

Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

Date: 15th - 21st April 2024

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1. ICJ Public Hearings: Armenia v. Azerbaijan

The International Court of Justice (ICJ) recently convened public hearings to address preliminary objections raised by Azerbaijan regarding the Court's jurisdiction in the case concerning the application of the **International Convention on the Elimination of All Forms of Racial Discrimination** (Armenia v. Azerbaijan). These hearings, held from April 15 to April 19, 2024, are pivotal in a long-standing dispute stemming from the war between Armenia and Azerbaijan in the Karabakh region in September 2020.

Establishing jurisdiction for the ICJ involves various factors, primarily the consent of both parties involved and the alignment of the subject matter with the Court's jurisdictional scope, which encompasses cases related to international law, including treaties and customary international law.

Armenia invoked the provisions of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and sought resolution based on its obligations outlined in the Convention. Azerbaijan, however, raised preliminary objections to the jurisdiction of the Court. Nonetheless, the consent of both parties to submit their dispute to the ICJ, as derived from their membership and commitments under the CERD, strengthens the Court's jurisdiction over the case.



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Past precedents, including cases such as ***Georgia v. Russia (2008)***, ***Ukraine v. Russia (2017)***, and ***Qatar v. UAE (2018)***, provide insights into the procedural preconditions and negotiations contemplated by the CERD. These cases highlight the importance of negotiations and discussions outlined in Articles 11-13 of the Convention as prerequisites for ICJ jurisdiction.

In the ongoing Armenia v. Azerbaijan legal proceedings, both parties have engaged in extensive correspondence and negotiations since December 2020. These efforts, despite their sincerity, have not led to a mutually agreed settlement, prompting recourse to the ICJ. The Court's decision on jurisdiction in this case could establish a precedent for addressing ethnic discrimination disputes under international law, offering justice to affected communities and deterring future violations.

Beyond legal adjudication, diplomatic engagement and reconciliation efforts remain essential for lasting peace. Armenian Prime Minister Nikol Pashinyan's indication of readiness to withdraw interstate lawsuits against Azerbaijan from international courts, contingent on the establishment of a stable and lasting peace and the readiness to sign a peace treaty, offers a potential avenue for resolution outside the courtroom.

2. Supreme Court Upholds Acquittal in Cheque Dishonour Case

In ***M/S Rajco Steel Enterprises v. Kavita Saraff & Anr***, the Supreme Court recently upheld the acquittal of an accused in a 16-year-old cheque dishonour case due to the failure of the complainant to prove the existence of a legally enforceable debt against the accused.

The Bench comprising Justices Aniruddha Bose and Sanjay Kumar observed that the petitioner failed to demonstrate that any sum was advanced towards financial assistance and that the debt/liability, supposedly discharged by the cheques issued, did not reflect in the petitioner's balance-sheet.

The case revolves around the initiation of cheque dishonour proceedings against the accused, with the complainant alleging that the cheques were issued against a legally enforceable debt. However, the accused rebutted this presumption, claiming that no such debt existed and that the funds in question were meant for trading in the stock market through the accused's bank account to maintain confidentiality.

The accused's conviction by the trial court was overturned to acquittal by the First Appellate Court, a decision subsequently upheld by the High Court. In response, the complainant approached the Supreme Court under Article 136 of the Constitution.

The Supreme Court noted that the accused had provided a plausible defence, rebutting the presumption against her. The Court clarified that its interference under Article 136 is warranted only when impugned findings are perverse or based on no evidence.

In this case, the Court found no such perversity in the decisions of the High Court and First Appellate Court, as both thoroughly examined the evidence against the complainant. Consequently, the Special Leave Petition was dismissed.

3. Arbitral Award Subject to Public Policy

In *NHAI v. M/s Ssangyong Engineering & Construction Co. Ltd*, the Delhi High Court recently held that failure by an arbitral tribunal to adjudicate on an issue fundamental to the dispute renders the arbitral award contrary to public policy, leading to its potential annulment under Section 34 of the Arbitration and Conciliation Act.

In a case involving the National Highway Authority of India (NHAI) and Ssangyong Engineering, the dispute centred around payments due under a construction agreement. The agreement provided for resolution of disputes through arbitration.

