Case Analysis:

Minerva Mill Ltd. And Ors V Union Of India And Ors¹

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I. Introduction

Minerva Mills Ltd. and Ors v Union of India and Ors is one of the most important judgments which guarded the ‘basic structure’ of the Constitution form being amended by parliament. The constitutionality of sections 4 and 55 of the 42nd Amendment Act, 1986 gave the parliament ‘unlimited powers’ to amend the constitution and hence were struck down by the Hon’ble Supreme Court.

II. Brief Facts

1. Minerva Mills Ltd. (herein after referred to as the petitioner no. 1/ the Company) is a limited company dealing in textiles in Karnataka. The other petitioners are the shareholders in Minerva Mills.

2. August 20, 1970- The Central Government, in apprehension of the substantial fall in production of Minerva Mills, appointed a committee under section 15 of the Industries (Development & Regulation) Act, 1951 (herein after referred to as the IDR Act) to make an investigation of the affairs of Minerva Mills Ltd.

3. October 19, 1971- After the submission of the committee report, the Central Government passed order under section 18A of the 1951 Act that authorised the National Textile Corporation Ltd., to take over the management of the Mills on the ground of mismanagement of the company affairs. Hence, this undertaking was nationalised and taken over by the Central Government under the provisions of the Sick Textile Undertakings (Nationalisation) Act, 1974 (herein after referred t as the Nationalization Act).

¹ 1980 AIR 1789
4. Thereafter, the petitioners challenged this order before the High Court. The High Court, however, dismissed their petition.

5. The petitioners, therefore, filed a writ petition before the Hon’ble Supreme Court under article 32 of the Constitution of India, 1950.

6. They challenged the constitutionality and validity of the following:
   a. Sections 5(b), 19(3), 21 (read with 2nd schedule), 25 and 27, of the Sick Textile Undertakings (Nationalisation) Act, 1974
   b. Order of the Central Government dated October 19, 1971
   c. Sections 4 and 55 of the Constitution (Forty Second Amendment) Act, 1976; and
   d. The primacy given to the Directive Principals of State Policy over the fundamental Rights.

III. Analysis of the Judgment

The 1st and the 2nd issues questioning the validity and constitutionality of; some provisions of the Sick Textile Undertaking (Nationalization) Act, 1974 and the order of central government under section 18 A of the Industrial (Development & Regulation) Act, 1961, were addressed in the judgment passed by a bench of Justice M. M. Dutta and Justice O. Chinnappa Reddy on September 9, 1986.

While the remaining two issues are addressed in the judgment delivered on July 31, 1980 by a bench of Justice V. Y. Chandrachud, Justice P. N. Bhagwati, Justice A. C. Gupta, Justice N. L. Untwalia and Justice P. S. Kailasam.

1). The Judgment delivered on September 9, 1986

The petitioners, namely, Minerva Mill Ltd. and the some of its creditors, challenged the order pronounced by the Central Government on October 19, 1971 under section 18 A of the IDR Act, 1961 on the following grounds;

   a. After the completion of the investigation, the Central Government by an order dated April 24, 1971, sanctioned a guarantee to enable the company to raise a loan for Rs. 20 lacs to deal with its financial crisis. Thereafter, the central government passed the above-stated order in October, to hand over the management of the Company to National Textile Corporation.
b. The petitioners claimed that the copy of the Investigation report was not given to them by the Central Government and this resulted in a situation that prejudiced them.

c. The petitioners challenged the validity of sections Sections 5(b), 19(3), 21 (read with 2nd schedule), 25 and 27 of the Nationalization act on the ground that it violated their fundamental rights and the ‘basic structure of the constitution.’

