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Important Judgement for CLAT 2024: In Re: The Berubari Union Case

Indrasish Majumder · 13 Feb 2023

Date: March 14th, 1960

Bench: Chief Justice of India B Sinha, Justice A S Shah, Justice K Dasgupta, Justice K S Rao, Justice M Hidayatullah, Justice P Gajendragadkar, and Justice S Das

Introduction

We know that the India and Pakistan boundary was fixed by Sir Radcliffe, and the line was called the Radcliffe Line. However, some disputes arose because of the erroneous depiction of the maps by the Radcliffe Award. One of these was the Berubari Dispute.

The dispute was that the state government of West Bengal did not want to give any territory in Berubari to Pakistan. The Central Government signed the Nehru-Noon Agreement, which clearly states that the territory of Berubari will be equally distributed between India and Pakistan. Therefore, this matter was finally taken to the Supreme Court of India.

The points made in the Berubari case were repeated in the Keshavanada Bharti decision. The decision also stated that the Preamble to the Constitution served as a guide to open the minds of the law's framers. But the preamble is not the source of all the powers given to the government by the Constitution of India.

Facts of the case

1. After the Independence Act, also known as the Mountbatten Plan of 1947, was signed into law, it was said that India would be split into two separate countries: Pakistan and India.

2. Now, the problem was what would be given to India, and the exact problem arose with Pakistan. Therefore, the map for the same was not finalized. A commission was formed with the goal of apportioning the state of Bihar, and it was led by Sir Cyril Radcliffe. Sir Cyril John Radcliffe was called and given the responsibility of dividing the area between India and Pakistan within the next five weeks.
3. Even Radcliffe was pretty confused, so he applied the principle of majoritarianism and divided the areas according to the majority population living in each area. For example, the areas where most of the people were Muslims were given to Pakistan, and the areas where most of the people were Hindus were given to India.
4. There was a region called Berubari in Jalpaiguri district in West Bengal, and Radcliffe gave this region to India, but unfortunately, he forgot to mention it in his written map. Due to this reason, Pakistan took advantage of the situation and started claiming Berubari, and because of this particular reason, a dispute arose between India and Pakistan. The Pakistani Government asserted its claim over the Berubari Union for the first time in 1952. The areas under the Berubari Union remained under the territory of India until such time as they became a part of West Bengal.
5. To solve this issue, the Nehru-Noon Agreement was introduced in 1958. By way of this agreement, it was decided that the Berubari region would be equally divided between India and Pakistan. However, the President referred the matter to the Supreme Court under Article 143 of the Indian Constitution.

Issues Raised

1. Article 3 of the Indian Constitution asks if the Parliament has the power to give any part of the state to a foreign country.
2. Whether legislative action is necessary for the implementation of the Nehru-Noon Agreement?

Government’s Argument

- On behalf of the Union of India, the learned Attorney-General has contended that no legislative action is necessary for the implementation of the agreement relating to the Berubari Union as well as the exchange of In regards to the Berubari Union, he says that the purpose of the agreement was to find the exact boundary that the two countries were arguing about because

they had different ideas about how the relevant description in the award should be interpreted. He says that the agreement is just a recognition or delineation of the boundary that had already been set, and not a replacement of the boundary or a change to it.

- He emphasises that the ascertainment or settlement of the boundary in the light of the award by which both governments were bound is not an alienation or cession of the territory of India, and according to him, if, as a result of the ascertainment of the true boundary in the light of the award, possession of some land has had to be yielded to Pakistan, it does not amount to a cession of territory; it is merely a mode of settling the boundary. The award had already settled the boundary, but since a dispute arose between the two governments over the location of the said boundary, the dispute was resolved in light of the directions given by the award and the maps attached to it.
- The learned Attorney-General has also said that the settlement and recognition of the true boundary can be done by executive action alone. This means that the agreement between the two Prime Ministers can be put into place without any action from the legislature.

Supreme Court’s Observation

1. According to the Attorney General, the agreement was simply a method of resolving the border issue and does not imply the sale or cession of Indian After looking at the agreement, the court decided that it was made before the award from the Indo-Pakistan Border Disputes Tribunal. Because of this, the agreement can’t just be seen as a result of the award that sets and defines boundaries.
2. In order to answer the President’s questions, the Supreme Court read the relevant part of Article 3 and decided that it wasn’t enough to make the agreement in question work.
3. The Supreme Court of India also said that Article 3 of the Indian Constitution needs to be changed by the parliament before any more steps can be taken.
4. The Supreme Court further observed that the Preamble is not a component of the Constitution. Although the Preamble is just “a key to unlock the mind of the framers,” it may be able to provide insight into the broad reasons for why the various sections of the Constitution were created; nevertheless, since it is not a part of the Constitution, it has never been recognised as the source of any substantive authority.

- In 1973, the Supreme Court ruled in Kesavananda Bharati v. State of Kerela that the Preamble may be modified under Article 368, just like any other section of the Constitution, but that the Preamble's fundamental characteristics could not be changed.
- But years later, on December 18, 1976, during India's Emergency, the Indra Gandhi administration introduced the 42nd amendment to the constitution.
- The terms "socialist" and "secular" were added, and between the phrases "sovereign" and "democratic," the phrase "unity of the nation" was replaced with "unity and integrity of the nation."

Judgement

1. The Supreme Court ruled that Article 1(3)(c) does not grant India the authority to acquire territories. It makes a provision for the absorption and integration of foreign territories that may be acquired by India. This provision is not supported by any expansionist political philosophy.
2. Regarding Article 368, it was held that the power to amend our Constitution includes the power to amend Article 1. Thus, logically, it would include the power to cede national territory in favour of a foreign state.
3. The Top Court further held that the power to acquire foreign territory and the power to cede a part of the national territory are essential attributes of Cession of national territory entails the transfer of sovereignty over the territory from the owner state to another state. So, legislation is required for the execution of the agreement. Article 3 does not refer to the Union territories. So, the cession of a part of the Union territories would have to be carried out under Article 368 of our Constitution.
4. The Supreme Court concluded that the Parliament would not be qualified to make a law under Article 3 of our Constitution for the purpose of carrying out the mandate. This meant that the law required to execute the agreement had to be passed under Section 368 of the Constitution.
5. The agreement amounts to India ceding a portion of its territory to Pakistan. So, its implementation would involve changes being made to Article 1 and the relevant part of the First Schedule of our Constitution because the execution of the agreement would lead to the diminution of the territory of India. Such an amendment can be made under Article 368 of the Constitution.

Thus, the Supreme Court answered the questions referred to it:

1. Legislative action is necessary for the execution of the agreement.
2. Article 3 of our Constitution says that a law made by Parliament doesn't have to be qualified, but Article 368 says that a law has to be qualified and necessary.
3. For the exchange of enclaves, too, the same procedure has to be followed.