Despite NHAI's contentions that the payment certificate issued by the Engineer was not final, as prerequisites like a written discharge were not fulfilled and disputes were pending, the arbitral tribunal deemed the certificate as final.

The High Court noted the tribunal's contradictory stance, initially recognizing the absence of a written discharge but later upholding the certificate's finality. Such inconsistency, the Court ruled, undermines the integrity of the arbitral process and violates principles of natural justice.

Furthermore, the Court emphasised:

The tribunal's failure to address NHAI's objections regarding pricing errors and discrepancies in the certificate, which are central to the dispute. This non-adjudication on critical issues violates principles of natural justice and constitutes grounds for setting aside the arbitral award.

The Court also highlighted a similar case under the same contract where the tribunal ruled differently on the finality of a payment certificate. Citing precedents, the Court asserted that conflicting awards on identical issues warrant intervention to uphold justice.

In line with these findings, the Court set aside the arbitral award.

4. Vodafone-Idea Held Liable for Unfair Practices by Consumer Commission

The District Consumer Disputes Redressal Commission-I, North Delhi, recently ruled against Vodafone Idea Limited for applying international roaming rates while the complainant was in India and for abruptly deactivating her services without prior notice.

The complainant, a journalist for BBC News, Delhi, had sought an international roaming plan for a trip to Bhutan in December 2019. Despite assurances of inclusive services similar to her domestic plan, she was unexpectedly charged international roaming rates and had her services suspended while still in India.

The commission noted that Vodafone-Idea failed to provide evidence, such as Call Detail Records (CDRs), to ascertain the complainant's usage. Instead, it submitted usage details lacking a date-wise breakdown, and failed to provide evidence of SMS alerts regarding usage or limit

exhaustion. Consequently, the commission deemed the abrupt deactivation of services without warning unfair treatment, causing distress and inconvenience to the complainant.

Despite arguments from Vodafone-Idea, the commission found the decision-making process regarding the complainant's alleged exceeding usage arbitrary and unwarranted. While reactivation of the complainant's number was not feasible due to telecom authorities' policies, the commission quashed the arbitrary demand notice issued by Vodafone-Idea.

As a result, Vodafone-Idea was held liable to compensate the complainant for mental harassment and agony, with the commission directing it to pay Rs. 35,000 to the complainant within 30 days from the date of the order.

5. Contempt Petition Filed for School Safety Policy Violation

A contempt petition has been lodged against senior officials of Haryana for allegedly disregarding a court order regarding the implementation of the **Surkashit School Vahan Policy**, aimed at ensuring the safety of school children.

The petition, filed by **Bal Kranti Trust**, holds the Principal Secretary to the Government of Haryana, the Transport Commissioner, and other officials accountable for neglecting safety measures outlined in the policy, particularly in light of a tragic incident on April 11. In this accident in Mahendragarh, six students lost their lives when a school bus, reportedly driven by an intoxicated driver, crashed into a tree.

The Trust contends that despite a directive from the High Court in 2017, instructing the state's transport department and the Commission for the Protection of Child Rights to oversee the policy's implementation in all schools, the authorities failed to ensure compliance.

Additionally, in a separate Public Interest Litigation (PIL), the Joint Transport Commissioner (Road Safety), Haryana, submitted a status report asserting the proper execution of the Surakshit School Vahan Policy 2014. However, the petitioner alleges that this claim contradicts the reality, as evidenced by the recent tragic accident.

The petitioner argues that while FIRs have been lodged against the driver and school management under Section 304 of the Indian Penal Code (IPC), the officials responsible for regular inspections of the buses as mandated by the policy have escaped accountability.

Consequently, the petitioner calls for the officials to be booked under Section 304 of the IPC, holding them equally culpable for the incident due to their failure to fulfil their duties.

6. Case of the Week: The Cauvery Water Dispute Case

In 1993, the Cauvery Water Disputes Tribunal made significant strides in resolving one of India's most contentious interstate water disputes. However, the principles it established were put to the test when the state of Karnataka enacted legislation seemingly in defiance of the tribunal's interim orders. This move sparked a legal battle that ultimately reached the Supreme Court of India, leading to a landmark decision reaffirming the **principle of equitable apportionment**.

