

JUSTICE P. B. SAWANT THIRD NATIONAL MOOT COURT COMPETITION 2015-16

1. Grand land is a Federal democratic country situated in the South Asia. The country has multi-ethnic and multi- religious population. The Ice Land is one of the developed states in Grand land. The present Chief Minister Mr. Jay Pratap is leading the State since last ten years.
2. In the recent past, there were many instances of violence against religious minorities, backward classes and women in the Ice Land. It was alleged by media and strata of intellectual class of society that for scoring political gain in the upcoming state assembly elections, the ruling party lacked the will to tackle these problems efficiently and the opposition party politicized it for their own political gain.
3. The Maoist is leftist extremist group. According to their philosophy, the Government officers and political leaders are running Government in collaboration and exploiting the poor and labour class. Their ultimate goal is to have Government of labour and poor class in independent country. To secure their goals they adopt the instrument of annihilation of class enemies i.e. Government officers, leaders of political parties and thereby creating insecurity in the minds of people.
4. On 11 June 2015, the whole Country was shocked by Maoist attack on office of District Magistrate at Sonapur, the capital city of Ice land. The attack caused the death of 10 innocent person and more than 20 were injured. The Maoist accepted the responsibility of this attack. Through this attack they tried to create fear in the mind of people and make them feel that Government was not able to protect them.
5. The state police started investigating the incidents but unfortunately they were not able to collect substantial evidence except some forensic evidence from the crime scene. There were rumors in media that the state police were under tremendous pressure from the State Government to go slow on this matter because of involvement of Mr. John Singh, a Cabinet Minister having charge of Mining and Labour Ministry. Mr. John Singh is

considered as one of the prominent leader having great influence on Chief Minister Mr. Jay Pratap.

6. Even in the past, Mr. John Singh faced many allegations including receiving money from big corporate houses as election fund for his party. It was also said that he had close connection with top Maoist leaders. He was alleged to have worked as middle man in the transactions in which Maoist asked for ransom in exchange of providing safety for conducting business in his district which is known as worst Maoist affected area in the State.
7. As the consistent demand was made by the media and general public for the proper investigation of this case, the Federal Government *suo motu* directed investigation by National Investigation Agency (hereinafter NIA), a newly formed federal agency by Act of Parliament [No. 34 of 2008]. The NIA is established to investigate and prosecute offences affecting the sovereignty, security and integrity of country. The present case is before the Federal Court of Grand Land under its Original Jurisdiction. The root cause of conflict between the Federal Government and the State Government of Ice land is regarding the power of investigation exercised under this Act.
8. The NIA started full fledged investigation of this attack by scrutinizing all other collateral aspects of it particularly the financial aspect behind the crime. The investigating team started grilling the people who were suspected of giving financial aid to Maoist leaders and in this process, it arrested Mr John Singh.
9. In an endeavor to protect Mr. John Singh, State Government has taken stand that the Act of 2008 does allow the NIA to investigate any offence other than terrorist activity and while investigating this case NIA has exceeded its power. On the contrary, the Federal Government has contended that NIA has statutory power to investigate financial aspect of terrorist activity. It is argued that it is the duty of accused to prove that the crime committed is not related to terrorism. The Federal Government is bound only to observe faith and trust during the investigation.
10. Regarding the arrest of Mr. John Singh, the State contended that it was not according to the Constitutional norms and procedural law of the country. It was argued by the state that it is the responsibility of the investigation agency to go with protocol while arresting the minister but Mr. John Singh was treated like a habitual criminal. There are certain

privileges conferred on MLA and Minister which were not observed by the agency. The State Government expressed that the action on the part of Federal Government is politically motivated and violating the very basic right of person.

11. However the NIA rejected the allegation by saying that permission from the Governor was sought and given prior to arrest of Mr. John Singh. The agency claimed that it has received complaint and collected credible information against the minister. The Agency had reasonable suspicion about the involvement of the Minister and the law does not prohibit the investigation agency to arrest anybody including the Minister.
12. The State Government further contended that the NIA had actually arrested Mr. John Singh on 22nd March 2015 but did not record his arrest in the register of arrest on the same date. He was shown to be arrested on 28th March 2015. This is utter violation of Constitutional Rights of the accused. So the State felt that it is its responsibility to protect its own rights and the rights of its Minister against the tyranny of the Federal Government.
13. The State of Ice land argued that the Federal Government is not functioning with faith and trust which is expected by the Constitutional Scheme. It is obligation of Federal Government to work according to Co-operative Federalism. The state of Ice land argued that not only this but there were many instances where Federal Government has tried to dominate the State Governments and misused its position at the cost of interests of the states. It has created a feeling of distrust for policies of Federal Government amongst the states which cannot be considered as good sign for Federal country like Grand Land.
14. During that time, when there was misunderstanding between the Federal Government and the State of Ice land the Federal Home Minister while addressing Annual Conference of senior police officers said that a serious review of the Seventh Schedule of the Constitution, three list, the Federal, State and Concurrent lists is required. He further said that the Federal Government is planning to appoint an Expert Committee and request it to look into the possibility of inclusion of subjects like law and order in concurrent list. The object behind it is to give decisive position to Federal Government in matters concerning national and international security.
15. The State of Ice land argued that on reading the schedule of offences assigned to the NIA Act, it is noted that the list of offences is, by and large, directly linked to the entries under

the Federal List in the Constitution and their numbers are very few. The State further submitted that the law governing the functions of the Agency does not bar the power of the State Government to investigate any offence occurred in the territory of the State and the State investigation agencies have original jurisdiction to investigate any offence including this.

16. The Federal Government took a stand that the goal behind these types of attacks is to destroy the fabric of the democracy in our country. Considering the nature and ramifications of the attacks, it is very clear that the state investigation agencies do not have capabilities to investigate the attacks and prevent the further series of attacks. The Federal Government argued that in these types of attacks the investigation agencies have to take cooperation not only from different state agencies but international agencies as well. The Federal Government requested the court to consider this matter from this perspective and it should not be considered as violation of Federal Principles which is basic feature of the Constitution.
17. The Federal Government, justifying its decision argued that there are many judgments of Federal Court upholding its responsibility under Article 355 of the Constitution to deal with any criminal act likely to endanger national security and integrity. The Federal Government cannot evade its responsibility by leaving the matter within the domain of the state.

The matter is put before the Federal Court for consideration. The Hon'ble Court will hear the arguments of both the parties on following important issues.

1. **Whether the present petition is maintainable before the Federal Court of Grand land?**
2. **Whether the investigating agency followed Due process of law while arresting Mr. John Singh?**
3. **Whether Section 6 of NIA Act is beyond legislative competency of Parliament and Ultra Vires the Constitution?**

4. **Whether the Federal Government's decision of directing investigation is politically motivated and violated Constitutional Scheme of Federal Structure?**

Note:-

- **Grand land is a democratic Country like India and all Indian laws/rules/regulations are similar /applicable to Grand land.**
- **Disclaimer – This moot problem is imaginary. Any resemblance with any fact, case, person or character is merely coincidental.**