

Marathwada Mitra Mandal's

SHANKARRAO CHAVAN LAW COLLEGE, PUNE.

Justice P.B. Sawant Second National Moot Court Competition,

2014-15

(31st January, 2015 & 1st February, 2015)

MOOT PROBLEM

Union of Indus Land is a Federal Democratic Republic Country. It is divided into 29 States. The State of East Land is one of the largest states in Indus Land. Mr. Tarak Singh was the Governor and Mr. Vinay Chandra is Chief Minister of the state. Due to Industrialization and being educational hub the State of East Land is most developed state in Indus Land. But the development throughout the State of East Land is not uniform and only two revenue divisions are more developed. Remaining three revenue divisions are backward in development. Other states of Indus Land are having mixed type of development.

The Indus Land is parliamentary democracy with multiple party system. There are major four national parties having great influence on the political life of the country. There are many regional parties having different agenda and vested interest in the state politics. The Conservative Party of Indus Land (hereinafter CPI) and Freedom Party of Indus Land (hereinafter FPI) are the two national parties ruling different states of Indus Land. The FPI was ruling party and CPI was in opposition at Centre till May 2012. But after General Election in June 2012 CPI came into power at Centre. In the State of East Land CPI is the ruling party since 10 year and its term will end by May 2015.

Last year media exposed a land grabbing scam in the State of East Land. Two senior ministers and five senior administrative officers of State by using their

power alleged to have grabbed the Government owned land. Because of consistent perusal of the media and due to involvement of public interest the Chief Minister had directed State Crime Investigation Department (hereinafter CAD) to investigate the matter. After the completion of Investigation the CAD asked the Governor for permission to prosecute the ministers which was given by the Governor and the controversy arose.

According to the law of Indus Land, to prosecute the state ministers the sanction of the State Government is required. The Governor is executive head of state and competent authority for giving sanction for prosecution of ministers. Therefore Governor's sanction was sought and given. But the Chief Minister and Council of Ministers were against of the sanction of Governor for the prosecution of their colleagues in the case. According to the Chief Minister the evidence collected by CAD is not sufficient to prosecute the ministers. He alleged that it is an attempt to make the ministers liable for the policy decisions taken by them. The Chief Minister is very upset on Governor that he is being instrumental for lowering the image of State Government in the eyes of People. He felt that the Central Government is trying to unstable the State Government through Governor. The Chief Minister is of the opinion that the Governor of a state has to work on the advice of Council of Ministers. Against the advice of Council of Ministers, Governor does not have any power to give sanction for prosecution of minister.

However, the Governor, Mr. Tarak Singh has taken a firm stand that he has properly discharged his Constitutional responsibilities. He wanted to prove that he is not the puppet in the hands of the State Government. He has enough powers to fulfill his constitutional responsibilities irrespective of the advice given by the Council of Ministers in certain matters. According to him, in some matters, the Governor's position is more powerful than the President of Indus Land. On the issue of sanction for the prosecution of Senior Ministers, the Governor was convinced about the *prima facie* involvement of the ministers and the administrative offices in this land grabbing scam. He declared that the CAD has sufficient evidence on record to prosecute ministers.

Another controversy between Governor and Council of Ministers arose with respect to the distribution of resources to backward areas of State of East Land. The Constitution of Indus Land under Article 371 (2) gives power to the President that he may by order give special responsibility to the Governor of certain state to ensure the equitable allocations of funds for developmental expenditure of certain parts of the state. In accordance with the special responsibility given by President, Mr. Tarak Singh has ordered the State Government to give ₹ 200 Crore to backward divisions of State of East Land as a matter of equitable allocations of funds for developmental expenditure. To achieve uniform development of the state he directed to establish an Institute of Technology in one backward division. To boost agrarian economy and overcome the regional disparity he directed to construct two dams in two remaining backward divisions.

The Chief Minister and His Council of Minister were not happy with Governor on this issue. They felt that Governor went beyond his power and violating the Constitutional norms. His decision has undermined the basic principle of Parliamentary System of Government. He expressed his anguish by saying that the Governor was working as the political agent of Central Government. But the Governor made it very clear that it was his Constitutional responsibility to distribute resources equally amongst all the parts of the state. He further said that he had asked just for ₹ 200 Crore for backward divisions of State and had a future plan of making provisions of ₹ 800 Crore. He opined that it was his responsibility to see that not only one or two divisions but all divisions of the state should be developed equally. He also claimed that his decision was based on the report of 'Fact Finding Committee' an Expert committee constituted by State Government to study the issues regarding development of backward divisions of state.

In June 2012, the general election for Parliament of Indus Land was held. The CPI achieved majority in Lower house of Parliament that is Lok Sabha. The CPI after coming into power sacked Mr. Tarak Singh from the post of Governor without giving any reason. The Governor felt that the Central Government had taken

politically biased decision. He was sacked as a punishment for his past decisions which were taken for the benefit of people of the state as they were going against the political interests of CPI. The internal sources in the Government, if to be believed, provided the information to the media on anonymity that Governor has paid the price of his past decisions.

The Governor requested the President of Indus Land for an opportunity to present his side which was not considered. The Governor questioned the power of Central Government to sack Constitutional functionaries like him in such a manner. He further said that the action of Central Government is best example of lowering the honor and dignity of the office of Governor. The Government said that the Constitution of Indus Land provides that 'the Governor shall hold the office during the pleasure of the President' and while exercising his Constitutional power President need not give any reasons for the removal of the Governor. Doctrine of pleasure is absolute in Indus Land and no courts have authority to question the decision of the President.

The political drama relating to the sacking of Mr. Tarak Singh has started uproar throughout the country. Many organizations and legal experts were not happy and decided to challenge the decision of Central Government. The Organization for Welfare of People (hereinafter OWP), a non-governmental organization working in area of Good Governance in Indus Land has filed a Public Interest Litigation in the Apex Court i.e. Federal Court. The OWP has challenged the decision of Central Government to dismiss the Governor of State of East Land.

The main argument of the OWP is that the action has not taken on the basis of reasonable grounds. The action has lowered the honor and dignity of the office of Governor, who is one of the most important Constitutional functionaries. The OWP has prayed before the apex court to issue certain directives regarding appointment and removal of the Governor for the purpose of maintaining the dignity of the office of Governor. It also prayed for restoration of Mr. Tarak Singh as the Governor of the State of East Land. The OWP contended that certain

decisions taken by Mr. Tarak Singh were in the interest of the People of the State, but unfortunately these decisions caused him to sacrifice his office.

Presently, the matter is before Federal Court for consideration. The Court will hear the arguments of both the parties on following important issues.

- 1) **Whether the PIL is maintainable before Federal Court of Indus Land?**
- 2) **Whether the Governor has discharged his responsibility in accordance with Constitutional Scheme?**
- 3) **Whether the Central Government in removing the Governor has exercised his power arbitrarily and violated the due process of law?**
- 4) **Whether the Central Government has lowered the honour and dignity of the office of the Governor and acted contrary to the Constitutional policy?**

Note:-

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