

Natural Resources Allocation, In re, Special Reference No. 1 of 2012 v. , (2012) 10 SCC 1

Constitution of India

Art. 14 - Violation of, by legislation or executive action - Determination of - Approach to be adopted - Test, if any, that may applied - Formulaic approach, comprehensively rejected - Development of jurisprudence on Art. 14 since inception of Constitution, traced - Shortcomings of classification doctrine and arbitrariness doctrine, highlighted - Executive power - Limits on - Foundational principles of executive governance - Held (per curiam), a constitutional mandate is an absolute principle which has to be applied in all situations on a case-by-case basis to see which actions fulfil the requirements thereof and which do not - A constitutional principle must not be limited to a precise formula but ought to be an abstract principle applied to precise situations - Strength of constitutional adjudication and judicial review lies in case to case adjudication - Thus held (per curiam), State action, be it legislative or executive action, has to be tested for constitutional infirmities qua Art. 14: State action to escape wrath of Art. 14 has to be fair, reasonable, non-discriminatory, transparent, non-capricious, unbiased, without favouritism or nepotism, in pursuit of promotion of healthy competition and equitable treatment - State action must conform to norms which are rational, informed with reasons and guided by public interest - All these principles are inherent in Art. 14 - This is the mandate of Art. 14 - Held, per Khehar, J. (concurring), executive action should have clearly defined limits and should be predictable - Man on street should know why decision has been taken in favour of a particular person - Lack of transparency in decision-making process would render it arbitrary - Foundational principle of executive governance is based on realisation that sovereignty rests in the People - Every limb of the constitutional machinery is obliged to be people oriented - Every holder of public office is accountable to the People - Question of unfettered discretion in the executive just does not arise - Fetters on discretion are: clear, transparent and objective criteria or procedure which promote public interest, public purpose and public good, and all powers vested in public office, even in field of contract must be exercised only in furtherance thereof - Public authorities are ordained to act reasonably and in good faith and upon lawful and relevant grounds of public interest, (2012) 10 SCC 1-A

Constitution of India

Arts. 14 and 19 - Nature and scope of rights conferred by - Contrasted - Negative and positive rights - Held, right conferred by Art. 14 is in the form of an admonition on State in negative terms prohibiting it from taking actions that may be arbitrary, unreasonable, capricious or discriminatory - Art. 14 is an injunction to State against taking certain types of actions rather than commanding it to take particular steps - Art. 14 does not directly purport to confer any right on any person as some of the other articles like Art. 19 do - Further held, Art. 14 is expressed in absolute terms and its effect is not curtailed by restrictions like those imposed on Art. 19(1) by Arts. 19(2) to (6) - Judicial decisions set the parameters for determining when Art. 14 will be violated [see Shortnote A], (2012) 10 SCC 1-B

Constitution of India

Preamble, Pt. III, Arts. 14, 32, 226, 136, 73, 162, 245 and 368 - Supremacy of the Constitution - Judiciary as guardian of the Constitution - Held, legislature and executive are answerable to the Constitution, and it is there where judiciary, guardian of the Constitution must find contours of powers, (2012) 10 SCC 1-C

Constitution of India

Arts. 14, 38 and 39 - Distributive justice - Balancing of individual rights with societal or collective rights as part of mandate under Art. 14 - Role of public interest litigation (PIL) in - Held, per Khehar, J., in a maturing society, individual rights and collective rights have to be balanced - True effect of Art. 14 is to ensure that a few individuals do not enrich themselves at the cost of all others, which would amount to deprivation to the plurality i.e. the nation itself - Role of public interest litigation in this regard, discussed, (2012) 10 SCC 1-D

