Commonwealth v Tasmania (1983) 158 CLR 1


Facts

- The Hydro-Electric Commission proposed to build a hydro-electric dam on the Gordon River, Tasmania. This would have flooded the Franklin River.
- In 1982, the Tasmanian Liberal Government supported the dam. The Federal Liberal (and later, Labor) Government did not.
- The Government passed the *World Heritage Properties & Conservation Act 1983* (Cth) (*World Heritage Act*) to prevent the dam from being constructed.
- The Tasmanian Government challenged the validity of the World Heritage Act, as well as several other constitutional issues.
- Tasmania argued that the World Heritage Act could not be passed under the corporations power (section 51(xx)) or the external affairs power (section 51(xxxix)) of the Constitution.
- Tasmania also argued that the Commonwealth had unjustly deprived Tasmania of property through passing the World Heritage Act, contravening section 51(xxxi) of the Constitution.

Issues

- Was the World Heritage Act valid?

Held

- The High Court held by a very slight majority that the Commonwealth had legitimately prevented the construction of the dam.
- The World Heritage Act was authorised under the "external affairs" power.
- The Hydro-Electric Commission was held to be a trading corporation, even though it was part of the Government. This was because it had a degree of independence in decision making and was engaged in the large production of traceable electricity.
- In respect to the deprivation of property, Tasmania had no proprietary rights over the site for the proposed dam (it was not private land). Tasmania had not been deprived of any property.

Quotes

Given how controversial these proceedings were at the time, it was clear that any decision by the High Court would have serious political ramifications. In the introduction to his Honour's judgment, Gibbs CJ wrote the following:

"No lawyer will need to be told that in these proceedings the Court is not called upon to decide whether the Gordon below Franklin Scheme ought to proceed. It is not for the Court to weigh the economic needs
of Tasmania against the possible damage that will be caused to the archaeological sites and the wilderness area if the construction of the dam proceeds. The wisdom and expediency of the two competing courses are matters of policy for the governments to consider, and not for the Court. We are concerned with a strictly legal question — whether the Commonwealth regulations and the Commonwealth statute are within constitutional power."

**Full Text**

The full text is available here:


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