

Topic: Distribution Of Executive Power Between Centre And State Under Article 256

Name of the Case: Bishamber Dayal Chandra Mohan v. State of Uttar Pradesh, AIR 1982 SC 33

Bench: Justice A.P. Sen and Justice Baharul Islam

Fact of the Case: The petitioner in support of the writ petition contends under the following heads;

There was nothing to prevent the State Government for making a law placing reasonable restriction on the freedom to carry on any occupation, trade or business guaranteed under Article 19 (1) (g) read with Article 19 (6) of the Constitution, or the freedom of trade, commerce and intercourse, throughout the territory of India, guaranteed under Article 301 of the Constitution but the restriction must be by "law" or by an "order having the force of law" and not by the recourse to the executive authority of the state under Article 162 of the Constitution;

The seizure of the consignment of the wheat, while they were in transit in the course of interstate trade and commerce from Delhi and State of Punjab and Haryana to various destinations in the state of Maharashtra and Madhya Pradesh, was without the "authority of law" and in violation of Article 300A of the Constitution.

Judgment: The Supreme Court has held that the State Legislature is competent to enact a law on the subject covered by Entry 33, List III, regulating trade and commerce, and the production, and supply and distribution of "foodstuffs" under Essential Commodities Act, 1955. The Act, 1955, was enacted by Parliament in exercise of concurrent jurisdiction under Entry 73 List 2, of the 7th Schedule to the Constitution as amended by Constitution (3rd Amendment) Act, 1954. The exercise of such concurrent jurisdiction would not deprive the State Legislature of its jurisdiction thereunder. The executive power of state which is coextensive with legislative power is subject to the limitation contained in Article 162 which directs that in any matter with respect to which the legislature of a State and Parliament power to make laws, the executive power of the state shall be subject to, and limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union of authorities thereof.

In the concurrent field, therefore, ordinarily the authority to execute law rests with the State even when the law is passed by the Centre. In exceptional cases, however, Parliament may describe that the execution of a central law shall be with the Centre alone, or with both the Centre and the States. In this field, even after Centre claims executive power under its law, the residuary executive power under the entry may still rest with the states.
