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Hindustan Construction Co. Ltd. v. Union of India¹

Facts

The case of **Hindustan Construction Co. Ltd. v. Union of India** revolves around the constitutional validity of specific provisions within the Arbitration and Conciliation Act, 1996, particularly Section 87, which was introduced by the Arbitration and Conciliation (Amendment) Act, 2019, and the repeal of Section 26 of the Arbitration and Conciliation (Amendment) Act, 2015. The Petitioners also challenge provisions of the Insolvency and Bankruptcy Code, 2016, arguing that they face discriminatory treatment under these laws.

Section 87 of the Arbitration and Conciliation Act, 1996, which was inserted by the 2019 Amendment Act and came into force on August 30, 2019, effectively reset the clock on how arbitral awards were to be treated. It reinstated a previously removed requirement that awards could not be automatically stayed during the pendency of set-aside applications unless a court expressly ordered such a stay.

The Petitioners, including Hindustan Construction Co. Ltd., were aggrieved by this change, arguing that it negated the progressive reforms introduced by the 2015 Amendment Act, particularly Section 26, which had removed the automatic stay on arbitral awards pending challenge. They contended that this change regressed to a pre-2015 position, which significantly hampered the enforcement of arbitral awards, thereby affecting their financial and operational stability.

The Petitioners also challenged the Insolvency and Bankruptcy Code, 2016, claiming that it provided preferential treatment to government bodies other than government companies, which are exempt from the Code's provisions because they are statutory authorities or government departments. Thus, they argued, resulted in unfair and discriminatory treatment against private entities like themselves.

¹ (2020) 17 SCC 324

Issues Raised

The Supreme Court of India identified three issues which are mentioned below:

1. Constitutional Validity of Section 87:

- Whether Section 87 of the Arbitration and Conciliation Act, 1996, as introduced by the 2019 Amendment Act, is constitutionally valid.

2. Validity of the Repeal of Section 26:

- Whether the repeal of Section 26 of the Arbitration and Conciliation (Amendment) Act, 2015, by Section 15 of the 2019 Amendment Act is valid and justifiable.

3. Discriminatory Treatment under the Insolvency Code:

- Whether the provisions of the Insolvency and Bankruptcy Code, 2016, result in discriminatory treatment against the Petitioners, particularly in the context of exemptions granted to government bodies.

Contentions

Petitioners' Arguments:

1. **Constitutional Infirmary of Section 87:** The petitioners contended that Section 87 of the Arbitration and Conciliation Act, 1996, introduced by the 2019 Amendment Act, undermines the objectives of the Arbitration Act and the 2015 Amendment Act. They argued that this section reintroduced the regime where the automatic stay on enforcement of arbitral awards was prevalent, which the 2015 Amendment Act had sought to remove to enhance the efficacy of the arbitration process in India.
2. **Violation of Article 14:** They argued that the repeal of Section 26 of the 2015 Amendment Act by Section 15 of the 2019 Amendment Act was arbitrary and discriminatory, thus violating Article 14 of the Indian Constitution, which guarantees equality before the law. The petitioners claimed that this repeal disrupted the legal expectations set by the 2015 amendments and created an uneven playing field.
3. **Discriminatory Treatment under the Insolvency Code:** The petitioners further claimed that the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC), discriminated against them. They pointed out that while government bodies and statutory authorities were exempt from the insolvency proceedings, private entities like themselves were not, which resulted in unequal and unfair treatment.

Respondent's Arguments:

1. **Defence of Section 87 and Repeal of Section 26:** The Attorney General for India, representing the government, defended the changes. He argued that the insertion of Section 87 and the repeal of Section 26 were necessary clarifications to maintain consistency in the application of the law. According to him, these amendments were intended to clear any ambiguity and restore the status quo ante concerning the enforcement of arbitral awards.
2. **Clarificatory Nature of the Amendments:** The Attorney General emphasized that the amended Section 36, which relates to the stay of enforcement of arbitral awards, was clarificatory and merely restated the existing legal position. Therefore, it did not introduce any new principle that could be seen as arbitrary or discriminatory.

