**CASE ANALYSIS ON STATE OF WEST BENGAL V. ANWAR ALI SARKAR**

BY

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**BACKGROUND OF THE CASE**

“The respondent and 49 other persons were charged with various offences alleged under the West Bengal Special Courts Act, 1950 to have been committed by them in the course of their raid as an armed gang on a certain factory known as the Jessop factory at Dum Dum, and they were convicted and sentenced to varying terms of imprisonment by the Special Court to which the case was sent for trial by the Governor of West Bengal by a notification dated 26-1-1950 in exercise of the powers conferred by Section 5(1) of the Act.”

“Thereupon the respondent applied to the High Court under Article 226 of the Constitution for the issue of a writ of certiorari quashing the conviction and sentence on the ground that the Special Court had no jurisdiction to try the case as Section 5(1), under which it was sent to the Court for trial was unconstitutional and void under Article 13(2) as it denied to the respondent the equal protection of the laws enjoined by Article 14.”

The High Court by a Full Bench quashed the conviction and directed the trial of the respondent and the other accused persons according to law. Hence this appeal in this Hon’ble Court.

This is an appeal by the State of West Bengal from a judgment of the High Court of Calcutta quashing the conviction of the respondent by the Special Court established under Section 3 of the West Bengal Special Courts Ordinance, 1949 which was replaced in March 1950 by the West Bengal Special Courts Act, 1950.

**ISSUES**

“The issue raised was of the constitutional validity of the West Bengal Special Courts Act, 1950 on the grounds of Article 14 of the Constitution of India.

Section 5(1) of the Act was also constitutionally challenged on the ground that it gives arbitrary power and authority to state government to refer any case or class of cases to special courts without any reasonable classification.”

**ARGUMENTS FROM PETITIONER**

“If the object of the legislation was a laudable one and had a public purpose in view, as in this case, which provided for the speedier trial of certain offences, the fact that discrimination resulted as a bye-product would not offend the provisions of Article 14 implying that if the inequality of treatment was not specifically intended to prejudice any particular person or group of persons but was in the general interests of administration, it could not be urged that there is a denial of equality before the law.”

“If the principle of classification has to be applied as a necessary test, there is a classification in the impugned Act as it says that it is intended to provide for the speedier trial of certain offences; and in the opinion of the legislature certain offences may require more expeditious trial than other offences and this was a good enough classification.”

“The Act empowers the State Government to direct the offences, which, in its view, require speedier trial. This State control which can effect such changes as it likes for securing due and efficient administration of justice is a mere regulation in the mode of trial and is thus not a discriminatory or hostile legislation. This construction of the section, is consonant with the object of the Act as recited in the preamble and does not offend against the inhibition of Article 14 of our Constitution.”

The petitioner contends that the Article is a protection against the inequality of substantive law only and not against that of a procedural law.

The differences that have been made in the procedure for criminal trial under the West Bengal Special Courts Act, 1950 are of a minor character and there are no substantial grounds upon which discrimination could be alleged or founded.

**ARGUMENTS FROM RESPONDENT**

“The whole of Section 5 of the Act or, at any rate, that part of it which authorises the State Government to direct particular “cases“ to be tried by the Special Court offends against the guarantee of equality before the law secured by Article 14. If the provision of Section 5 of the Act is invalid even to the limited extent mentioned above, then also the whole proceedings before the Special Court which was directed by the State Government to try these particular “cases“ must necessarily have been without jurisdiction as has been held by the High Court Full Bench and these appeals would have to be dismissed. “

“There is no indication in the sub-section itself of any restriction or qualification on the power of classification conferred by it on the State Government and that the power thus given to the State Government cannot be controlled and cut down by calling in aid the Preamble of the Act, for the Preamble cannot abridge or enlarge the meaning of the plain language of the sub-section.

This uncontrolled and unguided power of classification given to the State under Section 5(1) can be exercised capriciously or “with an evil eye and an unequal hand “so as to deliberately bring about invidious discrimination between man and man, although both of them are situated in exactly the same or similar circumstances.”

**LEGAL ASPECTS**

“The Court first began by decoding Article 14 of the Indian Constitution. The preamble to the Constitution mentions one of the objects to be to secure to all its citizens equality of status and opportunity. Article 14 states that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 14 of our Constitution, corresponds to the last portion of Section 1 of the Fourteenth Amendment to the American Constitution except that our Article 14 has also adopted the English doctrine of rule of law by the addition of the words “equality before the law.’’”

