

Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

20th May - 26th May 2024

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ICJ Orders Israel to Halt Rafah Offensive

The International Court of Justice (ICJ) has issued a directive for Israel to cease its military offensive in Rafah and to facilitate the opening of the Rafah crossing for humanitarian aid. The decision, delivered by ICJ President Nawaf Salam, comes in response to the worsening humanitarian crisis in the Gaza Strip, which the court highlighted in its January 26, 2024, order and reiterated in its March 28, 2024, order.

The ICJ's order highlights the dire situation in Gaza, noting that conditions have deteriorated significantly since the previous rulings. The court's decision was supported by 13 judges, with only two dissenting. The judges emphasised the immediate need for Israel to halt its offensive operations in Rafah and ensure the unrestricted delivery of essential services and humanitarian aid.

In its ruling, the court called upon Israel to comply with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide.

The ICJ stressed that Israel must take immediate action to prevent conditions in the Rafah Governorate that could lead to the physical destruction of the Palestinian population, either in whole or in part. This includes stopping any military actions that might exacerbate the already critical living conditions in the region.

Furthermore, the ICJ ordered Israel to facilitate unimpeded access for any United Nations-mandated commission of inquiry, fact-finding mission, or other investigative body tasked with probing allegations of genocide in the Gaza Strip. This measure aims to ensure that credible

investigations can take place without obstruction, thereby upholding international legal standards and accountability.

Israel is required to submit a report within one month detailing its compliance with the ICJ's order. This reporting requirement is intended to ensure transparency and accountability in the implementation of the court's directives.

The ICJ's ruling comes after a request from South Africa on May 10, concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide in Gaza. The court's decisions were supported by President Nawaf Salam and Judges Abraham, Yusuf, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, and Tladi. Vice-President Sebutinde and Judge ad hoc Barak dissented from the majority opinion.

This landmark ruling by the ICJ represents a significant step in addressing the humanitarian crisis in Gaza. By ordering Israel to halt its military actions and open the Rafah crossing for aid, the court aims to alleviate the suffering of civilians and uphold international humanitarian law. The decision also reinforces the importance of allowing investigative bodies to operate freely, ensuring that allegations of genocide are thoroughly examined and addressed.

Judicial Activism in the Wake of the Rajkot Fire Tragedy

In a decisive example of judicial activism, the Gujarat High Court swiftly intervened in the aftermath of the catastrophic fire at the TRP Game Zone in Rajkot, a tragedy that claimed the lives of at least 27 people, many of them children. This tragic event occurred on a busy Saturday evening, exposing grave deficiencies in safety protocols and administrative negligence, which spurred the court into action.

The proceedings were overseen by a division bench, consisting of Justices Biren Vaishnav and Devan M. Desai, who took suo motu cognizance of the disaster. The bench critically observed the lack of necessary permissions that should have been prerequisites for the construction and operation of such a facility.

The Justices remarked, "Apart from having constructed such game zones/recreational facilities, they have been put to use apparently according to our information through the newspaper report, without permission. Prima Facie, a man-made disaster has occurred where innocent lives of children have been lost and families have grieved today for the loss of lives in their respective families."

The fire incident, which ravaged the two-story structure of the TRP Game Zone during its peak hours, underscored the perils of inadequate regulatory oversight, particularly when the venue was packed with approximately 300 visitors, many enjoying their summer vacation.

During the court session, Advocate Amit Panchal highlighted the alarming absence of fire department approvals for the gaming zone through various newspaper clippings, pointing out the stark negligence by the authorities in enforcing safety norms. Moreover, Advocate Brijesh Trivedi, on behalf of the Bar Association, pressed for a thorough investigation led by a sitting judge.

Echoing a sentiment of profound disturbance, the court noted in its order the manipulative exploitation of loopholes within the Gujarat Comprehensive General Development Control Regulations (GDCR) by the gaming zone. This exploitation facilitated the illegal operation of the facility, a practice not isolated to Rajkot but prevalent in other cities like Ahmedabad as well, posing serious public safety hazards.