Constitution of India

Arts. 14, 39(b), 298, 299 and Preamble - Grant of State largesse - Allocation/dispensation/alienation of natural resources by State - Selection of method for - Nature of exercise - Freedom of executive in this regard - Scope of - Auction as method of allocation - Executive if bound to adopt auction in certain situations - When may auction be deviated from - Test of fairness to be satisfied and strict compliance with Art. 14, in case of deviation from auction as mode of allocation - Compelling reasons for deviation - Need for - Scope of judicial review - Onus when shifts onto State to justify its actions - Prevention of crony capitalism - Revenue maximisation as policy objective to subserve common good - Auction as preferable or optimal or invariable mode of allocation in such cases - Where revenue maximisation is object of policy, held (per curiam), auction would be one of the preferable methods, though not the only method - Auction despite being a more preferable method of alienation/allotment of natural resources, cannot be held to be a constitutional requirement for alienation of all natural resources - Hence, every method other than auction cannot be struck down as ultra vires the Constitution, even if there might be a potential for abuse, as potential for abuse cannot be the basis for striking down a method as ultra vires the Constitution - Furthermore, Court cannot conduct a comparative study of various methods of distribution of natural resources and suggest the most efficacious mode - It respects mandate and wisdom of executive in such matters - Methodology pertaining to disposal of natural resources is clearly a matter of economic policy which entails intricate economic choices, and Court lacks necessary expertise therefor - Hence, reiterated, there can be exceptions to auction: ultimate test being fairness of decision-making process and strict compliance with Art. 14 - However, a blithe deviation from public disposal of resources would not be tolerable - Such deviation must be justified by compelling reasons and not just convenience - Illustrative examples given of when deviation from auction may be justifiable - When challenged, courts are entitled to analyse legal validity of different means of distribution/allocation from case to case and adjudge the vires - If a policy or law is patently unfair, failing the fairness requirement of Art. 14, Court would not hesitate to strike it down - State action to escape wrath of Art. 14 has to be fair, reasonable, non-discriminatory, transparent, non-capricious, unbiased, without favouritism or nepotism, in pursuit of promotion of healthy competition and equitable treatment - State action must conform to norms which are rational, informed with reasons and guided by public interest - All these principles are inherent in Art. 14 - Thus, when a policy decision to alienate/allocate natural resources is not backed by a social or welfare purpose, and precious and scarce resources are alienated for commercial pursuits of profit maximising private entrepreneurs (i.e. crony capitalism), adoption of means other than those that are competitive and which maximise revenue may be held arbitrary to face wrath of Art. 14 - Hence, rather than prescribing or proscribing a method, judicial scrutiny of methods of disposal of natural resources should depend on facts and circumstances of each case, in a case to case adjudication [see also Shortnote A], in consonance with the above principles - Failing which, Court in exercise of power of judicial review, shall term executive action as arbitrary, unfair, unreasonable and capricious due to its antimony with Art. 14 and strike it down - Held, per Khehar, J. (concurring), for grant of State largesse transparent, rational and objective criteria/procedure have to be evolved - Governmental policy for allocation of natural resources should not only be devised keeping in mind common good of community, but should also be implemented legitimately and transparently - Elaborate hypothetical example constructed to illustrate how a forthright and legitimate policy may become unacceptable in law due to defective or illegitimate implementation - Executive must ensure that all eligible persons get a fair opportunity to compete so that common good is subserved - Exercise of discretion which enables competent authority to arbitrarily pick and choose out of several persons falling in same category would be arbitrary and as such violative of Art. 14 - Where no plausible reason or principle is indicated behind a particular allocation or allocation mechanism, or is discernible, or where impugned action ex facie appears to be arbitrary, onus shifts onto State to justify its action as fair and reasonable - In executing public contracts in its trading activity, State must act as a prudent businessman and profit earned should be for public benefit and not for private gains - Where State is simply selling a product, it must endeavour to obtain the highest price, subject to any other overriding public consideration - Validity of a trading agreement executed by State has to be judged by test that entire benefit arising therefrom enures to State, and is not used as a cloak for conferring private benefits to a limited class of persons (i.e. crony capitalism) - Every bit of natural resource expended must bring back a reciprocal consideration to State - Consideration may be in the nature of earning revenue or may be to best subserve common good, or amalgam of the two - There cannot be a dissipation of material resources free of cost or at a consideration lower than their actual worth - One set of citizens cannot prosper at the cost of another set of citizens - Endeavour to get State full value of its resources is particularly pronounced in sale of State-owned natural resources to private sector - Whenever State gets less than full value of the assets, it means that country has been cheated as it amounts to simple transfer of wealth from citizens as a whole to whoever gets the assets at a discount - Disposal of State largesse/natural resources by rightful and prudent choice of auction process (amongst many auction processes) could assure maximisation of revenue - When natural resources are made available by State to private persons for commercial exploitation exclusively for their individual gain, State's endeavour must be towards revenue maximisation - This alone would ensure that fundamental right in Art. 14 and directive principle in Art. 39(b) have been extended to all citizens - Auction is certainly not a constitutional mandate but auction by way of competitive bidding is certainly an indisputable means (as admitted by State) to maximise revenue, (2012) 10 SCC 1-E

