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## Case Comment: Unequal Bargains and Unconscionable Terms: Central Inland Water Transport v Brojo Nath Ganguly

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### INTRODUCTION AND BACKGROUND

Central Inland Water Transport Corporation Ltd v Brojo Nath Ganguly<sup>1</sup> is a Supreme Court case that marked history by expanding the words of Section 23 of the Indian Contract Act 1872<sup>2</sup>. This case involves invalidating an employment contract that went against the public policy, as prescribed in Section 23. The main question which was involved in this case is whether a government-owned company could draft a standard form service rule that is to terminate permanent employees, without giving any explanation. The case also talks about whether the wording of Section 23 can strike down such a contract. The judgment is a shift from laissez-faire freedom of contract to a more fairness-based review of contracts. This interpretation was especially required when the other party was a state-owned company. Ever since this judgment came in 1986, Brojo Nath Ganguly<sup>3</sup> has acted as a standard authority to rule upon the cases involving unconscionable employment contracts in the Indian Contract Act.

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<sup>1</sup> *Central Inland Water Transport Corporation & Anr Etc. v Brojo Nath Ganguly & Anr* AIR 1986 SC 1571

<sup>2</sup> Indian Contract Act 1872, s 23

<sup>3</sup> *Central Inland Water Transport Corporation & Anr Etc. v Brojo Nath Ganguly & Anr* AIR 1986 SC 1571

## FACTS

Central Inland Water Transport Corporation Ltd (CIWTC) is a government-owned company validated under Section 2(45)<sup>4</sup>. The company is operating in a joint ownership between the Union government and several State governments. The closure of another Inland water transport company, various employees, including Brojo Nath Ganguly, joined CIWTC under its terms and conditions of employment. CIWTC's Service, Discipline and Appeal Rules have Rule 9(i), which gives the company power and authority to fire any employee by providing either three months' notice or subsequent pay at any time. The firing can be done without stating any reasons and without offering any safeguard procedure. The employees who were affected by these terms were fired under Rule 9(i), and they were given three months' salary. The affected employees have questioned both their dismissals and the contract of employment, which included Rule 9(i). They also claimed that the terms were unconscionable, arbitrary and opposed the public policy.

## ISSUES

1. Is Rule 9(i) of the CIWTC's Service, Discipline and Appeal Rules violating Section 23 of the Indian Contract Act?
2. Whether a termination clause accepted under unequal bargaining power from the state-owned employer can be imposed upon a dependent employee.

## ARGUMENTS FROM BOTH SIDES

**Appellants:** The opposite party, CIWTC, defended itself by emphasising the principle of contractual freedom. The employee had accepted the employment terms, including Rule 9(i), and that firing through salary or notice was a usual commercial practice which was widely followed. The company also argued that Section 23 of the Indian Contract Act should not invalidate the terms just because the court finds them harsh or it is against public morals. Public policy was a narrow principle, and it is not meant to intrude into regular employment terms. They also focused on the 'mutuality', arguing that the employees also had the right to resign with notice, thereby noting that there was no unfairness. They made themselves clear

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<sup>4</sup> Companies Act 2013, s 2(45)

by stating that a public company needs these regulations and flexibility for standard management. Thus, Rule 9(i) was serving a legitimate need.

**Respondents:** The respondents argued that Rule 9(i) is unjust and unconscionable because it gave CIWTC unlimited authority to fire any permanent staff without valid grounds for firing. The clause also didn't make any specification on who could exercise this authority and under what conditions. The respondents also argued that their consent to this rule didn't arise from exercising their freedom of consent, but rather refusing to agree would mean they would be unemployed. As their previous employment company has been liquidated, and there are no opportunities for equal employment anywhere.

Since CIWTC is a government-owned company that is carrying out public duties, it contested that the corporation was interpreted as 'State' under Article 12<sup>5</sup>. As a state, the employment rule must comply with the requirements of Article 14<sup>6</sup> for justice and fairness. The clause was one-sided and lacked a safeguard procedure, allegedly violating constitutional principles and public policy under Section 23 of the Indian Contract Act<sup>7</sup>.

## JUDGMENT

After careful review of the case, a bench comprising A.P. Sen and D.P. Madom JJ rejected the appeal of CIWTC, and they held that the Calcutta High Court's judgment finding that CIWTC is in fact a 'state' under Article 12<sup>8</sup>. The Court also held with the decision that Rule 9(i) was invalid as per Article 14<sup>9</sup> and Section 23<sup>10</sup>. The court came to the conclusion that Rule 9(i) granted unjust dismissal authority to the corporation. The Court held that public policy is dynamic, and also a clause that 'shocks public conscience' because of being outrageously one-sided and imposed on the weaker party who does not have any other meaningful choice, falls under Section 23. The judgment drew a connection between unconscionability and unequal bargaining power with public policy. It also noted that employees are not commodities to be fired as needed, and Rule 9(i) apparent mutuality did not represent fairness and equality.

