

RC COOPER VS. UNION OF INDIA

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ABSTRACT

The case of Rustom Cavasjee Cooper v. Union of India is usually known as the Bank Nationalization Case. It is one of the better-known cases in the history of Indian Banking laws. The Hon'ble Supreme Court of India held in this case that the right to receive compensation for a loss suffered was an inherent right that is enshrined in the Constitution of India (hereinafter referred to as 'the Constitution'). The right so enshrined in the Constitution provides that the person shall be given money equivalent to the value of the property which has been compulsorily acquired. Socialism. This is the particular term that was the reason for everything which happened in this case. It was due to a feat to achieve the ends of socialism in India that whatever is about to get narrated through this article, took place. Let us first understand certain basics about this particular case.

BACKGROUND OF THE CASE

The Preamble and various constitutional provisions of the Constitution of India obligate the state to build an egalitarian society for the people of India. These obligations are in detail discussed in Part IV of the Constitution under the heading Directive Principles of State Policy. Part IV starts with Article 37 declaring the part not enforceable in the courts of law is however fundamental in the governance of the country. Therefore, while making laws the Parliament must apply these provisions. State control of industries was seen as a great means to achieve the ends of Socialism. After the Independence of the nation, transport undertakings, electricity, insurance sector, oil refineries etc., were nationalized to achieve the goals of Socialism.

Since Independence, the distribution of credit in rural areas was at a great low. This was because of the inaccessibility of banks and other financial institutions in rural areas. Therefore, to target the rural area, the government schemed a plan to target the needy sectors. This solution they devised was Nationalization. Earlier in 1955, Imperial bank of India was taken under the SBI Act and just in four years, its 7 subsidiaries were also amalgamated into the SBI branch. The Reserve Bank of India also played a pro-active role in regulating the

banking sector and reduced the number of commercial banking institutions from 569 in 1951 to 89 in 1969.

The Indira Gandhi government in 1969 at the instance of the then Acting President M. Hidayatullah promulgated the Banking Companies (Acquisition & Transfer of Undertaking) Ordinance, 1969 nationalizing the 14 banks. These 14 banks were chosen on the basis that they had deposits exceeding 50 crores. The ordinance was promulgated just two days before the Session of Parliament. The ordinance with effect from 19 July 1969 brought more than 75% of the banking sector under state control along with its assets, liabilities, and entire paid-up-capital.

The most horrific and controversial part of the Ordinance was the second schedule it contained. The second schedule provided that:

1. Where an amount of compensation could be fixed by an agreement; it would be determined by such agreement
2. “Where no such agreement could be reached in the provided time, the matter would be referred to the tribunal. The compensation fixed by the tribunal will be awarded after 10 years from the date when the agreement failed.

Two days later when Parliament came in session it enacted the Banking Companies (Acquisition & Transfer of Undertaking) Act, 1969 with the same provisions as were in the Ordinance. Therefore, RustomCavasjee Cooper the majority shareholder of Central Bank of India & Bank of Baroda filed a writ petition in Supreme Court u/a 32 for the violation of his Fundamental Rights mentioned under articles 14, 19(1)(f) & 31(2)

FACTS OF THE CASE

To understand the facts of the case, we need to understand a little bit of the history of India as well. The first Prime Minister of India, that is, Pandit Jawaharlal Nehru, believed in socialism to be the best model of development suited for the country to progress. The type of socialism which he believed was termed *Fabian Socialism*. This meant that for the better progress of the nation, its citizens' good and development, it was necessary to exercise State control over certain industries, which were considered to be important. Post-Independence, many sectors which were instrumental in the development of the State were nationalized. For example, the transport undertakings, insurance sector and the electricity were completely provided with a

monopoly of the State! The oil and refineries sector was nationalized a bit later in the 1960s, though.

