Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

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Powers of Delhi's Lieutenant Governor and a State Governor

The recent Supreme Court ruling in **Government of NCT of Delhi v. Office of Lieutenant Governor of Delhi** has brought to the forefront a significant constitutional distinction between the powers of Delhi's Lieutenant Governor (LG) and those of a State Governor.

In this judgement, the Supreme Court clarified that the Lieutenant Governor of Delhi possesses unique powers distinct from those of a State Governor, especially in relation to the nomination of members to the Municipal Corporation of Delhi (MCD). The bench, led by Chief Justice D.Y. Chandrachud, along with Justices Narasimha and J.B. Pardiwala, made this distinction by analysing the constitutional provisions of Articles 163 and 239AA.

Constitutional Framework: Articles 163 and 239AA

At the heart of this judgement lies the interpretation of Articles 163 and 239AA of the Indian Constitution. Article 163 pertains to the powers of a Governor of a State, stipulating that the Governor must act on the aid and advice of the Council of Ministers, except in cases where the Constitution requires the Governor to exercise discretion. On the other hand, Article 239AA, which specifically deals with the National Capital Territory of Delhi (NCTD), lays down a different framework. According to Article 239AA(4), the Lieutenant Governor of Delhi is required to act in his discretion only when mandated by or under any law.

The judgement, authored by Justice P.S. Narasimha, emphasised that this distinction creates a unique constitutional position for the LG of Delhi. The Court rejected the argument presented by Senior Advocate Dr. Abhishek Manu Singhvi, who contended that the LG should act based on the aid and advice of the Council of Ministers, similar to the role of a State Governor under Article 163.

The Role of the Delhi Municipal Corporation Act

In its analysis, the Supreme Court also examined the relevant provisions of the Delhi Municipal Corporation Act (DMC Act), particularly Section 3(3)(b)(i). This section, introduced through an amendment in 1993 after the insertion of Article 239AA in 1991, empowers the Lieutenant

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Governor to nominate ten members to the Municipal Corporation of Delhi. These members are required to possess special knowledge or experience in municipal administration.

The Court highlighted that the DMC Act is a law enacted by Parliament, which falls under Entry 5 of the State List. Since the LG's power to nominate members to the MCD is derived from this parliamentary statute, it constitutes a statutory duty rather than an exercise of discretion based on the advice of the Council of Ministers.

Reinforcement of the 2023 Constitution Bench Decision

The Supreme Court's ruling further reinforced the principles laid down in the 2023 Constitution Bench decision in Government of NCT of Delhi v. Union of India. In that case, the Court had held that if Parliament enacts a law on any subject in the State List or the Concurrent List, the executive power of the Government of NCT of Delhi (GNCTD) would be constrained by such law. Consequently, the LG's power to act independently, as stipulated in Article 239AA(4), is triggered by such laws.

Appealability Under Section 19 of the Contempt of Courts Act

In Ajay Kumar Bhalla & Ors v. Prakash Kumar Dixit, the Supreme Court provided a crucial clarification regarding the maintainability of appeals under Section 19 of the Contempt of Courts Act, 1971. The Court held that an appeal would be maintainable against any direction passed by a bench concerning the merits of the disputes between the parties, even if there is no order of punishment for contempt.

This decision elucidates the scope of appeals under the Contempt of Courts Act, particularly when the impugned order involves a finding on the merits of the case, rather than merely imposing a penalty for contempt.

Disciplinary Proceedings and Reinstatement

The facts of the case trace back to disciplinary proceedings initiated against the respondent, Prakash Kumar Dixit, who was serving as an Officer Commanding in the Central Reserve Police Force (CRPF). Allegations of misconduct led to his removal from service in July 1995. After the rejection of his appeal against the punishment, Dixit filed a writ petition under Article 226 of the Constitution before the Delhi High Court, challenging the order of his removal.

On December 24, 2019, a division bench of the Delhi High Court ruled in favour of Dixit, ordering his reinstatement with all consequential benefits. The penalty of removal from service was thus set aside. However, the order was not promptly complied with, prompting Dixit to initiate contempt proceedings against the relevant authorities.

Although he was reinstated and promoted to Deputy Commandant on a notional basis in 2021, he superannuated on March 31, 2023. Dissatisfied with the implementation of the court’s order, Dixit pursued the matter further in contempt proceedings.

