

MOOT PROBLEM

Republic of Rhodo is a sovereign, socialist, democratic republic situated in the southern part of the Asian continent. It was under colonial rule of European powers for over two centuries and finally won its independence in the mid of twentieth century. According to the latest census data it has a population over 1.2 billion divided into various communities on the basis of caste, creed, religion, language etc.

Immediately, after independence, the intrinsically socialist government of Republic of Rhodo, with the Rhodo National Congress (hereinafter referred to as RNC) at its helm embarked on a rapid industrialisation drive with the establishment of various state owned public sector industries and enterprises.

One such establishment was Dashanan Motors Ltd. (hereinafter referred to as DML), its flagship product being Pushpak, a car loosely modelled on the English automobile Morris Minor. This car became almost a standard issue among government officials, ministers and the common man alike. It also manufactured buses which were marketed under the name Garuda. Due to the widespread popularity, affordability and reliability of DML vehicles they soon emerged as the preferred means of mass transit in both rural and urban areas across the country.

The sole and principal manufacturing unit of DML is situated in the suburbs of the capital city of Northern Province, Shivpuri on the banks of the River Asli, due to the easy availability of resources and raw materials in the hinterland. The factory remained profitably operational for the first few decades of its existence.

In the meantime, there was a growing concern in the international community regarding the degradation of environment, which led to various international treaties and conferences with the aim of creating a consensus among nations to make their environmental safety norms more stringent. The Republic of Rhodo was an active participant and signatory in many of these significant conventions like the Stockholm Conference, 1972, Kyoto Protocol, 1992, Rio Summit, 1992, etc. and subsequently it passed various legislations to that effect including an amendment to its Constitution. It also beefed up its vehicle emission standards and issued a directive to the Pollution Control Boards (PCBs) of all its provinces to ensure strict compliance to the afore-mentioned norms.

In the year 1991, Republic of Rhodo faced with an impending foreign exchange and balances of payment crisis, relaxed its import regime, reduced tariffs across the table and created significant inroads for foreign and

domestic investment. This opened a flood gate of Japanese, American and European automobile giants who set up assembly units across Republic of Rhodo and inundated the market with cheap, fuel efficient and modern vehicles which were in perfect compliance with the existing norms. Naturally the booming middle class started opting for these cheaper and efficient motor vehicles over the obsolete DML products.

Dark clouds started looming over the horizon for DML. Sales dipped and the government decided to intervene by setting up ancillary units to manufacture the spare parts onsite, and injected funds to create updated and efficient components for the automobiles. These ancillary units included a tyre, lube & lubricant factory, and a paint & coolant manufacturing unit so that the costs of production could be reduced.

The fortunes of DML, however, did not turn around and the government soon realised that, in spite of the sentiment value and heritage, the continuance of the enterprise was proving to be a parasitic liability. Thus, began the disinvestment process of the DML in the year 2005. After the examination of bids, it emerged that DKS Enterprises held 30% of the stake of the holding company, and VS Motors held 21% of the same. The remaining stake was held by the Government of Republic of Rhodo.

After the private acquisition of DML there has been a consistent rise in the profit margins of the enterprise and the value of the stock on the National Stock Exchange of Republic of Rhodo has seen an impressive growth. When interviewed about the surprising turnaround saga of DML the new Board of Directors attributed it to a complete overhaul of the assembly lines, innovation in manufacturing methods and the scraping of all redundant production models and designs.

The booming enterprise supposedly employed 25000 technicians and engineers. The factory ever since its inception discharged all its trade effluents in the river Asli. Fifty miles down the river from where the factory is situated, the river Asli has its confluence with the Khari Sea. There it has created the largest riverine delta network on the planet, the Mohana which incidentally has been recognised as an extremely important biosphere reserve by several international organisations. It has a vast spectrum of flora and fauna species and is inhabited by a number of endangered species, and has extensive foliage of mangroves.

It was in the year 2015 that certain drastic changes were observed in the flora and fauna, and the health of the natives of this region. The over-ground breathing roots of these mangroves were found to be plugged with sludge as a result of which vast patches of mangrove forests withered away and died. About the same time period, bloated bodies of dead riverine

dolphins unique to the Mohana delta floated up on the shores. These riverine dolphins happened to be of special varieties which were considered to be endangered. Deleterious changes became evident on the health of the natives of the region; they started complaining of having developed black sores on various parts of the body and shortness of breath.

This raised an alarm amongst the observing scientists and activists of the Mohana Biodiversity Conservation Forum (hereinafter referred to as MBCF). The MBCF conducted an exhaustive research to elicit the reason as to why such detrimental changes had occurred. Their study revealed that the water of the river Asli was heavily polluted. It contained various chemicals which are hazardous to flora and fauna of the region. It was also found that some of the major pollutants of the river were sulphur and heavy metals which could have been the cause of death of the dolphins and the black-sore disease.

The MBCF also averred that the major reason for presence of sulphur and other metals in alarming quantity way beyond the tolerable limits in the river was due to the emission of trade effluents from the plant of DML. And therefore it opined that the DML was responsible for such environmental deterioration. Their findings were independently confirmed by ecological studies conducted by researchers of international eminence.

The government of Republic of Rhodo had switched over to the Euro IV norms in the year 2010, and had declared to opt for Euro V norms by 2015. At the end of the year 2014 the government decided to skip Euro V norms and rather directly turn to Euro VI norms by 2020. But in the mid of the year 2015 the air pollution levels in major parts of the country were found to have risen dauntingly with some of country's leading urban centres finding a place in the list of the most polluted cities on earth by emission and particulate matter count. To remedy the situation, the incumbent government of Republic of Rhodo led by the Jan Rhodo Party(JRP) after proper consideration and deliberation, and also under the influence of various pressure groups working for environmental conservation opted to switch from Euro IV emission norms to those of Euro VI from 1 January 2016, and issued a directive to this effect in October 2015 in which it was strictly ordered to all automobile manufacturing companies to desist the manufacturing and selling all vehicles which do not comply with the new norms.