Constitution of India

Arts. 14, 39(b), 298, 299 and Preamble - Allocation/dispensation/alienation of natural resources by State - Prevention of crony capitalism - Allocation of natural resources to private persons for commercial exploitation solely for private benefit with no social or welfare purpose - Heightened level of judicial scrutiny in case of deviation from open and transparent auction of natural resources in such cases - Revenue maximisation as an imperative in such cases - Principle in 2G Spectrum case, (2012) 3 SCC 1, that "a duly publicised auction conducted fairly and impartially is perhaps the best method for discharging this burden", impliedly affirmed (per curiam) - Held (per curiam), when a policy decision to alienate/allocate natural resources is not backed by a social or welfare purpose, and precious and scarce resources are alienated for commercial pursuits of profit maximising private entrepreneurs (i.e. crony capitalism), adoption of means other than those that are competitive and maximise revenue may be held arbitrary to face wrath of Art. 14 - Held, per Khehar, J. (concurring), disposal of State largesse/natural resources by rightful and prudent choice of auction process (amongst many auction processes) could assure maximisation of revenue - When natural resources are made available by State to private persons for commercial exploitation exclusively for their individual gain, State's endeavour must be towards revenue maximisation - Validity of a trading agreement executed by State has to be judged by the test that entire benefit arising therefrom enures to State, and is not used as a cloak for conferring private benefits to a limited class of persons (i.e. crony capitalism), (2012) 10 SCC 1-F

Constitution of India

Arts. 14, 39(b), 298, 299 and Preamble - Allocation/dispensation/alienation of natural resources by State - Public trust doctrine and trusteeship of natural resources by State on behalf of the People - Meaning and scope of - High degree of judicial scrutiny of actions of State, as implication of - Affirmative and negative duties under public trust doctrine, explained - Contention that public trust doctrine is restricted only to province of environmental law, rejected - Held, "trusteeship" of natural resources by State means that State holds all natural resources as trustee of the public and must deal with them in a manner that is consistent with nature of that trust - Public trust doctrine does not prohibit alienation of natural resources held on public trust by State for commercial exploitation by private persons - Public trust doctrine provides for a high degree of judicial scrutiny of any action of State in allocating/dispensing/alienating natural resource held on public trust, no matter how consistent with existing legislations, (2012) 10 SCC 1-G

Constitution of India

Arts. 14, 39(b), 298, 299 and Preamble - Allocation/dispensation/alienation of natural resources by State so as to best subserve common good - "Common good" - What is - Economic and political philosophy of Government of the day - Role of, in defining "common good" - Subservicing the "common good" - Modes for - Freedom of Government in selection of - Revenue maximisation from alienation of natural resources and auction as mode of alienation - Role of - Norm of "common good", held, has to be understood and appreciated in a holistic manner - Manner in which common good is best subserved cannot be measured by any constitutional yardstick as Art. 14 does not predefine any economic policy as a constitutional mandate, nor does Art. 39(b) impose any such restriction - Rather, it would depend on the economic and political philosophy of Government - Further held, revenue maximisation is not the only way in which common good can be subserved - Whether or not revenue maximisation is relevant would depend on the object of policy of distribution - Where revenue maximisation is the object of distribution policy, auction would be one of the preferable methods, though not the only method [but see also Shortnote F], (2012) 10 SCC 1-H

Constitution of India

Arts. 14, 39(b), 298, 299 and Preamble - Allocation/dispensation/alienation of natural resources by State - Distributive justice - Restriction on "distribution" imposed by Art. 39(b) - Interpretation of - Distribution of ownership and control of material resources of community to best subserve common good - "Distribution" - Meaning, scope and interpretation of - To be interpreted broadly - Disposal of natural resources as a facet of distribution of material resources of community - Held, restriction on distribution imposed by Art. 39(b) is imposed on the object and not the means thereof - Overarching and underlying principle governing "distribution" is furtherance of common good - Methodology of distribution is not fixed - Distribution has broad contours and cannot be limited to meaning only one method i.e. auction - It envisages all such methods available for distribution/allocation of natural resources which ultimately subserve the "common good" [but see also Shortnote F], (2012) 10 SCC 1-I