The bench specifically highlighted the dangerous conditions at the site, exacerbated by the presence of highly flammable materials like petrol, tires, and fibreglass sheets, which intensified the severity of the disaster. In response, the court took a proactive measure by directing the registry to register the issue as Suo Moto Public Interest Litigation.

This assertive response by the Gujarat High Court exemplifies the vital role of judicial activism in upholding public safety and ensuring accountability in the operation of public facilities. Through its intervention, the court not only seeks to address the immediate failings that led to the Rajkot fire tragedy but also sets a precedent for future enforcement of stricter safety regulations to prevent such disasters from recurring.

Free Bus Services on Polling Dates

In **Sayes Khalil Ulla Hussaini AND Chief Election Commission of India & Others**, the Karnataka High Court disposed of a public interest litigation (PIL) filed by Sayes Khalil Ulla Hussaini, which sought directions to the Chief Electoral Officer to provide free bus services on polling dates to facilitate voter transport. The vacation bench, comprising Justice R Devdas and Justice J M Khazi, delivered the ruling, underscoring the legal constraints on such requests. The court highlighted that issuing such directions would contravene explicit statutory provisions.

The bench remarked:

“If such directions are issued either by the state government or head of the public transport department it would violate express provisions contained in the statute. Allegations can also be made against the political party which is running the government that such directions would run counter to express provisions. The Chief Election Commissioner is not empowered to issue such directions either to the state government or the heads of the Public Transport Corporation.”

The petitioner, Syed Khalil Ulla Hussaini, had also requested an increase in the number of polling booths from 160 to 250 for the election to the post of Member of Legislative Council in the North East Graduate constituency, 2024. The court reviewed the statement of objections filed by the Chief Election Commission, which clarified the limitations of the Commission's powers regarding the provision of free transportation on election days.

The Commission cited Section 123(5) of the Representation of Peoples Act, emphasising that neither candidates nor the state government or public transport corporations could legally facilitate such services, as it would violate the Act's provisions.

Regarding the second request to increase the number of polling booths, the Chief Election Commission's statement noted that the number of polling stations had been increased from 160 to 195, based on the number of voters and information obtained from the respective Deputy Commissioners. The court acknowledged this adjustment and noted that the petitioner's concerns had been addressed adequately.

Courier and WhatsApp Notices in Cheque Bounce Cases

In **Rajiv Malhotra vs. State of U.P.**, the Allahabad High Court has affirmed that a demand notice sent to the cheque drawer via courier service is valid under the Negotiable Instruments (NI) Act in cheque bounce cases. However, the court clarified that the presumption of service under Section 27 of the General Clauses Act cannot be applied to notices sent through courier services until the provision is amended to include couriers along with registered post.

The case involved a petitioner, Syed Khalil Ulla Hussaini, who had moved the court with four primary arguments:

1. The complaint was dismissed in default and should not have been restored.
2. The cheque was conditional and required prior notice before submission, which was not given.
3. The demand notice sent via courier should not be considered valid service under Section 138 NI Act.
4. The service of notice through WhatsApp could not be deemed effective without prescribed rules.

Validity of Courier Service

Addressing the third issue, the court noted that while Section 138 of the NI Act does not explicitly bar the use of courier services for sending demand notices, the presumption of service under Section 27 of the General Clauses Act applies only to registered post. Section 27 provides a rebuttable presumption that a notice properly addressed and sent via registered post is deemed served. Since courier services are not included in this provision, the presumption cannot be invoked for notices sent via courier. The court asserted that courier services, being faster, serve the purpose of informing the cheque drawer about the dishonour, aligning with the objective of the NI Act.

WhatsApp Notices

On the fourth point, the court referred to the High Court ruling in *Rajendra vs. State of U.P.*, which recognized the service of notice through WhatsApp as valid under Section 138 NI Act, provided it complies with Section 13 of the IT Act. The court noted that the Central Government has already framed rules under Section 87 of the IT Act, ensuring the reliability of electronic signatures and records, thereby eliminating the need for separate rules for service under the IT Act.