Coming to the present case, which is popularly known as the *Bank Nationalization case*, the proposal to nationalize the banking sector was not very new to India. In fact, in the year 1948, the proposal to nationalize the banking sector had been actively debated upon by the All India Congress Committee (A.I.C.C.). The first Finance Minister of India, R.K. Shanmugham Shetty, was strongly in favour of nationalizing the Imperial Bank of India, but Sardar Vallabhbhai Patel had stopped him from doing so due to certain political reasons. However, very soon, in the year 1955, the Imperial Bank of India, was nationalized under the State Bank of India Act and 7 of its subsidiaries too were taken over by the Government. So, we may see from this point that partial nationalisation of the banking sector had already started. The role of the Reserve Bank of India too is very noteworthy in this process of nationalization. The Reserve Bank gradually decreased the number of commercial banking institutions in India from 566, as in 1951, to merely 89 by the end of 1969.

Now, moving forward with our discussion, there were certain leaders in the Government who were in opposition of this nationalization of the banks. Morarji Desai, the then Finance Minister, was seriously against the nationalization of 14 banks in India by Indira Gandhi while following the ideals of her father. Desai was also the Deputy Prime Minister at that time. Mr. Desai's main argument was that the amount of compensation that was going to be paid to these banks, which amounted to Rs.85 crores, could be simply used to accelerate the economy of the country. Another argument that Mr. Desai had put forward that the credit could be diverted towards the social sectors, simply by controlling the banks by amending the banking laws of the country.

The differences between the two became so severe that Morarji Desai was dismissed from the post of the Finance Minister on 17th of July, 1969. The very next day, he voluntarily resigned from the post of the Deputy Prime Minister of India

Amidst this, the then Acting President of India, Justice M. Hidayatullah, issued an Ordinance just two days before the monsoon session of the Parliament was going to start. The name of the Ordinance was 'Banking Companies (Acquisition and Transfer of Property) Ordinance of

1969'. Let us now firstly understand what was this Ordinance all about? The features of the Ordinance can be listed as follows.

1. 14 banks in India were listed in the Ordinance which was going to be nationalized.
2. These 14 banks had been selected based on the number of deposits that they held. That is, all of these banks held deposits of more than 50 crores, which was taken as the criterion to choose them to be nationalized.
3. All the Directors of these 14 banks were asked to vacate their offices. However, apart from the Directors, the rest of the staff was allowed to continue in their jobs under the Government of India.
4. The Second Schedule of the Ordinance was the most unconstitutional part. It talked about the compensation which was supposed to be paid to the banks which were being undertaken by the Government. The Ordinance mentioned two major ways of providing compensation to the aggrieved banks
5. *When an agreement was reached at-* When the amount to be paid as compensation was being able to be decided through an agreement, then it was alright.
6. *When no agreement could be reached at-* When no agreement was being able to reach at, then, the disputed matter was supposed to be referred to a Tribunal, within three months from the date of the failure to reach an agreement. Whatever compensation amount was to be decided by the Tribunal, was to be awarded in the form of Government Securities. These Government Securities were not redeemable immediately, but 10 years after they were issued.
7. Once the Ordinance had been passed, after two days when the Parliament started its monsoon session, immediately the Indira Gandhi Government formulated the 'Banking Companies (Acquisition and Transfer of Property) Act, 1969' and every provision was just the same as in the Ordinance.

After the news of the promulgation of the Ordinance reached Mr. Cooper, who was not only the then Director of the Central Bank of India Ltd., but also held shares in Central Bank of India, Bank of Baroda Ltd. and Bank of India Ltd. He filed a Writ Petition under Article 32 of the Constitution of India, before the Supreme Court of India, stating that his Fundamental Rights had been violated by the promulgation of the Ordinance. The Writ petition had been filed on the 21st of July, 1969 and the interim application had been heard on the 22nd of July, 1969. After hearing the interim application, the Court granted the injunction to stop the Directors from being vacated from their offices immediately.