“Article 14 is designed to prevent a person or class of persons from being singled out from others similarly situated for the purpose of being specially subjected to discriminating and hostile legislation, it does not insist on an “abstract symmetry’’ in the sense that every piece of legislation must have universal application. All persons are not, by nature, attainment or circumstances, equal and the varying needs of different classes of persons often require separate treatment and, therefore, the protecting clause has been construed as a guarantee against discrimination amongst equals only and not as taking away from the State the power classify persons for the purpose of legislation.”

The West Bengal Special Courts Ordinance, 1949, which was later replaced by the impugned Act (West Bengal Special Courts Act 1950) was a valid Ordinance when it was promulgated on 17-8-1949 as there was no provision similar to Article 14 of the present Constitution. The Act, which came into effect on 15-3-1950, is a verbatim reproduction of the earlier Ordinance.

“The true scope and intent of the impugned provision is that it purports to provide for the matters to be tried by a special Court and does not define the kind or class of offences or cases which the State Government is empowered under the Act to assign to such a Court for trial. The purpose of Section 5(1) is to define the jurisdiction of a special Court appointed under the Act and not the scope of the power conferred on the State Government to refer cases to such Court. The very object of the Act was to provide for speedier trials by instituting a system of special Courts with a simplified and shortened procedure.”

“The Act under scrutiny has deviated in many matters of importance from the procedure prescribed by the Criminal Procedure Code for the trial of offences and that this departure has been definitely adverse to the accused. Preliminary inquiry before committal to the Sessions, trial by jury or with the aid of assessors, the right of a de novo trial on transfer of a case from one Court to another, have been taken away from the accused who are to be tried by a Special Court; even graver is S. 13, which provides that a person may be convicted of an offence disclosed by the evidence as having been committed by him, even though he was not charged with it and it happens to be a more serious offence. This power of the Special Court is much wider than the powers of ordinary Courts. A comparison between the language of those sections of the Code and that of the several sections of this Act mentioned above will clearly show that the Act has gone much beyond the provisions of the Code and the Act cannot by any means be said to be an innocuous substitute for the procedure prescribed by the Code. The act quite definitely brings about a substantial inequality of treatment, in the matter of trial between persons subjected to it and others who are left to be governed by the ordinary procedure laid down in the Code.”

In consequence of the Act, two procedures, one laid down in the Code and the other laid down in the Act, exist side by side in the area to which the Act applies.”

1. A grave offence may be tried according to the procedure laid down in the Act, while a less grave offence may be tried according to the procedure laid down in the Code.

2. An accused person charged with a particular offence may be tried under the Act while another accused person charged with the same offence may be tried under the Code.

3. Certain offences belonging to a particular group or category of offences may be tried under the Act whereas other offences belonging to the same group or category may be tried under the Code.

The latter affords greater facilities to the accused for the purpose of defending himself than the former.

“The Court citing the provisions of the Indian Penal Code held that there are different chapters dealing with offences relating to different matters, eg. chapter XVII which deals with offences against property, that under this generic head are set forth different species of offences against property, eg. theft (S. 378), theft in a dwelling house (S. 380), theft by a servant (S. 381), to take only a few examples, and that according to the language of Section 5 (1) of the impugned Act it will be open to the State Government to direct all offences of theft in a dwelling house under Section 380 to be tried by the Special Court according to the special procedure laid down in the Act leaving all offences of theft by a servant under S. 381 to be dealt with in the ordinary Court in the usual way. The argument is that although there is no apparent reason why an offence of theft in a dwelling house by a stranger should require speedier trial any more than an offence of theft in a dwelling house by a servant should do, the State Government may nevertheless select the former offence for special and discriminatory treatment in the matter of its trial by bringing it under the Act. A little reflection will show that this argument is not sound. In order to be a proper classification so as not to offend against the Constitution it must be based on some intelligible differentia which should have a reasonable relation to the object of the Act as recited in the Preamble. In the illustration taken above the two offences are only two species of the same genus, the only difference being that in the first the alleged offender is a stranger and in the latter he is a servant of the owner whose property has been stolen. Even if this difference in the circumstances of the two alleged offenders can be made the basis of a classification, there is no nexus between this difference and the object of the Act, for, in the absence of any special circumstances, there is no apparent reason why the offence of theft in a dwelling house by a stranger should require a speedier trial any more than the offence of theft by a servant should do. Such classification will be wholly arbitrary.”

“In the present case, there is ostensibly no attempt at, or pretence of, any classification on any basis whatever. To say that the reference to speedier trial in the preamble of the Act is the basis of classification is to read into the Act something which it does not contain and to its authors what they never intended. The notifications simply direct certain “cases” to be tried by the Special Court and are obviously issued under that part of S. 5(1) which authorises the State Government to direct “cases” to be tried by the Special Court. “

“It is, therefore, clear, that the power to direct “cases“ as distinct from “classes of cases“ to be tried by a Special Court contemplates and involves a purely arbitrary selection based on nothing more substantial than the whim and pleasure of the State Government and without any appreciable relation to the necessity for a speedier trial.”