Constitution of India

Arts. 14, 39(b), 298, 299 and Preamble - Allocation/dispensation/alienation of natural resources by State - Auction as sole method of disposal of natural resources, held, cannot be declared a constitutional mandate under Art. 14 nor Art. 39(b), applicable to dispensation/allocation/alienation of all natural resources by State - Reasons for discussed in detail - Equality cannot be limited to mean only disposal by auction, without testing it in every scenario - "Distribution" has broad contours and cannot be limited to mean only one method i.e. auction - Legislature and executive are answerable to Constitution, hence disposal of natural resources is governed thereby, especially by Arts. 14 and 39(b), as interpreted by judiciary as guardian of the Constitution - 2G Spectrum case, (2012) 3 SCC 1, clarified and affirmed, that it is only radio spectrum which can be alienated solely by auction and by no other method - 2G Spectrum case does not deal with modes of allocation for natural resources other than radio spectrum [but see also Shortnote F], (2012) 10 SCC 1-J

Constitution of India

Arts. 14, 38, 39(b) and Preamble - Economic policy - Constitutional mandate, if any as to economic policies - Held, there is no constitutional imperative in the matter of economic policies - Art. 14 does not predefine any economic policy as a constitutional mandate - Even mandate of Art. 39(b) imposes no restrictions on the means adopted to subserve the public good and uses the broad term "distribution", suggesting that the methodology of distribution is not fixed, (2012) 10 SCC 1-K

Government Contracts/Tenders

Auction/Bidding/Tender Process/Rejection of Bid/Tender

Auction - What is - Auction is just one of the several price discovery mechanisms, (2012) 10 SCC 1-L

Constitution of India

Preamble, Arts. 13, 245 and Pt. III - Validity of law - Bases on which may be tested - Reiterated, validity of a law cannot be tested with reference to essential elements of ideal democracy or what in the opinion of Court is opposed to "spirit of the Constitution" - Courts cannot declare a limitation or constitutional requirement under notion of having discovered some "ideal norm", (2012) 10 SCC 1-M

Constitution of India

Arts. 14, 13, 141 and 245 - Presumption of constitutionality - Wholesale unconstitutionality of several legislations by implication - Court judgment, held, cannot be construed in such a manner, (2012) 10 SCC 1-N

Constitution of India

Arts. 14 and 12 - Right to equality - Organs or wings of State against which available - Right to equality before law, held, is secured from all legislative and executive tyranny by way of discrimination, (2012) 10 SCC 1-O

Constitution of India

Art. 14 and Preamble - Kinds of equality enshrined in Art. 14 - Object of Art. 14, held, is to secure to all persons, citizens

and non-citizens, equality of status and opportunity referred to in the Preamble, (2012) 10 SCC 1-P

Constitution of India

Art. 14 - Protection of - ``Persons" to whom available - Reiterated, available to citizens and non-citizens, (2012) 10 SCC 1-Q

Constitution of India

Arts. 14, 21, 19, 13, 32 and 226 - Public interest litigation (PIL) - Jurisprudential concept behind, explained - Distributive justice - PIL as a redressal mechanism against crony capitalism - Held, per Khehar, J., PIL as a jurisprudential concept brings into focus rights of the plurality or collective as against individuals' rights, especially when the collective is not in a position to seek redressal of its grievances due to lack of financial means, lack of awareness or merely from overwhelming might of executive authority - It is in these situations that Supreme Court and High Courts have balanced individual rights and rights of plurality, (2012) 10 SCC 1-R

Constitution of India

Art. 143 - Power of President to consult Supreme Court - Broad scope of - Questions that may be referred by President to Supreme Court - Authority competent to decide whether referred question(s) meet requirements of Art. 143(1) - Supreme Court's power upon receipt of reference: (a) matters that may be examined by Supreme Court, (b) power of Supreme Court to decline to answer referred questions - Scope of - Difference between Art. 143(1) and Art. 143(2) in regard to (b) - Effect of advisory opinion on ``view of law" as contrasted with ``decision" in previous judgment of Supreme Court - Effect thereof on invocation of advisory jurisdiction - Held, President can make reference of a question to Supreme Court even before it has arisen i.e. at stage when President is satisfied that the question is likely to arise - Satisfaction whether question(s) meet pre-requisites of Art. 143(1) is essentially a matter for President to decide - Upon receipt of reference Supreme Court is only to consider the question(s) which have been referred to it and if Supreme Court decides to answer some or all of the questions, then to report to President its opinion thereon - Usage of word ``may" in Art. 143(1) as contrasted from the ``shall" in Art. 143(2), implies that Supreme Court is not bound to render its advisory opinion in every reference and may refuse to express its opinion for strong, compelling and good reasons - What such reasons might be, instantiated - Held, though Supreme Court has power in its advisory jurisdiction under Art. 143(1) to clarify ratio/view of law/principle of law laid down in a previous judgment of Supreme Court, in advisory jurisdiction Supreme Court cannot overturn a decided issue/previous decree/decision in a dispute or lis inter partes - Hence, in advisory jurisdiction Supreme Court can decline to answer question(s), considering or answering which would affect or have a bearing on decided issue/previous decree/decision in a dispute or lis inter partes in a previous judgment of Supreme Court - For said reason, Supreme Court declining to answer Qs. 6 to 8 of present Reference [see in detail Shortnote T], (2012) 10 SCC 1-S