Contempt Proceedings and the Single Judge's Order

On June 2, 2023, the single judge hearing the contempt proceedings observed that despite the reinstatement, Dixit was entitled to further promotions, specifically to the rank of Inspector General (IG), from 2021 until his retirement in March 2023. The judge concluded that the non-compliance with the earlier court order amounted to willful disobedience, holding the Inspector General of Police (Personnel) and Deputy Inspector General (Personnel) guilty of contempt. However, the judge granted the authorities an opportunity to rectify their actions by issuing a fresh order promoting Dixit to the rank of IG.

Reaffirming the Scope of Section 19

The matter eventually reached the Supreme Court, where the core issue was whether the Letters Patent Appeal against the single judge's order was maintainable under Section 19 of the Contempt of Courts Act. The Supreme Court, in its judgement, held that the appeal was indeed maintainable. The Court relied on the precedent set in Midnapore Peoples' Coop. Bank Ltd. v. Chunilal Nanda & Others (2006), which established that an appeal under Section 19 lies only against an order imposing punishment for contempt.

However, it also clarified that if the High Court decides on the merits of the dispute or issues any direction relating to the merits during contempt proceedings, such an order can be challenged through an intra-court appeal or by seeking special leave to appeal under Article 136 of the Constitution.

Currency Conversion in International Arbitration

In the case of DLF Ltd. (Formerly Known as DLF Universal Ltd.) and Another v. Koncar Generators and Motors Ltd., the Supreme Court of India addressed two critical questions concerning the enforcement of arbitral awards expressed in foreign currency. These questions centred on the appropriate date for determining the foreign exchange rate for converting the award amount to Indian currency. The decision holds significant implications for parties involved in international commercial arbitration, particularly in terms of financial outcomes when dealing with currency fluctuations.

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Determining the Conversion Date: Enforcement of the Award

The first question before the Supreme Court was identifying the correct date for determining the exchange rate for converting an arbitral award from foreign currency to Indian rupees. The Court ruled that the relevant date for this conversion is the date on which the arbitral award becomes enforceable. The enforceability of an award, as outlined by the Court, begins when all objections against it have been finally resolved.

The bench, comprising Justices P.S. Narasimha and Aravind Kumar, emphasised that the statutory scheme under the Arbitration and Conciliation Act, 1996, aligns with this interpretation. The Court drew from the precedent set in the Forasol v. Oil and Natural Gas Commission case, wherein it was held that the appropriate date for determining the exchange rate is when the arbitral award becomes enforceable. Thus, the Court concluded that the date on which the objections are finally decided and dismissed would be the proper date for determining the conversion rate of the foreign currency award.

Conversion Date When Amounts Are Deposited During Proceedings
The second question addressed by the Court concerned the situation where the award debtor deposits some amount in court during the pendency of proceedings challenging the award. Specifically, the Court examined the scenario where the award holder withdraws a portion of this deposited amount. The Court ruled that in such instances, the conversion of the deposited amount from foreign currency to Indian rupees should occur on the date of the deposit itself.

This ruling clarifies that when an award debtor deposits an amount in court, and the award holder withdraws it, the conversion into Indian currency is to be made based on the exchange rate prevailing on the date of deposit. The Court further explained that this conversion must be adjusted against the remaining principal and interest amounts due under the arbitral award. For the remaining balance, the conversion should be done on the date when the award becomes enforceable, i.e., when the objections against it are finally decided.

Application to the Present Case
In the specific case at hand, the respondent (award holder) did not withdraw a partial award amount of Rs. 7.5 crores deposited by the award debtor in 2010 during the pendency of proceedings. The respondent argued that the currency exchange rate for the entire amount, including the deposited Rs. 7.5 crores, should be determined on the date of enforcement of the award, rather than the date of deposit. This argument was primarily aimed at benefiting from a potentially higher exchange rate.

However, the Supreme Court rejected this approach, stating that the Rs. 7.5 crores deposit must be converted at the exchange rate applicable on the date of deposit—October 22, 2010. The Court held that allowing the award holder to convert the entire amount at the enforcement date's exchange rate would be inequitable, as it would result in an unfair financial advantage.

National Green Tribunal and NHRC to Address Silicosis Epidemic

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In Peoples Rights And Social Research Centre (PRASAR) & Ors. v. Union of India & Ors., the Supreme Court of India took decisive steps to address the ongoing crisis of silicosis among workers in various industries across the country. The Court directed the National Green Tribunal (NGT) to monitor and ensure compliance with minimal safety standards in industries prone to causing silicosis.

Additionally, the Court mandated the National Human Rights Commission (NHRC) to oversee the compensation process for affected workers and their families across the states. This judgement marks a critical intervention in the fight against this debilitating occupational disease.

