

Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

Date: 9th - 15th July 2023

1. Wipro Enterprises restrained Using 'EVECARE' Trademark: A Case of Passing Off.....	1
2. Publicity and Privacy Rights Not Heritable.....	2
3. Supreme Court Emphasizes Principles of Natural Justice for the National Green Tribunal.....	2
4. Legislation Cannot Nullify Court Directions Without Altering Underlying Basis.....	3
5. State Action, Even in Contracts, Must Comply with Article 14.....	4
Weekly Focus	
6. Case of the Week: State of Madras v Smt. Champakam Dorairajan (1951).....	4
PYQ - Repeated Question.....	5

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1. Delhi High Court Restrains Wipro Enterprises from Using 'EVECARE' Trademark: A Case of Passing Off

The Delhi High Court recently (Himalaya Wellness Company & Ors vs Wipro Enterprises Private Limited) issued an interim order restraining Wipro Enterprises from using the trademark 'EVECARE' for its intimate hygiene wash for women or any other product. The court's decision came in response to a trade mark infringement and passing off suit filed by Himalaya Wellness Company, which has been selling its uterine tonic under the same mark since 1998.

The court acknowledged that Himalaya has been using the 'EVECARE' trademark for 24 years, establishing significant goodwill and reputation associated with the mark. In contrast, Wipro only launched its product around August 2021. The court opined that Wipro's adoption of the identical mark without conducting due diligence appeared to be a misrepresentation, lacking bona fide intentions.

The court noted that a basic search, such as a Google search or Trade Marks Registry search, would have revealed the existence of Himalaya's product with the same trademark. Considering that both Himalaya's uterine tonic and Wipro's vaginal wash are similar products targeting women, the court opined that Wipro's use of the identical mark could cause confusion, deception, and injury to Himalaya's goodwill and reputation.

Wipro contended that its adoption of the mark was bona fide and that the two trademarks were registered under different classes (class 5 for Himalaya's medicinal product and class 3 for Wipro's cosmetic product). The court addressed Wipro's argument citing Section 27(2) of the Trade Marks Act, 1999, which states that even if both marks are registered, an action for passing off can still be maintained.

Considering the evidence presented, the court held that a prima facie case of passing off had been established against Wipro. Consequently, it issued an interim order restraining Wipro from using the 'EVECARE' mark.

2. Publicity and Privacy Rights Not Heritable

In **KRISHNA KISHORE SINGH v. SARLA A SARAOGI & ORS.**, the Delhi High Court declined to grant an injunction against the further telecast of the movie "Nyay: The Justice," which is based on the life of late Bollywood actor Sushant Singh Rajput. The court dismissed the application for an interlocutory injunction filed by Sushant Singh Rajput's father in his lawsuit against the film's producers and director. The court observed that the rights to publicity and privacy are not inheritable and cease to exist upon the death of the individual.

Justice C Hari Shankar noted that the movie "Nyay: The Justice" is based on information already in the public domain, which was never challenged or questioned at the time of its dissemination. Therefore, seeking an injunction against the movie after its release and viewership by thousands of people would infringe upon the defendants' right to freedom of speech and expression under Article 19(1)(a) of the Indian Constitution. The court emphasized that the rights of publicity and privacy are personal and do not pass to the deceased individual's heirs.

The court rejected the contention that telecasting the film would prejudice the right to a fair and unbiased trial concerning the circumstances of Sushant Singh Rajput's death. It expressed confidence in the legal system and stated that the judiciary would not base its decisions on the facts depicted in the movie.

Justice Shankar emphasized that the law should not act as a tool for promoting celebrity culture. While recognizing and protecting rights arising from personal achievements, the court stated that conferring additional rights based solely on celebrity status would be contradictory. The court cited examples of child actors from the movie "Slumdog Millionaire" and cautioned against granting legal rights to something as fleeting as celebrity status.

While the court ruled against injunctioning the movie, it preserved the right of Sushant Singh Rajput's father to maintain and prosecute the lawsuit for claiming damages from the film's producers and director. The court clarified that this aspect of the case could proceed.