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<sup>5</sup> Constitution of India 1950, art 12

<sup>6</sup> Constitution of India 1950, art 14

<sup>7</sup> Indian Contract Act 1872, s 23

<sup>8</sup> Constitution of India 1950, art 12

<sup>9</sup> Constitution of India 1950, art 14

<sup>10</sup> Indian Contract Act 1872, s 23

As a result, Rule 9(i) was declared void under Section 23. The rule was also found to violate Article 14, validating arbitrary state power in public employment. The dismissal order that was sent to the employees was overturned, and the employees were rehired with full benefits. This case, however, had no major dissent, but later courts and legal commentators have worried about the doctrine's uncertainty because this broad interpretation of Section 23 might unleash.

## ANALYSIS

**New interpretation or Overreach? Re-reading Section 23:** The case of *Central Inland Water Transport Corporation Ltd v Brojo Nath Ganguly* is distinct because it took a new interpretation of Section 23<sup>11</sup>. Traditionally, Section 23 was only used for illegal or transparent violation of public policy. *Brojo Nath* did something different; it took a single clause from a valid employment relationship contract, and it invalidated the terms as being unconscionable.

This is arguable because it helped the Court to police unfair agreements without forcing the plaintiffs into a strict procedure to prove undue influence (Section 16<sup>12</sup>). By connecting 'public policy' with substantive justice, the court is transforming Section 23 into a general judicial power. By this move, the Court tried to push this section to just govern harsh bargains, thereby blurring the line between illegality and mere unfairness. The Court's interpretation of 'shocks public conscience' is inherently subjective. There are no clear guidelines that emerged from this judgment for the procedural application. The result was greater judicial authority to govern injustice, but at the price of contractual certainty.

**Inequality of Bargaining Power:** The judgment in *Central Inland Water* has raised some important issues around the fairness of contracts, especially in employment agreements. The Court rejected the formal equality that was prescribed in earlier contract law. In employment agreements, in a state-owned entity, the employee's consent is not realistic. By this, the judgment recognises dependence on the structural authority and is not just limited to transactional choice.

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<sup>11</sup> Indian Contract Act 1872, s 23

<sup>12</sup> Indian Contract Act 1872, s 16

### The Court's reasoning consists of two main ideas:

- **Procedural Unfairness:** This is where there isn't a meaningful choice for the weaker party.
- **Substantive Unfairness:** This is where the terms of the contract are tilted unfairly to favour one side.

This interpretation matches the unconscionability doctrine in the US and UK, but the Indian court had left the questions raised unanswered. Does mere economic necessity trigger a review? Does this judgment apply only to the vulnerable section, or does it apply to commercial parties who are under pressure? This absence of clear procedural standards had made lower and subordinate courts cautious while applying this judgment. As a result, Brojo Nath is implemented only in extreme cases; this restraint in application has limited the case's transformative potential.

**Constitutionalisation of Contract Law:** One important point of this ruling is the connection to constitutional principles, specifically Article 14. The judgment constitutionalises public employment contracts, so that a state-run company can't hide behind a contract to escape from constitutional responsibility. Extending this reasoning to private contracts would blur the distinction between public and private law. Later use of the judgment has wisely confined Brojo Nath to only state-controlled or semi-public entities. This is to recognise that constitutional norms are not a general code for commercial contracts.

### COMPARATIVE PERSPECTIVE

If we look at this situation from a broader and comparative perspective, we can see both strengths and weaknesses in India's approach to contract law. For instance, the United States has a well-defined structural framework that recognises unconscionability. Allowing courts to reject unfair contract terms under the Uniform Commercial Code. Similarly, the United Kingdom has laws like the Unfair Contract Terms Act 1977<sup>13</sup> that set standards for reasonable and fair contracts. India has no statutory unfair contracts rules or codes. Brojo Nath had filled the gap through judicial innovation, but it came at the cost of the predictability of contracts. Unlike the US or the UK, Indian courts operate with transparent public policy, while gaining

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<sup>13</sup> Unfair Contract Terms Act 1977

flexibility and losing consistency. This case has raised a strong policy argument for legislative intervention. Clear statutory standards for unfair terms would interpret Brojo Nath's protective intent while restoring contractual certainty.

### **PRESENT LEGAL POSITION**

Today, the Central Inland Water case is at a significant reference point, especially in matters of public employment and standard terms contracts. Yet, the Courts have applied it scarcely, particularly against a private corporation. The common restraint: Brojo Nath is about state action with extreme inequality. Judges remain on different sides on destabilising commercial contracts. Today, unconscionability is recognised but scarcely applied. Brojo Nath is not a general fairness principle; rather, it is a weapon for cases of marked power imbalance, specifically where the state is the counterparty.

### **CRITICAL EVALUATION**

Ultimately, Central Inland Water stands at the intersection of fairness and legal certainty. Brojo Nath protects the vulnerable section but disturbs the principle of the contract's predictability. Now, Courts have enforced the spirit while restraining the judgment's reach. The best interpretation of the case is that it is a targeted precedent for judicial intervention in cases of extreme inequality with state involvement. This case is not a tool to rewrite every hash bargain.