

NHRC-LC-I National Moot Court Competition on Human Rights

Dates of Competition: 8-10 March 2013

PROBLEM

1. P is a district in the State of X in India. The main inhabitants of P are the people of the Ubi tribe. They have been staying in this area since time immemorial. Their way of life and culture are quite different and considered 'primitive' in general.
2. The Ubi tribe is a Scheduled Tribe listed in the V Schedule of the Indian Constitution.
3. There is little public awareness about Ubi culture and assimilation/integration of the Ubi tribe to the mainstream is minimal. As a result there is a sense of alienation, distrust, and exploitative socio-political and economic domination felt by the members of Ubi tribe.
4. In 2011, a proposal came up for a hydro-electric project in P district. It would lead to the submergence of about 80% of the Ubi-inhabited area. The Ubi tribe protested against the project proposal on the ground that it would displace a majority of them from the area from where they drew their sustenance and livelihood. This area also held the roots of their culture and their very identity at deep levels.
5. The hydroelectric project, if materialized, would also submerge several of the Ubi's sacred natural sites situated in P District. This is another reason for the people's strong resistance against the project.
6. The government did a preliminary survey of the proposed project area and gave approval to start the project. The Ubi people protested that the government had not taken free, prior, and informed consent of the people before granting approval. They also claimed that the action of the Government was in violation of the obligations under the national and international legal framework.
7. Various citizens' organizations including the Ubi Sanghrakshak Samiti (USS) held peaceful protests and demonstrations against the government. In response to it, the government deployed more police force in the P district to suppress any anti-government movement.
8. Mr. Chikalo, Secretary of the USS, had been able to garner popular support in the movement organized by his association. To enable the expansion and continuity of the movement led by the USS, Mr. Chikalo printed request letters for financial support to the USS and started collecting money from the public.
9. Mr. Chikalo's activities came under the lens of the government. Consequently the police forces raided the house and office of Mr. Chikalo. Printed donation request letters along with unaccounted money amounting to Rs. 90,000/- were found in

the premises. The Government declared the USS as an illegal organization and accused it of sedition and extortion of money from the public.

10. Following the declaration of the USS as an illegal organization, five men in plain clothes claiming to be police, came to the residence of Mr. Chikalo at 1.30 a.m. at night and took him away without giving any reasons. His mutilated body was found by the villagers at the outskirts of the village after three days of his being taken away.
11. The people of P district felt that the extra-judicial killing of Mr. Chikalo was done by the State forces. They came out in large numbers on the street to protest against the government. Effigies of the Prime Minister, Home Minister and Chief Minister were burnt on the streets and the protesters also burnt down some of the public buses to show their anger.
12. The police opened fire at the mob killing 10 persons which included 2 women and a child. When the media queried the police for the reason that provoked the firing, the Commissioner of Police replied that it was done in self defence. The concerned police station refused recording of the First Information Report (FIR) regarding the arrest and later death of Mr. Chikalo.
13. The USS approached the National Human Rights Commission (NHRC) and filed a complaint of gross violation of human rights by the State Government and its Police force.. The fact finding Committee of the NHRC found the following facts:
 - (i) Arrest, torture and death of Mr. Chikalo, Member Secretary, the USS
 - (ii) The declaration of the USS as an illegal organization was not justified on the basis of the printed donation request letters and the unaccounted money.
 - (iii) Firing at the protesters and killing innocent civilians was disproportionate use of force on part of the Government.
 - (iv) The construction of the Hydroelectric Project will result in the destruction of important religious sites and symbols of the Ubi Tribe.
 - (v) The government did not conduct an Environmental Impact Assessment of the project before granting it approval.
 - (vi) Free, prior and informed consent of the community had not been taken before approving the project.
14. The NHRC made the following recommendations to the Government of State X:
 - a. that an FIR be lodged regarding the arrest and death of Mr. Chikalo;
 - b. that the project be halted till a proper Environment Impact Assessment is done in accordance with the Government of India Environment Impact Assessment Notification 1994;
 - c. that free, prior and informed consent of the Ubi community be obtained before proceeding with the project;

- d. that the notification declaring the USS as illegal be revoked;
 - e. that ex-gratia payments of Rs.2 lakhs each be given to the heirs of each person killed in the police firing;
 - f. that inquiry be held to fix responsibility for police firing.
- 15.** The government while denying any role of itself or the police in the arrest, torture, or death of Mr. Chikalo, did agree to register an FIR of murder. It has also agreed to make ex-gratia payments to the heirs of the persons who died in the police firing on humanitarian grounds; but it found no reason to hold inquiry to fix responsibility for the police firing. It has refused to lift the ban on the USS because it believes that the unaccounted money recovered from Mr. Chikalo was meant to support the underground organization opposing the government. For the government of State X, the Hydroelectric Project is its flagship project aimed at providing much needed water and electricity to the whole of State X as well as its neighbouring States. It has already invested a substantial amount of its annual budget in this project; halting the project at this point will result in substantial cost escalation. After its preliminary survey of the project area, the government of State X has already prepared a detailed plan for rehabilitation of the displaced persons and allocated sufficient funds for the same. Hence, State X is not willing to halt the project at this stage.
- 16.** The NHRC has filed a Writ petition before the Supreme Court under Article 32 of the Constitution of India asking for the following directions from the Court:
- a. State X be directed to halt the project till proper Environmental Impact Assessment is done;
 - b. Obtain free, prior and informed consent of the Ubi tribe before proceeding with the project in view of the national and international laws and guidelines relating to the protection of indigenous and tribal people;
 - c. Inquiry be initiated by State X to fix the responsibility for excessive use of force on ordinary citizens;
 - d. Lift the ban on the USS which is in violation of the rights guaranteed under Part III and Part X read with Schedule V of the Constitution.

Prepare written memorials and oral arguments on behalf of NHRC and State X as per the Rules and Regulations attached with the Problem.