The dispute centred around the Cauvery River, an interstate river shared by the states of Karnataka and Tamil Nadu. The Cauvery Water Disputes Tribunal had been established to adjudicate the allocation of water resources between these riparian states. However, Karnataka's enactment of a law allowing it to unilaterally determine water usage during the tribunal's proceedings raised questions about states' legislative competence in matters concerning interstate rivers.

In response to the legal challenge mounted by Tamil Nadu, the Supreme Court of India embarked on a thorough examination of the constitutional framework and relevant legal precedents. Drawing inspiration from international jurisprudence, particularly the landmark case of **Kansas v. Colorado**, the court emphasised the principle of equality among states and the justiciability of interstate water disputes.

Quoting from the *Kansas v. Colorado* ruling, the court reiterated that ***each state stands on an equal footing, and disputes over shared resources must be settled through judicial mechanisms that uphold the rights of all parties involved***. The court affirmed that the right to flowing water is a fundamental aspect of property rights, subject to reasonable use by riparian landowners but not to unilateral appropriation that harms downstream states.

By striking down Karnataka's legislation as beyond its legislative competence, the Supreme Court reaffirmed the exclusive jurisdiction of adjudicatory bodies like the Cauvery Water Disputes Tribunal in resolving interstate water disputes.

7. Repeated PYQ

Q. The Competition Act is designed to prevent monopolies and unfair trade practices against smaller competitors and consuming public. Elucidate.

Ans. The Competition Act in India is a comprehensive legal framework established to regulate and promote fair competition in the market, ensuring that monopolistic practices and unfair trade behaviours are curtailed. The primary objective of the Act is to protect the interests of both competitors—especially smaller enterprises—and consumers. By addressing various facets of competition and imposing strict penalties on violations, the Act seeks to foster a competitive environment conducive to economic growth and consumer welfare.

Anti-Competitive Agreements

The Act prohibits agreements between enterprises that negatively affect competition within India (Section 3). Such agreements include both horizontal agreements (among competitors) and vertical agreements (between enterprises at different stages of the production process). For instance, horizontal agreements presumed to have an appreciable adverse effect on competition, like cartels, are illegal unless proven otherwise. Vertical agreements, which could include exclusive supply or distribution arrangements, are scrutinised under the rule of reason approach, balancing positive and negative effects on competition.

Abuse of Dominant Position

Section 4 of the Act focuses on preventing enterprises holding a dominant position in the market from abusing that position. Dominance itself is not condemned, but the abuse of it is, which includes practices like predatory pricing, discrimination, or denial of market access. This provision is crucial for protecting smaller competitors who might be edged out of the market by a dominant player's exclusionary practices.

Regulation of Combinations

Combinations, such as mergers and acquisitions that exceed certain thresholds of assets or turnover, must be reported to the Competition Commission of India (CCI) for approval (Section 6). This regulation prevents the concentration of economic power to the extent that it adversely affects competition. It ensures that larger, potentially market-leading combinations do not undermine the competitive landscape or harm consumer interests by reducing choices or increasing prices.

Protection of Consumer Interests

The Act is designed not only to protect competitors but also consumers. By ensuring fair competition, the Act helps in the maintenance of reasonable prices, improved quality of products and services, and greater innovation. For example, the CCI's oversight in cases like exclusive agreements within cinema multiplexes ensures that such agreements do not unjustly prevent competition and that consumers continue to benefit from competitive prices and choices.

Economic Development

By promoting fair competition, the Act indirectly supports economic development. A competitive market environment stimulates efficiency and innovation among businesses, leading to better products and services, job creation, and significant contributions to the overall economic health of the nation.

Specific Cases and Interpretations by CCI

The application of the Competition Act can be seen in various rulings by the CCI, such as in cases against cement manufacturers for cartelization or against film exhibition companies for exclusive supply agreements. These cases show how the Act is implemented to curb anti-competitive practices and protect smaller entities and consumer interests.

Therefore, the Competition Act plays a crucial role in ensuring that the market operates in a fair manner, preventing monopolies and unfair trade practices that can disadvantage smaller competitors and the consuming public. Through its comprehensive provisions on anti-competitive agreements, abuse of dominant position, and regulation of combinations, the Act seeks to sustain an environment where competition thrives, thereby fostering economic growth and protecting consumer rights.