3. Supreme Court Emphasizes Principles of Natural Justice for the National Green Tribunal

The Supreme Court recently held that the National Green Tribunal (NGT), as an adjudicatory body, must adhere to the principles of natural justice. The court stated that if the NGT intends to rely on an expert committee's report or any other material, the concerned parties must be informed in advance and given an opportunity to discuss and rebut the findings. The ruling came in response to a batch of appeals against an order passed by the NGT, which had directed certain thermal power plants to take remedial measures for air pollution control and fly ash disposal.

The Division Bench, in *Singrauli Super Thermal Power Station v. Ashwani Kumar Dubey*, emphasized that the NGT is a judicial body and exercises an adjudicatory function. As part of this function, the NGT must comply with the principles of natural justice, especially in an adversarial system. The court highlighted that the NGT, although a special adjudicatory body established by an Act of Parliament, must operate in accordance with the law, including Section 19(1) of the NGT Act, which requires compliance with the principles of natural justice.

Referring to the "official notice" doctrine, the court emphasized that parties should be informed of the materials relied upon by the authority and be given an opportunity to explain or rebut them. The NGT should disclose in advance any expert committee reports or relevant materials to allow for discussion and rebuttal. The court stated that if the NGT intends to rely on factual information from a committee report, it must be disclosed to the parties, who should then be given a reasonable opportunity to present their observations or comments.

Due to the non-compliance with the principles of natural justice, the Supreme Court set aside the NGT's order and remanded the matter back to the tribunal. The NGT was instructed to reconsider the case from the stage of the expert committee's recommendations, allowing the parties an opportunity to present their objections.

4. Legislation Cannot Nullify Court Directions Without Altering Underlying Basis

In *Dr. Jaya Thakur v. Union of India & Ors*, the Supreme Court reaffirmed that a legislative act cannot nullify a court judgment without addressing its underlying basis. The court stated this while considering the extensions granted to the term of Sanjay Kumar Mishra, the Director of the Enforcement Directorate (ED). The Union Government had extended his tenure twice, contrary to a Supreme Court direction in the case of *Common Cause vs Union of India*. The court emphasized that legislative action can only nullify a judgment by removing its basis or rectifying defects in the law, but a mere nullification of a judgment is unconstitutional.

The bench, comprising Justices BR Gavai, Vikram Nath, and Sanjay Karol, referred to various precedents and observed that a legislative act can nullify the effect of a court judgment by altering its basis or curing defects in the law, even retrospectively. However, an enactment that solely nullifies a judgment is deemed unconstitutional.

- The court emphasized that such legislation should not transgress constitutional limitations, infringe upon judicial power, violate the principle of separation of powers, the rule of law, or the fundamental rights guaranteed by the Constitution.
- The judgment highlighted that retrospective amendments must be reasonable and not arbitrary, and they should address the defects pointed out in the law to remove the basis of the judgment. However, nullifying a court directive through legislation is impermissible, as it amounts to an intrusion into the judicial power and violates the principle of separation of powers, as well as Article 14 of the Constitution.

The court emphasized that the specific mandamus issued in the Common Cause case, directing that Mishra should not be given further extensions, was binding on both the Union Government and Mishra. As parties to the case, they were obligated to comply with the mandamus.

Therefore, the court held that the extensions granted to Mishra's term were illegal and breached the mandamus issued in the Common Cause judgment.

5. State Action, Even in Contracts, Must Comply with Article 14

The Supreme Court, in *Madras Aluminum Co. Ltd. vs Tamil Nadu Electricity Board*, has held that state action, even in the contractual realm, must adhere to the principles of Article 14 of the Constitution. The court emphasized that the fact that a dispute arises within a contractual framework does not exempt the state from its obligation to comply with Article 14.

In this case, **Madras Aluminum Co. Ltd.** had filed an application to reduce its contracted maximum demand for electricity to 10,000 KVA, effective from January 27, 2002. The issue raised in the appeal was whether the delay in processing the application could be classified as an arbitrary and unreasonable act.

