The powers of State Courts

Kable v Director of Prosecutions NSW (1996)

Facts of the case

Convicted of manslaughter of his wife in 1990, Gregory Wayne Kable had been sentenced to four years jail. While in prison he wrote threatening letters to the relatives of his deceased wife who had custody of his children.

There was community outrage when it came close to the time of Kable’s release. So, the Fahey Liberal Government in NSW amended the Community Protection Act to keep him in jail. Section 3 of the Act stated:

This Act authorises the making of a detention order against Gregory Wayne Kable and does not authorise the making of a detention order against any other person.

In February 1995 the Supreme Court of NSW ruled that Kable was to stay in jail for a further six months. The Court was satisfied on reasonable grounds that he was more likely than not to commit a serious act of violence.

Kable exercised his right of appeal and went all the way to the High Court

Issues considered by the court

Kable’s defence argued that the Act required a court to exercise non-judicial power and that this breached the separation of powers. The defence also argued that the Act gave the NSW court power which was incompatible with Chapter III of the Constitution.

Decision

The Constitution gives the Commonwealth Parliament the power to invest State courts with federal jurisdiction. Supreme Courts cannot do things that are incompatible with federal judicial power.

The continuing detention of Kable at the behest of the State Government was not a proper legal process. This meant that the detention of Kable was not a judicial function. The NSW Government had to release Kable.

Chief Justice Brennan court in session Source: High Court of Australia
Background to the case

On 23 February 1995, Levine J ordered under the authority of the Community Protection Act that Kable be detained for six months.

The Principle of the Separation of Powers was embroiled in controversy. The independence of the Court was in question. Former Solicitor-General of Australia, Sir Maurice Byers, represented Kable in his appeal to the High Court of Australia.

In Kable, Justices Toohey, Gaudron, McHugh and Gummow formed the majority. Brennan CJ and Dawson J were the dissenters. Kirby J did not sit on the case as he had sat on a previous iteration of the case in the NSW Supreme Court.

Did you know?

- A law directed at a specific person is called ‘ad hominem’ (‘against the man’).

- Before Kable, it was thought States had unrestricted power with respect to their courts.

- The Community Protection Act threatened the independence and impartiality of the Supreme Court of NSW.

- The Community Protection Act authorised the continuation of imprisonment after the completion of the sentence.