ISSUES RAISED IN THE CASE

The following issues has been raised by Mr. Cooper, through his advocate, Mr. Palkhiwala, which are as follows

1. Whether a shareholder could file a Writ petition for the violation of his Fundamental Rights when the company in which he is a shareholder is acquired by the Government?
2. Whether the Ordinance in question had been properly made or not?
3. Whether the Act was within the jurisdiction of the Parliament to get formulated or not?
4. Whether the impugned Act was violative of Article 19(1)(g) and Article 31(2) of the Constitution of India or not?
5. Whether the method of ascertaining the compensation was valid or not?

ARGUMENTS SUBMITTED**Petitioner's arguments**

1. The first argument submitted by Mr. Palkhiwala regarding the maintainability of the petition was that the petition was maintainable, on the pretext that the petition was being filed by Mr. Cooper in his capacity as a citizen of India and not as a representative of his company. Since a company is not a citizen within the ambit of the Indian Citizenship Act, 1955, so, it can't claim any Fundamental Right under the Constitution, of which Mr. Cooper was eligible by being a citizen.
2. According to Article 123, the President is empowered to pass any Ordinance, if he feels that there is an absolute necessity and when both the Houses of the Parliament are not in session. Based on this contention, we may see that the Ordinance was

promulgated just two days before the monsoon session of the Parliament, so there was no necessity to promulgate the same. Thus, in contravention of this provision, the Supreme Court was empowered to strike it down.

3. The third argument was regarding the competency of the Parliament to pass the Act. It was stated that the Seventh Schedule contained the three Lists, which demarcated the limit of jurisdiction for both the Central as well as the State Governments. The Union List contained entries upon which only the Central Government was empowered to make laws, the State List contained entries upon which only the State Governments were empowered to make laws and lastly, the Concurrent List contained entries upon which both the Central and State Governments could make laws, subject to the Doctrine of Repugnancy. The argument, thus, stated that the Central Government was entitled to make laws on 'banking' only as defined under Section 5 (b) of the Banking Regulation Act of 1949, as Entry 45 of the Union List empowered it to do so. Moreover, it was argued that by Entry 42 of the Concurrent List, the Legislature was empowered only to make laws to effectuate Entry 45 in the Union List. Thus, based on these logics, it was said that the Parliament was not empowered at all to pass the impugned Act.
4. At that time, the right to property was considered to be a Fundamental Right under Article 19(1)(f), which was later omitted after the Judgement of *Kesavananda Bharati's* case. However, when the present case had been instituted, the Right was officially recognized and so it was said that it violated Article 19 (1) (g) Article 31 (2) (the whole article has been repealed now) which dealt with *compulsory acquisition of property*.
5. Lastly and not the least, the Achilles' heel of this whole Act was the provision for compensation, which was argued to be entirely 'draconian' and extremely irrational and illogical. The compensation, which would not be paid in cash, but in Government securities, which in turn were payable after 10 years, was completely biased in its approach, intending to harass the public and also, to give an undue benefit to the Government.

Respondent's arguments

1. The first argument of the respondent was regarding the maintainability of the Writ petition and it said that the said petition was not maintainable, as the same was being filed to claim the Rights in the name of a company, which, as we have seen, does not fall under the definition of a citizen as per the Indian Citizenship Act, 1955.
2. The next argument was regarding the question about the President's power to promulgate the Ordinance. It was contended that the power of the President to promulgate the Ordinance was completely subjective, as the words 'if he felt' were used and also, he was not answerable to anyone for the reason of his actions done during his term of office. Thus, the argument of the invalidity of the Ordinance was condemned.
3. The other argument, regarding the competence of the Parliament was that the Court must understand that there was an obligation upon the State to achieve a socialistic society, with principles of egalitarianism and where no inequality existed. Considering this definition, the argument was that the Court should interpret the term 'banking' in the widest possible way, to include all the activities that could be included by the respondent.
4. The fourth argument was regarding the mutual exclusivity of the Fundamental Rights from one another, as held in the case of *A. K. Gopalan Vs. State of Madras* and stated that the Act was not violative of Article 19 (1) (g), as it fell within the ambit of Article 31 of the Constitution.