1.2) Analysis of this Judgment

a. The hon’ble Supreme Court has very rightly pointed out the fact that the petitioners approached the court after a delay of almost 7 years from the passage of the order passed by the Central Government on October 19, 1971. After the Investigation Authority submitted its report on the management of the company, the government authorized the National Textile Corporation to take over management of the undertaking of the Company. During the pendency of taking over management of undertaking by the National Textile Corporation, the Sick Textile Undertakings ordinance of 1974 was promulgated and it was replaced by the Sick Textile Undertakings Act (Nationalization Act). Section 2 (j) of the Nationalization act defines ‘Sick Textile Undertaking’ as an undertaking specified in 1st Schedule, the management of which has been taken over the Central Government under section 18 A of the IDR Act. Court had rightly pointed out the fact that the results of the investigation should not be over-looked as it showed the company was mismanaged in a manner highly detrimental to the interest of the public. The court rejected this contention of the petitioners by saying, ‘The Government might have thought of assisting the Company in raising loan, but the fact that such proposal for assistance was made for special reasons as provided in the proviso to section 4 of the Mysore State Aid to Industries Act, 1959, is not sufficient to uphold the contention of the petitioners.

b. The contention the petitioners that section 16 of the IDR Act requires the government to issue directions to the concerned industrial undertakings after an investigation is conducted, was rejected by the court on the ground that issuance of the guidelines was not ‘obligatory’ for the government.

c. Further, the court rejected the claim of prejudice suffered by the petitioners on non-supply of the copy of the investigation report for two reasons;

1. The petitioners did not ask for any such copy; and
2. The petitioners were also given ample opportunities to make representations against the proposed take-over, but they failed to refute so.

d. The court’s take-over on the contention of the petitioners that Nationalization Act is unconstitutional as it violates fundamental rights and the basic structure of the constitution, was also rejected by the court on the following grounds;

1. The basic structure of the Constitution can be damaged by an amendment of the provisions of the Constitution. While referring to the Kesavananda Bharati case, the court emphasized on the fact that only constitutional amendments made on or after Aril 24, 1973 by which acts or regulations were included in the 9th Schedule can be challenged. However, if such challenge is protected by Articles 31 A and 31C (as it was prior to the 42nd amendment Act), it cannot be sustained.

2. The Nationalization Act under section 39 declared that it gave effect to the policy of the State in implementing the principles given in Article 39 (b). Moreover; no argument was placed by the petitioner to counter this statement of purpose.

3. The Nationalization Act comes under the umbrella of Article 31 C, the petitioners were held not entitled to challenge the constitutional validity thereof on the ground of violation of the provisions of Articles 14 and 19 of the Constitution.

2. Judgment of Supreme Court delivered on July 31, 1980

1.2. Issues Raised before the Court

1. Whether Sections 4 and 55 of the 42nd Amendment Act, 1986 are constitutional?

2. Whether the Directive Principles of State Police should be given supremacy over the fundamental rights?

2.2. Analysis of the Judgment

1. Section 4 of the Constitution (42nd Amendment) Act 1976, replaced the clause, ‘the principles specified in clause (b) or clause (c) of article 39’ with ‘all or any of the principles laid down in Part 4’ and hence this amendment gave parliamentary sanction to any law or regulation passed to fulfil any goal laid in the Directive Principle of State Policy, irrespective of the fact that it violated article 13 read with articles 14 and 19.

2. Section 55 introduced sub-clauses (4) and (5) to Article 368 of the Constitution, which gave the parliament unlimited powers to amend the constitution.
3. A limited amending power is one of the basic features of Indian Constitution and therefore, the limitations on that power cannot be destroyed and the right to repeal or abrogate the same cannot be held constitutional. The meaning and spirit of article 13 will cease to exit. The court was called upon to deal with questions of constitutional amendment which interfered with the fundamental rights of the people.

4. The petitioners raised the question that whether the Kesavananda Bharti case permitted the parliament to introduce such an amendment whereby the DPSP is given more preference than the Fundamental Rights. The answer is; if article 19 and 14 are a part of the basic structure of the constitution, then they cannot be amended. The DPSP are essential for the welfare of the people but to subvert the fundamental guarantees of part 3 of the constitution is to destroy the basic structure of the constitution.

5. Fundamental rights occupy a unique place in the lives of civilized societies and have been variously described as "transcendental", "inalienable" and "primordial" and as said in Kesavananda Bharati Case they constitute the soul of the Constitution. Fundamental Rights and Directive Principles of State Policy are two wheels of the chariot and twin formula to achieve social revolution.

6. The Indian Constitution has maintained a balance between the fundamental freedoms and the DPSP, therefore, giving absolute primacy to one, would disturb the harmony and balance sought by the founding fathers of our constitution. The preamble has very clearly woven the threads of this harmony. On the one hand it reflects on the ideal of India being a socialist state, secure social justice to all its citizens and on the other hand, it empowers each and every citizen with the liberty of thought, faith, belief, worship and right to maintain dignity and fraternity, equality of opportunity and status and the right to maintain human dignity, in order to give an individual ideal opportunity and freedom to endeavour to be the version of him.