A Decade-Long Struggle
The case, Peoples Rights And Social Research Centre (PRASAR) & Ors. v. Union of India & Ors., brought before the Supreme Court, was initiated in 2006 by the People's Rights and Social Research Centre, a Delhi-based NGO. The petition sought the Court's intervention to address the

rampant spread of silicosis—a severe, incurable lung disease caused by prolonged inhalation of silica dust. This disease primarily affects workers in industries such as mining, construction, stone cutting, and sandblasting, where exposure to silica dust is prevalent.

The petitioner argued that despite being preventable through adequate safety measures, silicosis remained widespread due to lax enforcement of safety regulations and a lack of awareness. The petition emphasised that the widespread prevalence of silicosis among workers violated their fundamental rights under Article 21 of the Indian Constitution, which guarantees the right to health, safety, and a life of dignity. The petitioner also invoked Articles 39(e) and 42 of the Directive Principles of State Policy, which obligate the State to protect workers' health and ensure they are not forced into hazardous occupations due to economic necessity.

The Court's Directives: Monitoring and Compensation

In response to the petition, the Supreme Court issued a series of orders over the years, culminating in the recent directive. The Court noted the grave impact of silicosis on workers' health and directed the NGT to oversee the implementation of safety measures in silicosis-prone industries. The NGT was tasked with ensuring that the Central Pollution Control Board (CPCB) and the respective State Pollution Control Boards (SPCBs) comply with the Court's earlier directions to prevent the spread of silicosis.

The Court also directed the NHRC to monitor the compensation process for workers affected by silicosis. This included coordinating with the Employees' State Insurance Corporation (ESIC) and the Chief Secretaries of the respective states to ensure that compensation is distributed efficiently and without delay. The NHRC's involvement is expected to provide a robust mechanism for addressing the financial and social challenges faced by silicosis victims and their families.

Delhi High Court Cancels Trademark "Andaaz-e-Nizaam"

In Shri Rajesh Chugh v. Mehruddin Ansari & Anr., the Delhi High Court ordered the cancellation of the trademark "Andaaz-e-Nizaam," registered in favour of Mehruddin Ansari, a food outlet owner in Nizamuddin, Delhi. The decision came after a case was filed by Rajesh Chugh, the owner of the well-known Indian restaurant chain "Nizam's," who argued that the trademark was deceptively similar to his own, leading to potential confusion among consumers.

Trademark Similarity and Consumer Confusion

The conflict arose when Chugh alleged that Ansari's trademark "Andaaz-e-Nizaam," registered in November 2021, was not only deceptively similar but also nearly identical to the "Nizam's" trademark, which has been in use since January 1978. Chugh asserted that his trademark, associated with food, drinks, and temporary accommodation, had acquired significant recognition and was exclusively identified by the public as a symbol of the quality and services offered by his food chain.

Trademark law in India is designed to prevent consumer confusion and protect the goodwill associated with a registered mark. A key consideration in such cases is whether the impugned trademark is likely to cause confusion or deceive consumers into believing that there is an association between the two businesses. Chugh's argument was built on the premise that

"Andaaz-e-Nizaam" could mislead consumers into thinking that the food outlet was associated with or endorsed by "Nizam's," thereby diluting the distinctiveness of his trademark.

Cancellation and New Trade Names

Justice Mini Pushkarna, presiding over the case, ruled in favour of Chugh, directing the Registrar of Trademarks to cancel the "Andaaz-e-Nizaam" trademark. The Court agreed that the trademark in question was deceptively similar to "Nizam's" and could lead to consumer confusion. The decision underscores the importance of protecting established trademarks and preventing the unauthorised use of names or symbols that are closely associated with another brand.

During the proceedings, Ansari's counsel informed the Court that his client did not intend to continue using the "Andaaz-e-Nizaam" trademark and proposed new names for his business—"Daawat-e-Nizamuddin" or "Andaaz-e-Nizamuddin." Chugh's counsel did not object to these new names, provided they did not infringe on his client's trademark.

Following this, the Court directed Ansari to take appropriate steps to change the name of his food outlet, trade name, and partnership firm to either "Daawat-e-Nizamuddin" or "Andaaz-e-Nizamuddin" within four weeks. This decision allowed both parties to reach a resolution that protects the integrity of the "Nizam's" trademark while enabling Ansari to continue his business under a new and distinct name.

Case of the Week: Anglo-Norwegian Fisheries Case

The Anglo-Norwegian Fisheries Case arose from a dispute between the United Kingdom and Norway over the delineation of territorial waters and fishing rights along the coast of Norway. The dispute specifically centred around Norway's method of drawing straight baselines along its rugged coastline to measure its territorial sea. The United Kingdom objected to Norway's system, arguing that it extended Norway's territorial waters unlawfully, infringing on the high seas where British fishing vessels had traditionally operated.

