा करें।

Demand of the question:

It expects students to write about need of robust institution to keep track of migrant labourers to handle crisis times with more deft and compassion.

Introduction:

The COVID-19 crisis for India has also become a humanitarian one involving inter-State migrants on return journeys home racked by pain and suffering and no surety of any income going ahead. For a majority of migrant labourers, migration is either a livelihood accumulation strategy or survival risk reducing strategy whichever way we define the nature of migration.

Body:

Field studies indicate that the lead source States of internal migrants are Uttar Pradesh, Bihar, Rajasthan, Madhya Pradesh, Andhra Pradesh, Chhattisgarh, Jharkhand, Odisha, Uttarakhand and Tamil Nadu, whereas key destination areas are Delhi, Maharashtra, Gujarat, Haryana, Punjab and Karnataka. According to a UNESCO study, Surat at 58% has the highest percentage of migrant labour population in India, while the percentage of migrant population is 43% for Mumbai and Delhi.

Need of more deft and compassion towards migrant labourers:

- Lack of robust data about migrants in real time: According to the Census of India, 2011, more than 450 million Indians (37%) are internal migrants who change their residence within a country's national borders. About 30% of the migrants are youth aged 15-29 years and another 15 million are children. Women migrants are less represented in regular jobs and more likely to be self-employed than non-migrant women.
- Casual and informal nature of work: Domestic work has emerged as an important occupation for migrant women and girls. Facing relentless bouts of gender discrimination at home, and on the farms as wage workers, these

migrant women are forced into various forms of servitude in the domestic spaces of affluent city dwellers.

- Lack of social security benefits: In between migration and settlement for employment and livelihoods, footloose army of migrants are often denied welfare rights in their destination place and imposed debilitating transaction costs in case they decided to negotiate their citizenship rights.
- Second class citizen: Lack voting rights, own home, fear son of soil politicians and casual nature of work make them second class citizen. A long pending issue is portability of migrant workers' voting rights. The Election Commission of India is already working, so time has come to empower migrant workers so that they gather better bargaining power and political voice in the system.
- Food and job security: Another urgent issue is portability of the public distribution system (PDS) for migrant labourers and also allowing migrant labourers to use their NREGA job cards in any part of the country. This portability of NREGA will be a great relief, if any migrant labourer is in crisis like the pandemic, he or she can take up NREGA work at the destination site rather than returning home.

Reforms for institutional framework for migrant labourers:

- The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 is largely a regulatory law failing to incorporate welfare rights of the migrant labourers.
- The most urgent revision is to introduce a National Migrant Workers Commission at the Central level backed up by State level Migrant Workers Commissions. Also, we need to expand the definition of migrant labourer and include next generation skills like IT, mobile repair, financial services related works. Act needs to include provisions for State-supported skill training services for migrant labourers.
- The proposal to establish the Migration Commission must interface with and build upon the National Migrant Information System, set up by National Disaster Management Authority, to create a robust and dynamic database for labour mobility in India.
- The commission must take up the registration of migrants as an urgent task. The lack of a unique worker identification number has prevented frequently mobile inter-state migrants from accessing existing social welfare mechanisms such as the Building and Other Construction Workers board (BOCW). Shramik cards used by states for identification of such workers have provided limited success. A coordinated single national ID for access to multiple benefits could introduce fiscal efficiencies as well.
- Migration Commission should have powers to coordinate among multiple ministries of the government of India. Deliberations of the Working Group on Migration, which submitted its report in 2017, revealed the importance of inter-ministerial coordination in resolving critical issues.
- The Migration Commission must also act as a hub for inter-state negotiations in creating protocols for the safe mobility of labour back to worksites,

designing portability features in social welfare and reconciling fiscal issues that arise from portability.

- Other laws relating to workers must be synergised with the Inter-State Migrant Workmen Act. For instance, the Building and Other Construction Workers (Regulation of Employment and Conditions of Services) Act, 1996 should be integrated into the Inter-State Migrant Workmen Act. And it needs to be implemented by the Secretary of the Migrant Workers Commission.
- In this digital age, we must stress more digital administrative techniques such as smart cards and leverage JAM— Jandhan/Aadhaar/mobile payment infrastructure for portability of all.

Conclusion:

Migrant labourers are a formidable force in India's economic life. The government must look beyond the lure of political gestures that pacify hurt migrants and those voters outraged on their behalf. Instead, a Migration Commission is an opportunity to craft a well-planned long-term system to manage labour mobility in India.