JUDGEMENT OF THE CASE

The court delivered this landmark judgment on February 2, 1970, & speaking in 10:1 majority held that the shareholder or director cannot move to the courts for the protection of infringement of Fundamental Rights of the company unless it is proved that by the impugned action his rights are also violated. The majority opinion was written by Justice Shah for himself and on the behalf of Grover, Vaidialingam, Mitter, Dua, Shelat, Hedge, Reddy, Sikri and Bhargava, JJ. while justice A.N. Ray wrote the dissenting opinion.

The major findings of the majority bench were as follows:

1. The apex court overruled the 20 years' law laid down by *K. Gopalan* rejecting the mutual exclusivity theory. The court held that we cannot overlook the violation of citizens of the nation on mere technicalities. If due to state action the fundamental rights of a citizen are violated the court is bound to prohibit such violation. The court by holding this laid down the *Effect* test and overruled the *Object* test. Therefore, now the courts won't look into the objects of the impugned act and rather they will look into the effect of the impugned act. In case the effect of such an act violates the FR's of citizens it would be violative of the Constitution and liable to be struck down.
2. Since the Ordinance was already replaced by the act of Parliament, therefore, the court held that deciding the validity of the said impugned Ordinance is fruitless. This discussion is relevant for academic purposes only.
3. The court rejected both the Petitioner's & Respondent's argument on legislative competence to acquire banking Companies. The court held that the term Property in itself constitutes the rights, liabilities, organization etc. that accrue to the property. The power to acquire property was held to be an independent power of Parliament and it required no separate legislation under List II or List III.
4. The court found the impugned act in contravention of Article 31 since the act failed to comply with the said provision. The said provision provided that in case any property is acquired by the government then they have to provide compensation to the property owner. Since there was a clear violation of the said provision, therefore, the court struck down the said act.
5. However, the court upheld the validity of the act in the context of Article 19(1)(f). The court said that the act is not violative of the freedom to carry trade & business. The justification for the said ruling is that the state can always create a partial and absolute monopoly.
6. But the court held the said act in clear violation of Article 14c since only these 14 banks were restrained from conducting banking business in the future while other banks including the foreign banks were allowed to continue Banking in India. The court this discrimination as flagrant hostile discrimination.

Justice A.N. Ray's opinion was the sole dissent in the judgment. However, he agreed with the majority in two instances which were as follows:

1. That the said act is not in violation of Article 19(1)(f) i.e. freedom to carry trade & occupation.
2. That the Parliament was competent to legislate on the acquisition of banking and that the said law was valid as far as Legislative Competence is considered.

Further, he held that the Ordinance promulgation power vested within the President of India is a subjective power that cannot be challenged in courts. However, he rejected the majority's opinion that the shareholder can approach the apex court for the violation of his rights which were directed against a company i.e. a *non-citizen*. He also affirmed the mutual exclusivity theory as was propounded in *Gopalan* judgment.

CRITICAL ANALYSIS OF THE CASE

The importance of this judgment is often misunderstood in the sense that it is contradictory to Socialist ideals of the Constitution. In actuality, the power of Nationalization was upheld by the Supreme Court. The court however just expanded the horizons of the protection of Fundamental Rights after which even a shareholder whose rights are indirectly violated by the legislative act can approach the courts. The court held that they would not bar the remedies that exist in the Constitution for the protection of citizens on mere trifling technicalities. The court decided not to interfere in the Government's objective of Socialism and provided them with enough levy to achieve them. This case is also important as it was a turning point in the interpretation of Fundamental Rights which was later applied in subsequent SC decisions.