Conclusion

In its final ruling, the Allahabad High Court made several key determinations:

1. The court concerned has the authority to recall a dismissal order for want of prosecution at the initial stage, and the bar of Section 362 CrPC does not apply.

2. A conditional cheque, when dishonoured and not paid within the stipulated period, attracts liability under Section 138 NI Act.
3. Notices sent through courier services are valid under Section 138 NI Act, but the presumption of service under Section 27 of the General Clauses Act applies only to registered post until the provision is amended.
4. Service of notice via WhatsApp is valid as per the procedure of Section 13 of the IT Act, and no separate rules are required.

Objections on Merits in Arbitration

In **Delhivery Limited v. Far Left Retail Private Limited**, the Delhi High Court bench of Justice Neena Bansal Krishna held that objections regarding the insufficiency of service are to be considered on merits and should be raised before the arbitrator.

Background of the Case

The case involved Delhivery Limited (the Petitioner) and Far Left Retail Private Limited (the Respondent), who had entered into a Service Agreement that subsequently led to a dispute. The crux of the dispute was the Respondent's failure to make payments for invoices as per the agreement terms. Despite multiple email communications from the Petitioner between November 10, 2022, and January 24, 2023, the Respondent acknowledged the arrears but did not settle the dues. The outstanding amount claimed by the Petitioner, including delay interest, was Rs. 8,69,743.78.

Following the non-payment, the Petitioner issued a Demand Notice and later invoked arbitration in compliance with Section 21 of the Arbitration and Conciliation Act, 1996, and Clause 19 of the Service Agreement. The Respondent did not respond or make the payments, prompting the Petitioner to approach the Delhi High Court under Section 11(5) of the Arbitration Act for the appointment of an arbitrator.

Respondent's Objections

The Respondent, in an advance reply and an application for condonation of delay (which was not formally filed), raised two primary objections:

1. The Petitioner did not seek an amicable settlement as required by the arbitration clause.
2. The services provided by the Petitioner were unsatisfactory.

High Court's Observations

Justice Neena Bansal Krishna observed that the Petitioner had made a clear effort to resolve the dispute amicably before initiating arbitration proceedings, thereby complying with the arbitration clause. This demonstrated that the Petitioner had fulfilled its contractual obligations prior to invoking arbitration.

Regarding the Respondent's objection about the insufficiency of service, the High Court clarified that such objections pertain to the merits of the case and are to be addressed before the arbitrator.

Case of the Week: Rameshwar Prasad vs. Union of India (2005 (7) SCC 157)

In Rameshwar Prasad vs. Union of India, the Supreme Court of India addressed the extent of judicial scrutiny permissible under Article 361 of the Constitution of India, which grants immunity to the President and Governors from being answerable to any court for actions undertaken in their official capacities. The case centred around the constitutional validity of a proclamation issued under Article 356(1) and whether the actions of a Governor could be scrutinised by the judiciary in the context of allegations of mala fides or ultra vires.

Facts of the Case

The case arose from a political crisis in Bihar, where the Governor recommended the dissolution of the state legislative assembly under Article 356(1) of the Constitution. The President of India, acting on the Governor's recommendation, issued a proclamation dissolving the assembly. This proclamation was challenged in the Supreme Court by various petitioners, including Rameshwar Prasad, who contended that the Governor's actions were mala fide and ultra vires.

Key Issues

1. Whether the immunity granted to the Governor under Article 361(1) of the Constitution precludes judicial scrutiny of the Governor's actions or recommendations.
2. Whether the court can examine the validity of a proclamation issued under Article 356(1) on grounds of mala fides or ultra vires.

Legal Provisions

- Article 361(1) of the Constitution of India: Provides immunity to the President and Governors from being answerable to any court for the exercise and performance of their powers and duties.
- Article 356(1) of the Constitution of India: Empowers the President to issue a proclamation dissolving a state legislative assembly if he is satisfied that the government of the state cannot be carried on in accordance with the provisions of the Constitution.

