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Case Analysis of West Bengal V. Union of India [1964] 1 SCR 371

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Abstract

The researcher aims to study the usage of comparative law in the context of federalist principles in the instant case. Reliance has been placed primarily on secondary materials that include but are not limited to commentaries, journal articles, official proceedings, treatises and textbooks. The scope of the project is restricted to a doctrinal study of the usage of comparative law on constitutional federalism in the instant case and its consequences for the ultimate finding in the majority and the minority opinions. Considering the off-the-wall nature of the issue before the court and the socio-political background of the time, the research attempts to understand the judicial approach towards comparative constitutional law in the instant case. Further, the researcher endeavours to examine whether the judicial excursion into federalist principles of foreign constitutions of certain commonwealth countries with a richer tradition was a mere digression or a useful exercise in light of the final pronouncement.

Keywords: *Constitution of India, Federalism, Comparative Law, Schedule Vii, Article 246, List III, Subba Rao.*

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INTRODUCTION

Comparative law provides insights into the foundation of the systems and offers new perspectives that lead to useful questions against the background of the systems compared. [1] It is important to stay clear of 'deformation professionnelle' while studying comparative law. Otherwise, a cognitive bias is created, and it deludes one into seeking solutions from comparison. That is problematic because there is no 'one federal system' [2] and each federal framework has its own sociological, cultural, ethnic and historical roots. Comparative law can only supply ideas that aid in understanding the systems in all their complexities. The question of federalism that has tormented courts and academicians for decades is the allocation of rights between the individual States and the federal government. [3] Indian Government took on the role of a socialist democracy and that has resulted in a constant conflict between the demands of the social revolutionary strand of the seamless web with the right to property and other constitutionally protected rights with, additionally, critical implications for the democracy strand. [4] One of the landmark cases that help us explore the reaches of comparative law in proposing solutions to this conflict is *State of West Bengal v. Union of India*. [5] This project is an endeavour in understanding the approach taken in the case towards comparative law on constitutional federalism.

CASE SYNOPSIS

The case involves the Coal Bearing Areas (Acquisition and Development) Act, 1957 enacted by the Parliament to empower the Central Government to acquire land and rights over land. The dispute revolves around two major questions: -

1. Whether the impugned Act seeks to authorize the Central Government to forcibly acquire lands belonging to the State Governments and,
2. If yes, whether the same is within the legislative competence of the Parliament.

Sections 4 and 7 of the Act were under challenge. Sinha C.J. pronounced the majority judgment and Subba Rao J. delivered the

dissenting opinion. On the question of legislative competence of the Parliament, both, the parties and the Hon'ble Justices made references to the relatable jurisprudence of foreign constitutions. The issues of comparative constitutional law can be framed as follows: -

1. Whether the fact that the Indian Constitution does not expressly provide for the acquisition of State property unlike the Australian Constitution indicates that it was not the intent of the framers to confer that power upon the Centre? Or can it be understood as an implied power?
2. Whether the doctrine of immunity of instrumentalities that originated in the context of the US Constitution can be resuscitated and used as an aid to interpret the division of legislative powers between the Centre and the States? Or has it faded away after its applicability was categorically rejected in the contexts of the Canadian and Australian Constitutions?

MAJORITY OPINION

The Majority judgment discusses the relevance of the text of the Preamble and the Statements of Objects & Reasons as aids to interpretation but dismisses their utility and finds that on true construction the impugned provisions authorise the Central Government to acquire the coal mines vested in the State of West Bengal. On the second question, Sinha J. refers to Entry 42 in List III of the VII Schedule to the Constitution read with Art. 246(3) where power to legislate in respect of acquisition and requisition of property is conferred upon the Parliament as well as the State Legislatures. This power was found to be exercisable by the Parliament in respect of all property, privately owned or State owned.

The first level argument advanced by the State of West Bengal was that the Union cannot exercise this power against the State Government owned properties since it is not expressly provided for in the Constitution. Sinha C.J. brushes aside this contention by referring to the American Constitution that doesn't contain any express provisions but has a rich tradition of judicial practice that has upheld the power of the Federation to make laws that have a 'direct impact' upon the State's right to property. [6] He buttresses his finding by referring to the judicial position in Canada that allows the Federation to acquire provincial crown lands. [7] Hence, if the other provisions of the Constitution allow such amplitude of legislative power to exist, the mere lack of an express provision cannot be the reason to defeat it.

The State of West Bengal further argued that such an exercise of power would violate federalist principles that make the Indian Constitutional framework. Sinha C.J. invokes the express provision in the Australian Constitution context provided under s. 51(31) of the Commonwealth of Australia Act, 1900 that clearly empowers the Commonwealth to acquire the property of States, if needed for a Commonwealth purpose, upon payment of compensation. Hence, truer federations- where larger power vests in the component units than in the Union- have comprehended the power of eminent domain to subsume the power to expropriate State owned property.

It was held that our Constitution is not of a true or a traditional pattern of federation. [8] Sinha C.J observed that in our Constitution the supreme authority of the Courts to interpret the Constitution and to invalidate action violative of the Constitution is to be found in full force. The exercise of powers legislative and executive in the allotted fields is hedged in by numerus restrictions, so that the powers of the States are not coordinate with the Union and are not in many respects independent. The political sovereignty is distributed between the Union and the States with greater weightage in favour of the Union.