Constitution of India

Arts. 141, 143 and 137 - Result 1: Overruling or varying or clarifying ``view of law"/principle of law/ratio of previous judgment of Supreme Court - Result 2: Re-opening, reversing, revising or varying ``decision"/decided issue/previous decree, writ, order or direction in a dispute or lis inter partes, of previous judgment of Supreme Court which has attained finality - Jurisdiction for obtaining Results 1 and 2 - Source and scope of - Nature of jurisdiction under Art. 143 - Availability of power under Art. 143 to invoke jurisdiction to obtain Result 1, but not Result 2 - Explained in detail - Held, in case of a ``decision" appellate structure is exhausted after a pronouncement by Supreme Court, and operative decree, writ, order or direction can only be opened in review under Art. 137 or curative jurisdiction, and in no other way - After exercise of these limited options, parties concerned have absolutely no relief with regard to their inter se dispute: it is considered settled for eternity in the eye of the law - However, what is not eternal and still malleable in the eye of the law is opinion or ``view of law" pronounced in course of reaching the decision - Overruling a judgment as a precedent does not reopen the decree, writ, order or direction or decision contained therein - Overruling an earlier view or principle of law is not done in appellate jurisdiction but in exercise of inherent power and only in exceptional circumstances - This inherent power can be exercised only so long as a previous decree, writ, order or direction or decision inter partes is not

affected - It is the attempt to revise/vary/overturn ``decision" of a previous case that is impermissible - Advisory jurisdiction under Art. 143 is not an appellate jurisdiction of Supreme Court over its own ``decision" and executive does not have power to ask Supreme Court under Art. 143 to revise its ``decision", though executive does have power to ask it to revise its ``view of law" - Permitting the former would be a serious inroad into independence of judiciary - Hence, Supreme Court is not barred from clarifying or varying or overruling ratio or view or principle of law of a previous judgment in advisory jurisdiction - In present case as State had categorically stated that ``decision" in 2G Spectrum case, (2012) 3 SCC 1, that allocation of radio spectrum could be done by auction alone and by no other method, was not being questioned, present Reference to clarify ``view of law" or ratio of 2G Spectrum case, considered, and Qs. 1 to 5 of Reference answered as they did not affect decision of 2G Spectrum case, but Qs 6 to 8 not considered as consideration thereof would affect decision in 2G Spectrum case , (2012) 10 SCC 1-T

Constitution of India

Art. 141 - Departure from binding precedent - Overruling or varying or clarifying ``view of law"/principle of law/ratio of previous judgment of Supreme Court - Exceptional circumstances in which permissible, instantiated - Inherent nature of such jurisdiction - Effect of overruling of view of law in a judgment on decision contained therein - Explained - Overruling a judgment as a precedent does not reopen the decree or decision contained therein - Overruling an earlier view or principle of law is not done in appellate jurisdiction but in exercise of inherent power and only in exceptional circumstances - This inherent power can be exercised only so long as a previous decree or decision inter partes is not affected, (2012) 10 SCC 1-U

Constitution of India

Arts. 137, 136, 141, 143 and 32 - Finality of decisions of Supreme Court - Re-opening, reversing, revising or varying ``decision"/decided issue/previous decree in a dispute or lis inter partes of previous judgment of Supreme Court which has attained finality - Extremely limited scope for - Modes and jurisdiction for, explained - Held, in case of a ``decision" appellate structure is exhausted after a pronouncement by Supreme Court, and operative decree or order can only be opened in review under Art. 137 or curative jurisdiction, and in no other way - After exercise of these limited options, parties concerned have absolutely no relief with regard to their inter se dispute: it is considered settled for eternity in eye of law, (2012) 10 SCC 1-V

