Supreme Court’s intervention in economic policy

Why in news?

\n\n

\n
- Recently several cases were filed in the Supreme Court to withdraw the demonetisation move of the government.
\n
- The court has referred the issue of demonetisation to a constitutional bench of five judges.
\n
- The constitutional bench is yet to clarify an important issue of **what constitutes a notification as legislative or executive in nature.**
\n

\n\n

What the apex court’s judgments reveal?

\n\n

\n
- A clear decision came in the well-known case of Indian Express Newspapers vs. Union of India 1986 that **a notification, when legislative in nature, made intervention impermissible unless it violated a fundamental right.**
\n
- In this case the SC interfered to strike down the excessive tax on newsprint as it came to the conclusion that the imposition of a high tax was violative of the fundamental right of freedom of speech under Article 19(1)(a) of the Constitution.
\n
- However, on the mere ground of unreasonableness, an imposition of tax even by the amendment of a notification cannot be challenged, the court said.
\n
- In the case of Black Diamond Beverages vs. Union of India - 1988 and in the case of Sulochana Enterprises vs. Union of India - 1991, it was held that **if the excessiveness of the tax or policy was unbearable, so as to render business impossible,** only then was the policy violative of Article 19(1)(g) of the Constitution.

\n

\n\n

Whether economic policy is justiciable?

\n\n

\n
- Economic policy can be laid down either by legislation or by notification.
\n
- The SC came to a detailed conclusion in the Indian Express case, that economic policy contained in a notification is not justiciable if a notification is legislative in nature.
\n
- In such a case, it can be challenged only on the ground of violation of fundamental rights.
\n
- Hence, **the essential question is whether a notification is legislative or executive.** If in fact, it is executive in nature, then interference by the SC is permissible.
\n

\n\n

Conclusion:

\n\n

\n
- In the case of an ordinary fiscal levy, mere excessiveness of tax is not justiciable.
\n
- If the petitioner is able to prove that the excessiveness of tax has created discrimination vis-a-vis his competitors or has otherwise completely ruined his business such that it has gone against his fundamental right to trade or business, then it becomes justiciable.
\n
- In the case of newsprint, the challenge to a levy which was found to be burdensome has been entertained by the Supreme Court as justiciable on the ground that it violated the fundamental right to freedom of speech and expression under the Constitution and was a threat to democracy.
\n

\n\n

\n\n

Category: Mains | GS – II | Judiciary

\n\n

Source: Business Standard

\n