7. The goals set to be achieved in part 4 are to be achieved by purity of mean and not at the cost of fundamental freedoms. These two should go hand in hand. In regard to the category of laws described in article 31 C, the section 4 of the 42nd amendment act, abrogates article 14 and 19 of the Constitution. The consequence of such an amendment is that no matter, any law violates the spirit of article 13 read with 14 and 19, it shall not be subject to any questions as to its validity as long as it seeks to achieve the goals laid down in part 4; the DPSP.

8. The contention that not all laws falls within the ambit of article 31 C is no justification to abrogate the fundamental freedoms guaranteed under articles 14 and 19. No doubt,
there are certain laws which do not fall within the jurisdiction of the above mentioned article, but they are not a small proportion of them.

9. Article 38 states that the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice social, economic and political shall inform all the institutions of National life.

10. There are two aspects that need to be looked into; this article no doubt has a broader implication, yet the article does not necessarily corroborate with it and second thing being, it is clear to deduce that no law that seeks to give effect to this article can be contrary to the ideals of the constitution, therefore, there is no need whatsoever, to make an amendment to the basic structure of the constitution to achieve this.

11. The main purpose of introducing this article is to get away with such laws which cannot stand article 19 and 14 of the constitution of India. Articles 14 and 19 are not some fancy right but are natural and fundamental human right that made their appearance for the first time in the UDHR 1948 and if the legislatures are empowered to pass unreasonable restrictions on these rights, then the very soul of the constitution will be shattered. Section 4 of the Forty Second Amendment found an easy way to circumvent Article 32(4) by withdrawing totally the protection of Articles 14 and 19 in respect of a large category of laws, so that there will be no violation to complain of in regard to which redress can be sought under Article 32.

12. The power to take away the protection of Article 14 is the power to discriminate without a valid basis for classification. Moreover, article 14 permits reasonable classification to ensure social welfare and article 19 comes with reasonable restrictions that can be imposed in order to ensure just and fair society, the sole purpose of the DPSP. Hence, the amendment into the article to ensure the realization of DPSP to such an extent that any abrogation of these fundamental rights was not to be questioned in the Court.

13. Laws can be passed with immunity, preventing the citizens from exercising their right to move freely throughout the territory of India. Thus, this amendment virtually breaks the heart of the constitution. Article 12 of the constitution gives interpretation of the word ‘state’ which includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. Wide as the language of Article 31C is, the definition of the word "State" in Article 12 gives to Article 31C an operation of the widest amplitude. Even if a State Legislature passes a
law for the purpose of giving effect to the policy by a local authority towards securing a directive principle, the law will enjoy immunity from the provisions of Articles 14 and 19.

14. The contention that this amendment seeks to empower the democracy by fulfilling the ideals of state policy does not hold ground, because state has certain goals to achieve in any democracy and therefore, seeking to achieve these goals in a disciplined way while maintaining the guarantee of the fundamental rights is what makes the ways of achieving state goals democratic. If the discipline of Article 14 is withdrawn and if immunity from the operation of that article is conferred, not only on laws passed by the Parliament but on laws passed by the State Legislatures also, the political pressures exercised by numerically large groups can tear the country asunder by leaving it to the legislature to pick and choose favoured areas and favourite classes for preferential treatment.

15. Since the amendment to Article 31C was unquestionably made with a view to empowering the legislatures to pass laws of a particular description even if those laws violate the discipline of Articles 14 and 19, it is impossible to hold that the court should still save Article 31C from the challenge of unconstitutionality by reading into that Article words which destroy the rationale of that Article and an intendment which is plainly contrary to its proclaimed purpose.

IV. Decision of the Court

1. The court in the judgment dated July 31, 1980 by majority of 4:1 held the sections 4 and 55 of the 42nd (Amendment) Act 1986 unconstitutional.

2. Further, the writ petition challenging the constitutionality of the Sections 5(b), 19(3), 21 (read with 2nd schedule), 25 and 27, of the Sick Textile Undertakings (Nationalisation) Act, 1974, was dismissed.