Courts, Tribunals and Judiciary

Judicial Process

Judgment - Constituents of - In a judgment there will be a declaration of law and its application to facts of case to render a decision on dispute between parties to lis, (2012) 10 SCC 1-W

Constitution of India

Art. 143 - Power of President to consult Supreme Court - Maintainability of reference - Requirements of form - No prescribed format or pattern necessary - Use of word ``doubt" not mandatory - Held, use of word ``doubt" in reference is not required for maintainability thereof - Reference is not to be returned unanswered on ground of form or pattern alone - It requires appropriate analysis, understanding and appreciation of content or issue on which opinion of Supreme Court is sought by President, keeping in view constitutional responsibility, juridical propriety and judicial discretion - Reference should not be vague, general or undefined - Supreme Court can go through written briefs and arguments to narrow down legal controversies - It is only when question(s) become unspecific and incomprehensible that risk of returning reference unanswered arises - This was certainly not the case with instant Reference - Neither were the questions vague or unspecific, and though word ``doubt" had not been used, there certainly was a doubt on which opinion of Court was sought by President - Preliminary objection on this ground, rejected, (2012) 10 SCC 1-X

Constitution of India

Arts. 143 and 137 - Relative scope of advisory and review jurisdiction - Power of President to consult Supreme Court - Maintainability of reference - Effect of having sought a review against judgment concerned - President seeking opinion of Supreme Court to clarify view or principle of law/ratio of a previous judgment of Supreme Court - Fact that review had been filed and withdrawn against said judgment - Certain aspects of grounds for review also stated in recitals of reference - Effect - Clarifying difference between advisory and review jurisdiction, held, abovesaid facts did not bar invocation of advisory jurisdiction under Art. 143, (2012) 10 SCC 1-Y

Constitution of India

Art. 143 - President to consult Supreme Court - Maintainability of reference - Reference if actuated by mala fides - Effect - Held, only discretion Supreme Court has is to either answer reference or decline to answer it - It cannot go into question of bona fides or otherwise of authority to make reference, (2012) 10 SCC 1-Z

Constitution of India

Art. 141 - Binding law - "Law declared by Supreme Court" - What is - Principles reiterated - Ratio decidendi - What is and how to discern ratio decidendi of a judgment - Importance of reading judgment as a whole to discern its ratio decidendi, emphasised - Held, "law declared" means the ratio decidendi i.e. principle(s) of law or an interpretation of a law or judgment by Supreme Court, culled out on reading of a judgment as a whole in light of questions raised, based upon which the case is decided - Ratio decidendi is essence of decision and principle upon which case is decided, which has to be ascertained in relation to subject-matter of decision - Not everything said by a Judge while giving a judgment can be ascribed precedential value - Hence, it is important to analyse a decision and cull out therefrom the ratio decidendi - Every part of a judgment is intricately linked to other parts, constituting a larger whole and thus must be read keeping the logical thread intact - Said principles applied to discern ratio of 2G Spectrum case, (2012) 3 SCC 1, examining it as a whole and in particular: (i) questions raised therein, (ii) answers to those questions, (iii) principles in statute and case law discussed therein, (iv) new principles enunciated and laid down therein, (v) subject-matter of decision, (vi) principles strictly necessary to decide subject-matter of decision, (vii) use of word "perhaps" in regard to a broader conclusion(s) of law, not strictly necessary to decide subject-matter of decision, (viii) paragraphs containing main conclusions, (ix) summary of final conclusions and directions, and (x) larger context of settled legal principles in which any judgment can be rendered, (2012) 10 SCC 1-ZA

Constitution of India

Art. 222 - Transfer of High Court Judges - Scope of judicial review - Held, Third Judges case, (1998) 7 SCC 739, had slightly expanded the quite restricted scope of judicial review in respect of transfer of High Court Judges as laid down in Second Judges case, (1993) 4 SCC 441, (2012) 10 SCC 1-ZB

Constitution of India

Arts. 32, 136, 226, 143, 145(3), 13, Pt. III and 245 - Constitutional adjudication - Proper mode for - Formulaic approach, rejected - Held, a constitutional mandate is an absolute principle which has to be applied in all situations on a case-by-case basis to see which actions fulfil the requirements thereof and which do not - A constitutional principle must not be limited to a precise formula but ought to be an abstract principle applied to precise situations - Strength of constitutional adjudication and judicial review lies in case to case adjudication, (2012) 10 SCC 1-AA