

CASE COMMENT: BHIKAJI NARAIN DHAKRAS & ORS. VS. THE STATE OF MADHYA PRADESH & ORS. 1955 AIR 781

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Abstract

Bhikaji Narain Dhakras v. St of Madhya Pradesh²² case was responsible for the utterance of doctrine of eclipse as it was formally grasped by the S.C dealing with the validation of Pre - constitutional laws being confront and tested as Constitutional. To eliminate the inconsistency of certain laws which came into existence before the enforcement of the constitution with PART III ,the doctrine of eclipse acted as the executive & assess the legitimacy of those laws by ensuring that any pre constitutional law which is inconsistent with the fundamental Rights is not invalid or void ab initio the law only overshadow by the fundamental rights and remain inoperative but not dead altogether & the conflict can be removed and reinforced by the constitutional amendment.²³

I. Introduction: -

The doctrine of eclipse was officially created in this case. Berar motor vehicle act, 1947 empower government to take over motor transport business, this section became violative of article 19, so article 19 eclipsed these sections, later due to amendments in article 19 and those sections were no more in violative of article 19, so those sections will become active again.

II. Background Of Judgement: -

Supreme Court held that the effect of the amendment was to remove the shadow and to

make the impugned act free from all blemishes and infirmity. This law was merely eclipsed for a time being by the fundamental right. As soon as the eclipse is removed the law begins to operate from the date of such removal.²⁴

The pre-constitutional law is affecting the fundamental rights of the citizen of India and the issue arose that whether under article 13 of Indian constitution the supreme court can question existing law or not. The fundamental rights are given to citizen of India through the constitution and restricted with the restrictions in the same article. Article 19 clauses (2) was amended and made expressly retrospective through the first amendment act, 1951 and where article 19 clauses (6) was amended but not made retrospective. Therefore, it brings out the outline that the impugned Act is subjective to the pre-amended reasonable restrictions under Article 19(6). The case was filed on 1955 but the Fourth Constitutional Amendment, 1954 (which amends Article 31 of the Constitution of India) came into force well before the petition. Thus, the present case dealt with the nature of the C.P and Berar Act, 1947 and its consistency with Part III of the Constitution of India. Most importantly, the influences of the Constitution Amendment Acts were also critically analysed.

III - Facts

C.P Transport Services and Provincial Transport Company Ltd. are companies situated in Madhya Pradesh. In this case the provision of CP AND BERAR MOTOR VEHICLES ACT 1947 was in

²² BHIKAJI NARAIN DHAKRAS & ORS. V. THE STATE OF MADHYA PRADESH & ORS., AIR 781 1955

²³ INDIA CONST. ART. 19, amended by THE CONSTITUTION (first amendment) act, 1951.

²⁴ Legal service India, <https://www.legalserviceindia.com/legal/article-4535-dctrine-of-eclipse.html> (last visited April 25,2023)

questioned and authorised state government to make entire motor transport business to the exclusion of private operator. after commencement of Indian constitution, the provision violated article 19 clause (1) sub clause (g) which provides for freedom of trade and commerce. The provincial government was authorised in taking over the entire operation of road transport to compete or create monopoly by taking over, but with the First Amendment 19 (6) came into existence that gave the exact power to the state government. The question over the validity of such laws was raised²⁵.

VI – Issues:-

A) Whether the C.P and Berar Amendment Act, 1947 which amends the Motor Vehicles Act, 1939 is constitutionally valid?

B) Whether the impugned Act is violative of Article 19(1)(g) of the Constitution of India?

C) Whether the reasonable restrictions under Article 19(6) include prohibition and monopoly by state?

D) Whether the First and Fourth Constitutional Amendment Acts have retrospective effects?

V – Both Parties Argument: -

A) Contention of the Petitioner:

Since the contested Act violates Part III of the Indian Constitution and Article 19(1)(f) of the Indian Constitution, it must be unconstitutional.

Because the disputed Act was unconstitutional, the law (imputed Act) was declared invalid.

The First and Fourth Constitutional Amendments, which went into effect on April 27, 1955 and April 27, 1951, respectively, are not retroactive and cannot be used in the current situation²⁶.The impugned Act must be held unconstitutional as it contravenes Part III of the constitution of India.

²⁵ Anirudh thakur, case comment, volume 2 [Indian journal of contemporary legal ana social issues] page 2.

²⁶ Legal service India, <https://www.legalserviceindia.com/legal/article-4535-doctrine-of-eclipse.html> (last visited April 27,2023)

B) Contention of the Respondent:

Even though the contested Act violated Article 19(1)(f) when the Constitution first went into effect in 1950, this error had been corrected by 1951 due to the First Constitutional Amendment.The reasonable constraints outlined in sections 2 to 6 of Article 19 of the Indian Constitution serve as a limit on the fundamental rights granted to citizens but are not absolute.

Article 19(6), which was the provision that placed limitations on a citizen’s basic freedom to engage in any profession, occupation, trade, or business, was changed by the First Constitutional Amendment Act.The legitimacy of the contested Act must be sustained because it does not violate any basic rights, and the petitions must be denied.