The decision should not be misunderstood because the apex court respecting the obligations upon the respondent to make India a socialist state. Although, socialism in retrospect had been disastrous to the Indian economy and eventually led to India's bankruptcy. However, it was a popular philosophy at that time and the government had every right to pick a socialist path. The court also apart from upholding the respondent's power to Nationalize also upheld respondent's competence to enact such laws. The court also relieved the Parliament from the lengthy procedure of making such laws by first making specific laws under List I. Thus, if now the Parliament desires to nationalize airlines then it need not first make laws specifically under Entry 29 List I for aircraft. Rather they can directly make laws under Entry 42 of List III since they expanded the meaning of "property" to mean rights, liabilities, organization etc.

The majority bench to protect the rights of the citizens of the nation from such a draconian law tried to expand the horizons of the protection. After the pronouncement of the decision the shield was broadened and as a result now if a legislative act violates a citizen's fundamental rights indirectly it will be liable to be struck down. The court did away with the objective test that was used to ascertain the validity of the legislative act & now the effects test was used to ascertain this validity. This was a huge incentive in the favour of the citizens of the nation. Following this decision, the apex court again in *Bennett Coleman v. Union of India* held that FR's of a citizen is not lost when they associate to form a company.

The court however also succeeded in protecting the Fundamental Rights of the citizens of the nation by holding the impugned act in violation of Article 31(2). The court held that compensation to be awarded 10 years later that too in bonds is too illogical and detrimental to the affected parties. Probably, some citizens will not be able to realize the fruits of the agreement due to the reasons of emergencies such as death. The court relied on the principle laid down in *State of West Bengal v. Bela Banerjee* that the word "Compensation" in Article 31(2) means full indemnification. After the decision of *Bela Banerjee*, the Parliament enacted the 4th Constitutional (Amendment) Act, 1955 which provided that inadequacy of compensation cannot be a ground to challenge the acquisition of private property. Despite this, the court in *P. Vajravelu Mudaliar v. Special Deputy Collector, Madras* affirmed the ratio of *Bela Banerjee*. However, confusion was caused when the court reversed its stance and overruled the earlier judgments in *the State of Gujarat v. Shantilal Mangaldas*. However, rejecting the opinion in *Shantilal Mangaldas* and clearing all confusion upheld the ratio of *Bela Banerjee*.

This decision is also important in the sense it was the main driving force to the bench who sat to decide the landmark case that changed the interpretation of Right to life & liberty i.e. *Maneka Gandhi v. Union of India*. The mutual exclusivity theory that was propounded by the bench in *Gopalan* was rejected in *R.C. Cooper* and it was held that each FR is dependent on one another for its survival. This interlinking of FR's was later used in *Maneka Gandhi*.

"The court also in its judgment dwelled on the aspect of Principles of Natural Rights vis-à-vis FR's and held that if the statutory provision which eliminates any Principle of Natural Rights, then the court cannot ignore such elimination and is duty-bound to make the state follow them.

CONCLUSION

The *Bank Nationalisation* case indeed served as a landmark judgement for guiding the Parliament, as well as the Constitutional jurisprudence of the country for years to come. However, the aftermath of the judgement may be noted from the fact that the Parliament, to strengthen its position, made the 25th Constitutional (Amendment) Act, in which the following points were noted-

1. The word 'compensation' in Article 31(2) was replaced by the word 'amount'. This meant that the Government was now not liable to pay an 'adequate' amount to the person whose property was being acquired as earlier.
2. Article 19(1)(g) was detached from Article 31(2).
3. Article 31C, a new provision was added to the Constitution to remove all difficulties that-
4. Articles 14, 19 and 31 are not to be applied to any law enacted under the fulfilment of objectives laid down under Articles 39(b) and 39(c).
5. Any law to give effect to Articles 39(b) & 39(c) will be immunized from Court's intervention.

Hence, this was all about the *R.C. Cooper Vs. Union of India* case, popularly known as the *Bank Nationalisation* case of 1970.

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