Sinha C.J. further points out that the distribution of powers between the Centre and the States is based on the relationship between the Centre and the States under the Government of India Act, 1935. Though the Provinces were autonomous within the spheres allotted to them and there existed a system of distribution of property and assets between the Central Government and the Provinces under Part III of Ch. VII in almost the same terms as is found in the corresponding Arts. 294 and

298 of the Constitution, it was not considered an infraction of the autonomy of the Provinces to vest such a power in the Central Government.

Sinha C.J. concludes by saying that the exclusive power of the Parliament to make laws with regard to mine will be virtually ineffective if it is disempowered to legislate in a manner that affects property vested in States. He adds that this could not have been the intent of the Constitution makers. Otherwise, the effective exercise of the power to legislate on this allotted field will depend upon the consent of the States in which mines are situated.

Seervai criticises the majority judgment on its lack of satisfactory discussion on Federalism and Sovereignty. He believes that a better approach would be to consider the so-called "unitary" features independently and to show them to be present in admittedly federal constitutions. [9] Sinha C.J. pointed out the absurd consequences of holding that fundamental rights are not available to a State. He further said that there is at present no constitutional doctrine or principle which invalidates a legislative act even if the power conferred by it is capable of being abused.

The court had to examine the legislative competence of the Parliament to enact a law for compulsory acquisition by the Union of land and other properties vested in or owned by the state and the sovereign authority of states as distinct entities. The Supreme Court held that the Indian Constitution did not recognize the principle of absolute federalism. It laid down the characteristics that demonstrate that the Indian Constitution is not a "traditional federal constitution:"

1. There is no separate constitution for each state;
2. The constitution is the supreme document which governs all states;
3. The constitution is liable to be altered by the Union Parliament alone and the units of the country and the states have no powers to alter it;
4. The distribution of powers is to facilitate local governance by the states and the national policies to be formulated at the centre;
5. The constitution provides the powers to the courts to invalidate actions in violation of the constitution.

The Supreme Court held that both the legislative and executive power of the states is subject to the relevant powers of the Union. The sovereignty of the Indian nation is vested with the people of India and political power is distributed between the centre and the states with greater powers for the centre. [10]

Jagat's article [11]

Constitution cannot be regarded as strictly federal, [12] though politically federalism and multi-lingual" [13] political structure may at times give the appearance of being significant features of public life in India. Because that is so, the normal assumptions of a federal system are not necessarily applicable to India. Indeed, the cause of democracy which requires a government to be for and near the people is better served by emphasising administrative devolution properly supervised and supplemented by a very careful "democratic decentralisation " at the local village or town level and encouraging people to come forward and participate in the decision-making process at all levels so far as is possible rather than by stressing the "legalism" of federalism at the central-regional relational level.

In State of Bengal v. Union of India (A.I.R. 1963 S.C. 1241; Subba Rao J., dissenting) the Supreme Court held that the distribution of powers (legislative and executive) does not support the theory of full sovereignty in the states so as to render it immune from the exercise of legislative power of the Union Parliament, particularly in relation to Union acquisition of property of the states. Similarly, when Professor K. C. Wheare terms the Indian Constitution as "quasifederal" (Federal Government, 1963, pp. 26-28), he is in effect saying that there are several features in it which modify the federal principle.

Then distribution of power between the centre and the regions is in itself not crucial to determining the actual character of the

constitution. For the actual sharing of power may vary greatly from one country to another. Hence attempts at classifying constitutions into familiar pigeon-holes are bound to be self-defeating (cf. S. A. de Smith, " Legislatures under Written Constitutions," op. cit. p. 228).

Discussion on foreign constitutions

"Any definition of federal government which failed to include the United States would be threby condemned as unreal." [14] In order to be called federal it is enough if the federal principle is the predominant principle in the Constitution. [15] The law of the Constitution is one thing; the practice is another. [16] The Canadian Constitution has unitary features, but it works predominantly on federal principles. [17] Seervai respectfully disagrees. [18]

A power essential for the existence of federal government cannot be said to impair the federal principle. [19] The powers granted in the exclusive Union List and in the concurrent list cover almost all subjects of importance and what is left to the exclusive authority of the States tends to be of subordinate concern. [20-23]

CONCLUSION

K.C. Wheare who described India as a quasi-federal State has said that "Indian Union is a unitary State with subsidiary federal features rather than a federal State with subsidiary unitary features." Granville Austin concurs, and he says that Indian federation is a new kind of federalism that is tailored to meet Indian's peculiar needs. Further, Prof. Sawer argues that a federal situation clearly existed in India before it adopted a federal Constitution. But constitutional labels can misguide our senses. Federalism depends on certain specific qualities and characteristics that manifest themselves in the functions of the federation. Labels like quasi-federal, merely obscure the reality of the system. If constitutionalism can be considered as existing n a spectrum that admits diverse degrees of compliance with a constitution, or different degrees of constitutional efficacy, India is indeed a 'federal' State.

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