VI - Judgement: -

A) RATIO DECIDENDI

The judgement based on the construction of article 13 of Indian constitution. In keshavan Madhava menon v. the state of Bombay²⁷ , the majority decision of the apex court held that the word “void” is not new and undiscussed subject matter. The law which is inconsistence with the part III of the constitution of India declared as void, not the act becomes void in all purpose or all time for all persons. Inconsistent law governs the past transactions and enforce the rights and liabilities which arose when the law was in force even against the non-citizens. The doctrine of eclipse was founded through this case.

Article 19 clause (6) of Indian constitution was not retrospective and it is not applicable for the rights and liabilities that arose from 1950 after the amendment, the restriction is applicable to all citizen of India. The state having power to make notification which declaring the intention of government to take over all bus routes on 4th February ,1955.The contention about the

²⁷ Keshavan Madhava Menon vs The State Of Bombay on 22 January, 1951 AIR 128, 1951 SCR

fundamental right to property which is affected by act in question, the court stated that act in question is protected by the fourth constitutional amendment act, 1955 which amended article 31. The act which is in question was inconsistent with article 31 when constitution was made.

B) OBITER DICTA

The court said that the C.P. and Berar Motor Vehicles (Amendment) Act, 1947, which amended the Motor Vehicles Act, 1939, gave the province government permission to nationalize the road transport business and to conduct it exclusively for its own benefit in *Bhikaji Narayan v. St. of Madhya Pradesh*²⁸. Since there were no fundamental rights available to the public in 1947, the act was entirely within the province's legislative purview. i.e., prior to the date of the constitution. However, as soon as the constitution went into effect, the Act came into conflict with the basic freedom of the citizen given by Article 19(1)(g) to engage in any trade or business, and as a result, the Act was declared void under Article 13(1). But the Constitution (1st Amendment) Act of 1951, which added, among other things, subclause (ii) to clause (6) in Article 19, fixed this flaw in the Act by allowing states to conduct any trade or activity to the partial or total exclusion of their inhabitants.

In *Shagir Ahmed* case, the Uttar Pradesh act was similar to C.P and Berar act, 1947. The case was presented before court but in the present case the petitioners failed to take reasonable action within time. According to this case the word "restriction" should be constructed as limitation, the government is allowed to monopolize a particular field in the interests of public suitable restrictions included the power of state to enter into competition. According to the case *Deep Chand v. State of Uttar Pradesh*²⁹ the courts still follow the doctrine of eclipse

which is evident to section 497 of Indian penal code. If the amendments are against the basic structure then the law will be held invalid.

VII - Conclusion: -

It is clear from a comparison to the current situation that the power of the Parliament has changed significantly. The Court also noted that the Act, which had been formed prior to the constitution's start, was authorised by the constitutional revisions that had been made. Additionally, the degree of prevailing unconstitutionality was examined with regard to the act. There was no proper consideration given to the government's broad authority to change the constitution and make new laws in accordance with such amendments, despite the fact that Part III of the constitution was thought to be the only yardstick to assess the legality of the Act. The petitioners' failure in this instance, however, was brought on by their own tardiness rather than the political environment.

The writ petitions have the power to even though there is no restriction. The petitioners brought this action after learning about the *Shagir Ahmed* case, which involved the C.P. Berar Act, a 1947-like UP Act. However, the case was filed prior to the amendments, whereas the current case was filed much later than the amendments. The judge argued that the term "restriction" might be taken to mean "limitation" and that if the government gets monopoly status in the road transport industry, that would violate professional freedom. The constitutional amendments gave governments the ability to monopolize a certain industry in the interest of the general public and with appropriate constraints.

However, in this case the petitioners' failure was brought on by their own delay rather than the political environment. Although there is no time limit, the writ petitions must be filed in a timely manner to create a valid cause of action. Despite the fact that the Constitutional modifications were not retroactive, the Act's

²⁸ *BHIKAJI NARAIN DHAKRAS & ORS. V. THE STATE OF MADHYA PRADESH & ORS.*, AIR 781 1955

²⁹ *Deep Chand vs The State Of Uttar Pradesh* ... on 15 January, 1959 AIR 648, 1959 SCR Supl. (2) 8

legitimacy was upheld by the filing of the petitions after a month.³⁰

VIII - Related Case Laws: -

- A) Shagir Ahmad v. The State of U.P. & Others, [1955] 1 SCR 70
- B) Keshavan Madhava Menon v. The State of Bombay, 1951 Cri LJ 680
- C) Deep Chand v. State of Uttar Pradesh and Ors., AIR 1959 SC 648
- D) Keshavananda Bharati v. State of Kerala and Anr., (1973) 4 SCC 225
- E) P.L. Mehra, Etc. vs D.R. Khanna Etc. on 2 September, 1970, AIR 1971 Delhi 1
- F) The State Of Gujarat And Another vs Shri Ambica Mills Ltd., ... 1974 AIR 1300, 1974 SCR (3) 760

³⁰ Legal service India, <https://www.legalserviceindia.com/legal/article-4535-doctrine-of-eclipse.html> (last visited April 27,2023)