

NORTHCAP UNIVERSITY NATIONAL MOOT COURT COMPETITION-2017

MOOT PROPOSITION

Hindia is the seventh largest country of the world with highest number of agrarian population. It is a developing nation having around 50 percent of its population under poverty. The southern region of the country is a coastal zone with abundance of rainfall throughout the year. In 2004, the KewlCola Beverages Private Limited, a subsidiary of the Atlanta based KewlCola company, established a plant in Merumatty district of Berala, a southern state of Hindia. The Merumatty Village Council, after considering the opportunities that the establishment would provide to its native villagers, gave annual operational license to the company to commence production in 2005. The license is generally subject to the approval on yearly basis.

Kewlcola drew around 510,000 litres of water each day from boreholes and open wells. For every 3.75 litres of water used by the plant, it produced one litre of product and a large amount of waste water. Until 2006 the company drew huge amount of water from the ground water of the district and eventually, the local farmers started complaining about the lowering down of the ground water table. Two years after production, protest by local residents became common practice. Local communities complained that water pollution and extreme water shortages were endangering their lives.

In January 2007, three years since the production had begun in the KewlCola factory, women from the Jalanagaram Colony in the district, protested that their wells had dried up because of the over exploitation of groundwater resources by the KewlCola plant. They complained that they now they have to walk nearly five kilometers twice a day to fetch water for their livelihood and agricultural activities. They also argued that the little which was left was undrinkable and when used for bathing the water burned their eyes and lead to skin complaints. Aside from these health issues, the depletion of groundwater resources also affected the ability of local residents to raise their crops.

In December 2007, the Merumatty Grama Panchayat (Village Council), considering the alleged over-exploitation of natural resources by the company, refused renewal of KewlCola's license on the grounds that it was not in the public interest to renew the license, stating:

"...the excessive exploitation of ground water by the KewlCola Company is causing acute drinking water scarcity in Merumatty Panchayat and nearby places..."

The Village Council considered revocation of the license to be necessary in order to protect the interests of local people. Subsequently, in March 2008, the Village Council's decision of refusing to renew KewlCola's license was challenged in the High Court of Berala by Kewlcola Beverages Private Limited.

The High Court considered the Village Council's decision of refusing to renew KewlCola's license and the justification of Village Council for doing the same. The Court recognized that the State as a trustee is under a legal duty to protect natural resources. It considered that these resources, meant for public use, cannot be converted into private ownership or commercial ownership. The presiding judge, asserted that the government had a duty to act to ***"protect the interest of native residents and work against the exploitation of resources and the inaction of the State in this regard was tantamount to infringement of the right to life of the people guaranteed under Article 21 of the Constitution of Hindia."***

The High Court in its judgment after considering the actions of both the parties, ordered KewlCola to limit the groundwater extraction within a month, ruling that the amount of water extracted by the plant caused excessive exploitation of natural resources and caused severe pollution. But at the same time, the Court ordered the Village Council to renew the license and not to interfere with the functioning of the Company as long as it was not extracting the prohibited ground water. The Village Council deviating from the order of the High Court, went ahead and cancelled the license of KewlCola. KewlCola refuted the accusations of excessive exploitation and pollution and lodged an appeal. In January 2009, KewlCola filed a fresh petition before the Divisional Bench of High Court of Berala, stating the cancellation of license by the Village Council is over-exploitation of the administrative discretionary powers.

In its judgment, the divisional bench of the High Court granted permission to the company to extract 500,000 litres from the common ground water per day in the immediate following year. Further, the court constituted a special committee named as “Merumatty Committee” to supervise the regulation of licensing and to ensure that the ground water usage of the company is in consensus with the Hindia’s environmental law and public policies. Furthermore, the KewlCola was obliged to submit it’s annual scientific and legal due diligence report to the committee.

In 2010 Hindia constituted a specialized tribunal to adjudicate environment related matters under National Green Tribunal Act, 2010. In the month of June 2016, the Merumatty district experienced a severe drought resulting in to the daunting effect on agricultural produces. Eventually, several farmers committed suicide as they were unable to pay off the agricultural loan and were running in to losses since past one-decade. Grama Panchayat unanimously felt that the one of the main reason for the drought is over-exploitation of ground water by the company since its inception and filed a fresh petition in southern bench of the National Green Tribunal asserting that the KewlCola’s actions are in violation with the Hindia’s environmental law regime specifically ground water regulation involving contemporary judicial precedence. Whereas one of the main contention of KewlCola was that the matter has already been adjudicated by the High Court and accordingly it would be subject to double jeopardy if the tribunal accepts the matter.

All laws in force in Hindia are in pari materia with those of India.

Disclaimer: “All aspects of the moot problem do not bear any validity in facts. Any representations of the Governments and other institutions or persons are work of fiction only employed for academic purposes.”