The Court held that the whole of the West Bengal Special Courts Act of 1950 offends the provisions of Article 14 and is therefore bad. We find men accused of heinous crimes called upon to answer for their lives and liberties. We find them picked out from their fellows, and however much the new procedure may give them a few crumbs of advantage, in the bulk they are deprived of substantial and valuable privileges of defence which others, similarly charged, are able to claim.

The Court therefore agreed with the High Court that S. 5 (1) of the Act in so far as it empowers the State Government to direct “cases“ to be tried by a Special Court offends against the provisions of Art. 14 and, therefore, the Special Court had no jurisdiction to try these “cases“ of the respondents. The High Court was right in quashing the conviction of the respondents in the one case and in prohibiting further proceedings in other cases and finally this Court dismissed these appeals

**PRECEDENTS**

“The meaning, scope and effect along with the principles underlying the provisions of Article 14 of our Constitution have been discussed and laid down by this Court in the case of **Chiranjit Lal V. The Union of India[[1]](#footnote-1)** and The **State of Bombay v. F.N. Balsara[[2]](#footnote-2)**. It is now well established that while Article 14 is designed to prevent a person or class of persons from being singled out from others similarly situated for the purpose of being specially subjected to discriminating and hostile legislation, it does not insist on an “abstract symmetry’’ in the sense that every piece of legislation must have universal application. All persons are not, by nature, attainment or circumstances, equal and the varying needs of different classes of persons often require separate treatment and, therefore, the protecting clause has been construed as a guarantee against discrimination amongst equals only and not as taking away from the State the power to classify persons for the purpose of legislation.”

The Court relied on a passage from Willis on Constitutional Law wherein it was held that the guarantee of the equal protection of the laws means the protection of equal laws. It forbids class legislation, but does not forbid classification which rests upon reasonable grounds of distinction. It does not prohibit legislation, which is limited either in the objects to which it is directed or by the territory within which it is to operate. It merely requires that all persons subject to such legislation shall be treated alike under like circumstances and conditions both in the privileges conferred and, in the liabilities, imposed.

**SUGGESTIONS**

The West Bengal Special Courts Act though gave arbitrary power to the State government to refer the cases to the special courts, it didn’t reduce the judicial power or the authority of the judges. So, even if the cases were referred arbitrarily to the special courts, the justice would be the same as the judiciary was not taken under the control of the state government.

The Hon’ble Supreme Court of India, left no doubt over the scope of Article 14 in this case. The quashing of the appeal was considered to be an essential step towards ensuring a non-arbitrary justice procedure. However, the court could also have considered to amend the Act so as to reduce the arbitrary power of the state and give an equal upholding to the judiciary to decide the matters.

**CONCLUSION**

“The case of State of West Bengal v Anwar Ali Sarkar was decided by the Hon’ble Supreme Court in favour of Anwar Ali declaring the West Bengal Special Courts Act, 1950 void on the grounds of violating Article 14 of Constitution of India as the Act gave arbitrary, uncontrolled, unguided power to the State Government which could be used unreasonably and in a biased manner and along with that restricted the equal protection of laws. The Act failed to provide reasonable classification between cases, classes of cases, offences and classes of offences.”

“It was also held that the classification of cases as already done in the Code of Criminal Procedure was reasonable and such reasonableness did not meet the classification as done in the impugned act. The Code already provided the classification of cases which are to be provided with speedy trial and no adequate need of the Act was seen.”

**REFERENCES**

* *Chiranjit Lal V. The Union of India,* 1951 AIR 41
* *State of Bombay v. F.N. Balsara,* 1951 AIR 318
* *Constitutional Law of the United States,* by H.E. Willis
* *Anwar Ali Sarkar v. State of West Bengal,* AIR 1952 Cal 150
* *State of West Bengal v. Anwar Ali Sarkar,* 1952 AIR 75

**BRIEF ABOUT THE AUTHOR**

Nivedita Guliani is a first-year student pursuing BA.LLB. from Symbiosis Law School, NOIDA. Her key areas of interest are criminal law, family law, human rights law and alternate dispute resolution. She is very keen on legal research and writing and looks forward to developing her skills. She has interned in the High Court of Delhi and enjoys the work of a lawyer. Other than law, she enjoys reading, watching movies and cooking which serves as an escape from the academics.

1. 1951 AIR 41 [↑](#footnote-ref-1)
2. 1951 AIR 318 [↑](#footnote-ref-2)