The United Kingdom contended that Norway's method of drawing straight baselines was contrary to the principles of international law, which generally required that the territorial sea be measured from the low-water mark along the coast. The United Kingdom sought a declaration from the International Court of Justice that Norway's practice was illegal under international law.

Issues

1. Whether Norway's use of straight baselines to measure its territorial sea was consistent with international law.
2. Whether the United Kingdom's fishing vessels had the right to operate in the waters claimed by Norway as part of its territorial sea.

Arguments

United Kingdom's Argument: The United Kingdom argued that Norway's method of drawing straight baselines was excessive and inconsistent with customary international law. They maintained that the territorial sea should be measured from the low-water mark along the coast or

from lines drawn between appropriate points on the coast, and that Norway's approach unlawfully extended its territorial waters.

Norway's Argument: Norway defended its practice by arguing that the unique geographical features of its coast, characterised by numerous fjords and islands, justified the use of straight baselines. Norway asserted that this method was a long-standing, consistent practice that had been accepted both domestically and internationally over time. Norway also argued that its baseline system was consistent with international law, considering the specific geographical and historical circumstances.

Judgement

The International Court of Justice ruled in favour of Norway, upholding its use of straight baselines to measure its territorial sea. The court acknowledged that Norway's method of drawing straight baselines was consistent with customary international law, considering the specific geographical conditions of Norway's coast. The Court recognized that Norway's baseline system had been in use for a long time and had not been contested by other states, including the United Kingdom, until the dispute arose.

The Court also emphasised that there was no universally applicable rule that prohibited the use of straight baselines in cases of deeply indented coastlines or where a state had a long history of employing such a system. The judgement concluded that Norway's straight baseline method was a lawful means of delineating its territorial sea, given the particular characteristics of its coastline and the historical acceptance of this practice.

Repeated PYQ

Q. Discuss the circumstances under which 'Financial Emergency' can be proclaimed by the President of India and effects thereof.

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Ans. The concept of a 'Financial Emergency' in India is a critical constitutional provision aimed at addressing acute financial instability or crisis in the country. Enshrined under Article 360 of the Indian Constitution, it empowers the President of India to declare a Financial Emergency.

Circumstances for Proclaiming a Financial Emergency

Threat to Financial Stability: The primary ground for proclaiming a Financial Emergency is the threat to the financial stability of India or any part of its territory. This threat could arise from various factors, such as a severe economic downturn, a drastic fall in government revenues, massive deficits, or a situation where the government is unable to meet its financial obligations.

Threat to Credit of India: Another circumstance is a threat to the credit of India. This could occur if the country is on the verge of defaulting on its debt obligations, if there is a significant loss of investor confidence, or if the country's credit rating is severely downgraded, making it difficult to raise funds.

Presidential Satisfaction: The proclamation of a Financial Emergency is contingent on the satisfaction of the President of India. This implies that the President must be convinced that a grave financial crisis exists that warrants the use of such extraordinary powers.

Consequences of Financial Emergency

Executive Authority Over Financial Governance

Upon the declaration of a Financial Emergency, the executive authority of the Centre extends to directing any State to observe canons of financial propriety, as deemed necessary.

Suspension of Distribution of Financial Resources

The President can modify the distribution of financial resources between the Union and the States. This can have far-reaching consequences on State budgets and programs.

Salary and Allowances

The President has the power to reduce or suspend the salaries and allowances of all government officials, including judges of the Supreme Court and High Courts.

Obligations to Financial Institutions

The President can also issue directives for reducing the financial obligations of the States towards the financial institutions.

Judicial Review and Financial Emergency

While the proclamation of a Financial Emergency is subject to the satisfaction of the President, the decision can be challenged in the courts. However, the scope of judicial review in matters of Financial Emergency is limited, as the courts are generally reluctant to interfere with the executive's assessment of a financial crisis. The courts may review the procedural aspects of the proclamation but are unlikely to question the substantive grounds for declaring a Financial Emergency unless there is a clear case of abuse of power or violation of constitutional provisions.

The provision for declaring a Financial Emergency under Article 360 of the Indian Constitution is a formidable tool in the hands of the Union government. It provides a legal framework to make sweeping changes in the financial governance of the country in times of crisis. However, it comes with significant drawbacks, such as potential abuse and excessive centralization. While it has never been invoked, the mere presence of this provision highlights the range of options available to the government when dealing with extreme financial distress.

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