Considering the facts of the case, the court observed that the reduction to 10,000 KVA was agreed upon and a new agreement was entered into in July 2004, after a significant period of time. The court also noted that other applications for reduction were considered within a reasonable period, and no valid reason was provided for the delay in processing the appellant's application.

The appellant had diligently followed up with the authorities to effectuate the reduction. Additionally, the appellant was unreasonably asked to pay for unutilized electricity beyond a reasonable period.

In light of these findings, the court held that the state's action was unreasonable and arbitrary.

6. Case of the Week: *State of Madras v Smt. Champakam Dorairajan (1951)*

State of Madras v Smt. Champakam Dorairajan was a landmark case heard by the Supreme Court of India in 1951. The case dealt with the issue of discrimination in admission to educational institutions based on caste or religion.

Background:

The Madras government had implemented a reservation policy that reserved a certain percentage of seats in medical and engineering colleges for different communities, based on their caste and religion. Smt. Champakam Dorairajan, a qualified candidate who belonged to a non-reserved community, applied for admission to a medical college but was denied a seat due to the reservation policy. She challenged the policy as being unconstitutional and violative of her right to equality under Article 15(1) of the Indian Constitution.

Legal Issue:

The central issue in the case was whether the reservation policy violated the right to equality guaranteed under Article 15(1) of the Constitution.

Supreme Court's Decision:

The Supreme Court, in a majority judgment, held that the reservation policy of the Madras government was unconstitutional and violated the principle of equality. The court reasoned that the policy, by providing separate treatment to individuals based on caste and religion, created discrimination and denied equal opportunities to qualified candidates. The court held that Article 15(1) prohibits any discrimination on the grounds of religion, race, caste, sex, or place of birth.

Significance of the Case:

1. Overturned the concept of communal or caste-based reservations: The decision in this case overturned the prevailing practice of providing separate reservations based on religion or caste. It established that any reservation policy should be based on backwardness, economic criteria, or other valid grounds, rather than religious or caste considerations.
2. Paved the way for the First Constitutional Amendment: Following the Supreme Court's decision, the Indian government introduced the First Constitutional Amendment in 1951, which inserted Article 15(4) and Article 16(4) into the Constitution. These amendments allowed the state to provide reservations for socially and educationally backward classes, Scheduled Castes, and Scheduled Tribes, subject to certain limitations.
3. Clarified the interpretation of the right to equality: The case clarified the scope and interpretation of the right to equality under Article 15(1) of the Constitution. It established that the right to equality prohibits discrimination based on religion, race, caste, sex, or place of birth.
4. Emphasized the importance of fundamental rights: The case highlighted the significance of fundamental rights in ensuring equality and justice in Indian society. It underlined the responsibility of the judiciary to safeguard these rights and strike down discriminatory laws or policies.

In subsequent years, the Indian Constitution was further amended, and various judgments were delivered to address the issue of reservations and affirmative action in India. *State of Madras v Smt. Champakam Dorairajan* played a pivotal role in shaping the discourse on reservations and equality in the country.

PYQ - Repeated Question**Q: How is criminal breach of trust different from Criminal Misappropriation of Property?**

Criminal Breach of Trust (Section 405-409) and Criminal Misappropriation of Property (Section 403) is offence against property under IPC provisions. The offenses have different definitions, elements, and conditions that distinguish them from each other. Their difference can be indicated as below

Basis of Difference	CBT	CMP
Entrustment	Involves entrustment of property, which means the person	Involves taking possession of property without any legal right or

	committing the offense had legal possession or control of the property.	entrustment. The person committing the offense had no legal authority over the property.
Position of trust	The offender must be in a position of trust, such as a guardian, trustee, agent, or servant.	The offender does not need to be in a position of trust. Any person who comes across lost or mistakenly delivered property can commit this offense.
Intention	The offender must have the intention to cause wrongful loss to the owner or any other person and wrongful gain to himself or any other person.	The offender must have the intention to dishonestly take possession of the property and not make reasonable efforts to return it to its rightful owner.
Initial possession of property	The accused initially has legal possession or control of the property due to entrustment.	The accused initially has no legal possession or control of the property, but later acquires it dishonestly.

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