The DML manufactured only three vehicles namely Pushpak Hatchback and Pushpak Sedan among cars and Garuda Premium bus which were non-compliant with the new norms. The board of directors of the company held a meeting on 1 November 2015 at which the vital issues

pertaining to compliance with new norms were discussed, and it was concluded that they were not in a position to make the requisite changes in the engines of their products in such a short span. After an exhaustive deliberation it was found that necessary modifications in the engines of the products would require a time of at least eight months, and until the needful is done they would have to lay off their workers and also during this period they will be forced to stop both manufacturing and sale of their products which would incur huge losses.

The company was of the view that the basic reason as to why it will have to inevitably face this impending pain was the policy of the central government. The board of directors were of the view that the directive of the government was inconsiderate and violated their fundamental rights.

The Board of Directors of the company moved to the Hon'ble High Court of Judicature of Shivpuri on 1st December 2015 seeking issuance of a writ in nature of mandamus so as to get the impugned directive annulled. The writ petition was admitted as WP(C) 9813/2015. The petitioner in this case alleged that the directive of the central government was unconstitutional as it violated their fundamental right to freedom of trade and profession, and also the right to livelihood of their employees. The Hon'ble High Court took the arguments of the DML into proper consideration and ordered in favour of the Petitioners.

Central Government feeling aggrieved by decision of the High Court approached the Supreme Court of Rhodo under its appellate jurisdiction. It filed an SLP on 22nd December 2015 which was admitted as SLP 8015/2015.

Maya Mehta has been one of the most prominent green crusaders of the legal fraternity of Rhodo. For the last two decades she has waged legal battles against errant corporations who have blatantly abused the environment and has been successful in extracting requisite compensation from large corporations to undo the damage caused to both natural resources as well as its fallout on the health and well-being of common people residing in the vicinity of such polluting facilities. In the meantime, she took up the cause of the MBCF and sent a number of representations to the State Pollution Control Board and the concerned government authorities with detailed evidence of massive air and water pollution caused by the DML plant and its widespread consequences on both human and natural subjects. She demanded a thorough inspection of the trade effluents and the plant facilities or better still, a complete closure of the plant until the findings of such reports came out. However, her complaints fell on deaf ears as neither

was a thorough and substantive inquiry ordered by the PCB nor was an order of closure of the plant issued.

Aggrieved and disheartened by the lukewarm response of the government Ms. Mehta turned to the third pillar of democracy and filed a Public Interest Litigation (PIL) in the High Court of Judicature of Northern Province at Shivpuri on 16 November 2015. In the petition she cited both expert analyses on the effluent and emission figures as well as photographic and documentary evidence of the morphological and physiological changes in the deltaic ecosystem. She further alleged that the reason because of which there was drastic shift in the ecological balance of the deltaic region which had resulted in acute harm to the flora and fauna of the region was the discharge of noxious trade effluents by the DML plant situated on the banks of the river Asli. From the Hon'ble High Court she sought relief primarily in terms of recovering damages through mass tort action to the natives who had developed black sore disease from the DML. She also sought from the court a writ in nature of mandamus to be issued to the State Pollution Control Board to close the plant of DML.

The Hon'ble High Court after having heard the arguments of Maya Mehta directed the State Pollution Control Board to conduct a thorough examination of the trade effluents discharged by the plant in the Asli River, and also to report the same to the court within 3 weeks from the date of the order.

The High Court in its final judgment dated 21st December held that the report of the PCB revealed that the plant discharged such effluents in the river Asli which contained many chemicals which were way beyond the prescribed limits. It also averred that it was due to this heavy discharge of pollutants in the river that the flora and fauna of the deltaic region were badly affected, and also that it was due to this reason that the natives had developed black sore disease. The court further held that after this examination it thought it was necessary to grant damages to the natives of the region and that it was also compelled to issue a directive to close the plant. But after having paid heed to the arguments of the respondent company it was of the opinion that if the plant was closed then it would render about 45000 employees of the enterprise unemployed, and that it would also leave around 2 lac family members of these employees in misery, hunger and squalor. Hence it decided not to issue any directive to shut the plant but it did order the company to pay damages worth Rs.10 crores to the aggrieved natives.

Ms. Maya Mehta in an interview to a national television news channel said that she and the aggrieved natives were unsatisfied with the amount of

damages awarded. She also said that the order of the court was not bold enough so as to meet the ends of justice because it had failed to issue a directive to shut the plant which had constantly for over a period of years polluted the river Asli and had disturbed the ecological harmony of the region.

In the subsequent week she filed a Special Leave Petition before the Supreme Court of Republic of Rhodo seeking enhancement of the awarded damages and closure of the plants. The Supreme Court admitted the Special Leave Petition under SLP 031/2016. After a couple of hearings, SC decided to club Special Leave Petition no. SLP 031/2016 and SLP 8015/2015 as they originated from the same subject matter and the same parent company, and also because Ms. Mehta was the council for the central government in the latter. The Supreme Court has set both of these cases to be decided before a division bench on 1st April 2016 for final hearing.

Note:The Constitutional Law, Environmental Law, Procedural Laws of Republic of Rhodo and all other laws relevant to this proposition are *pari material* to those of India.

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