3. **Suppression of Facts:** He accused the petitioners of suppressing facts and figures relevant to the case, suggesting that this suppression warranted the dismissal of the petitions at the threshold without a detailed examination of the claims.

Intervenors' Support for Petitioners:

1. UNCITRAL Model Law: The intervenors, supporting the petitioners, argued that under the UNCITRAL Model Law, Articles 34 and 35 provide for the setting aside and enforcement of arbitral awards in a manner that ensures fairness and equality. They claimed that Section 87 undermined this principle by reintroducing an arbitrary cut-off date, thus disrupting the level playing field intended by the 2015 amendments.

Rationale

The Supreme Court's rationale in this case revolved around the principle of fairness and the need to maintain consistency with the objectives of the Arbitration Act. The Court noted the following key points in its reasoning:

1. **Manifest Arbitrariness:** The Court found the deletion of Section 26 of the 2015 Amendment Act and the insertion of Section 87 by the 2019 Amendment Act to be manifestly arbitrary. It held that these changes disrupted the legal framework established by the 2015 amendments, which aimed to remove the automatic stay on the enforcement of arbitral awards, thereby enhancing the efficacy and speed of arbitration in India.
2. **Violation of Article 14:** By reintroducing the automatic stay regime, the amendments created an unfair disadvantage for parties seeking to enforce arbitral awards. This arbitrary treatment violated Article 14 of the Indian Constitution, which guarantees equality before the law and prohibits discrimination.
3. **Consistency with Legislative Objectives:** The Court emphasized that legislative changes must align with the broader objectives of the law they seek to amend. In this case, the 2015 amendments were introduced to promote arbitration as a speedy and efficient alternative dispute resolution mechanism. The 2019 amendments, by reversing key aspects of these reforms, were found to be inconsistent with this legislative intent.

Defects of Law

The Court identified several defects in the legislative amendments challenged in this case:

1. Arbitrariness: The insertion of Section 87 and the repeal of Section 26 were deemed arbitrary because they reintroduced the very issues that the 2015 amendments sought to address. This arbitrary reversal of legislative intent was seen as detrimental to the arbitration process.
2. Disruption of Legal Expectations: The 2015 amendments had created a legal expectation that arbitral awards would be enforceable without an automatic stay. The 2019 amendments disrupted these expectations, creating uncertainty and undermining the trust in the arbitration process.
3. Unequal Treatment: The provisions of the Insolvency and Bankruptcy Code were also criticized for creating unequal treatment between government bodies and private entities. This disparity was seen as discriminatory and contrary to the principles of fairness and equality enshrined in the Constitution.

Inference

The Supreme Court's decision in *Hindustan Construction Co. Ltd. v. Union of India* underscores the importance of maintaining consistency and fairness in legislative amendments, particularly in the context of arbitration and insolvency laws. The key inferences from this case are:

1. **Judicial Oversight on Arbitrariness:** The judiciary plays a crucial role in ensuring that legislative changes do not introduce arbitrariness or disrupt the legal expectations of the parties involved. In this case, the Court's intervention was necessary to strike down amendments that were inconsistent with the broader objectives of the Arbitration Act.
2. **Promotion of Arbitration:** The decision reinforces the need to promote arbitration as a speedy and efficient alternative dispute resolution mechanism. Legislative changes that undermine this objective, by reintroducing hurdles like the automatic stay on enforcement, are likely to face judicial scrutiny.
3. **Equality Before Law:** The case highlights the importance of equality before the law, as guaranteed by Article 14 of the Indian Constitution. Legislative provisions that create discriminatory treatment between different classes of entities, without a reasonable basis, are likely to be struck down as unconstitutional.
4. **Legislative Consistency:** The decision emphasizes the need for legislative consistency and coherence. Amendments to existing laws should align with the broader legislative intent and objectives, rather than introducing conflicting provisions that create uncertainty and disrupt legal processes.

Overall, the Supreme Court's decision in this case reaffirms the judiciary's role in safeguarding the principles of fairness, equality, and consistency in the application of laws, particularly in areas critical to the effective resolution of commercial disputes through arbitration.

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