Judgement

The Constitution Bench, comprising five judges, delivered a unanimous judgement on 8 September 2005. The court held that while Article 361(1) grants immunity to the Governor from being personally answerable to any court, this immunity does not preclude judicial scrutiny of the Governor's actions or recommendations. The court made several significant observations:

1. The court emphasised that the immunity granted under Article 361 does not affect its power to scrutinise the proclamation issued under Article 356(1). The validity of such a proclamation can be challenged on the grounds of mala fides or ultra vires, and it is the government's responsibility to defend the proclamation against such challenges.
2. The court clarified that mala fide acts fall outside the scope of the Governor's powers and duties. Therefore, even though the Governor enjoys immunity from being answerable to the court, acts purportedly done by him that are mala fide or ultra vires are not protected by this immunity.

3. In cases where the proclamation is challenged, the government must satisfy the court that the proclamation was issued in good faith and within the scope of the Governor's constitutional powers. The absence of the Governor as a respondent does not impede the court's examination of the grounds of mala fides or ultra vires.

Repeated PYQ

Q. A minor is liable to pay out of his property for necessaries supplied to him. Discuss with the help of decided cases.

Ans: Under Indian law, the contractual capacity of minors is a crucial aspect governed by the Indian Contract Act, 1872. According to Section 11 of the Act, a minor is not competent to contract. Consequently, a contract entered into by a minor is void ab initio, which means it is null from the beginning. However, an exception exists regarding the provision for 'necessaries' supplied to a minor.

Minors and Contractual Obligations

The legal framework surrounding the contractual abilities of minors in Indian law is strictly regulated under the Indian Contract Act, 1872. Unlike English law, where a minor's contract is voidable at the minor's discretion under certain exceptional circumstances, Indian law clearly mandates that any contract involving a minor is outright void, not voidable. This principle is firmly anchored in the landmark case of *Mohori Bibee vs. Dharmodas Ghose*, which illustrates the rigid stance Indian law adopts regarding contracts entered into by minors.

Mohori Bibee v. Dharmodas Ghose (1903)

This landmark decision by the Privy Council laid the foundation for understanding contracts entered into by minors. In this case, a minor mortgaged his property to secure a loan. The Privy Council held that the contract was void.

Principle of Non-Recovery and Ratification

The Privy Council further concluded that the lender could not recover the advanced sum because the contract was void from its inception. This case also establishes that a minor, upon reaching majority, cannot ratify a previously void agreement, as the original contract was non-existent in the eyes of the law.

For example, in a scenario where a minor named Mohan issued a demand promissory note to Lakhan and later attempted to validate it with a fresh note upon reaching adulthood, it was held that both notes were invalid.

Claims for Necessaries Supplied to a Minor

The exception to the general rule that minors cannot be bound by contracts arises in the context of necessaries. Section 68 of the Indian Contract Act allows a person who supplies necessaries suited to the condition in life of a minor to be reimbursed from the minor's estate. This provision ensures that those who in good faith provide essentials that genuinely benefit the minor can seek compensation, though only from the minor's estate and not through personal liability.

Necessaries are defined not only as items essential for survival but also as goods and services that are crucial for maintaining the minor's standard of living according to their social status. This includes a wide range of needs, from basic sustenance to education and even legal expenses.

Nash v. Inman (1908)

While this is an English case, it has been influential in Indian jurisprudence concerning minors' contracts. The court in this case defined necessaries as goods suitable to the condition in life of such an infant or minor and to his actual requirements at the time of sale and delivery. Nash v. Inman highlighted that the minor's own means are considered in determining what constitutes necessaries.

Examples of Application

- If a supplier provides educational materials to a minor, these can be considered necessaries if they are appropriate to the minor's life condition and educational needs.
- Similarly, expenses for basic living necessities, like food and clothing, tailored to the minor's standard of living, qualify as necessaries.

