
**BEFORE THE HON'BLE
SUPREME COURT OF RAMBO**

**Original Writ Jurisdiction
PUBLIC INTEREST LITIGATION**

W.P. (CIVIL) No. ____ OF 2013

UNDER ARTICLE 32 OF THE CONSTITUTION OF RAMBO

**In the matter of Article 19 and Article 21
of Constitution of Rambo**

PRO BONO ENVIRO SOCIETY.....PETITIONER

v.

UNION OF RAMBO AND ANR. RESPONDENTS

UPON SUBMISSION TO THE HON'BLE CHIEF JUSTICE AND HIS COMPANION
JUSTICES OF THE SUPREME COURT OF RAMBO

MEMORANDUM ON BEHALF OF THE RESPONDENTS

MEMORIAL ON BEHALF OF THE RESPONDENTS

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LIST OF ABBREVIATIONS

¶	Para
¶¶	Paras
AIR	All India Reporter
All	Allahabad
Art.	Article
Cal	Calcutta
CITES	Convention Of International Trade In Endangered Species Of Wild Fauna And Flora,1975
CMS	Convention on Migratory Species,1983
Del	Delhi
Ed.	Edition
ICCPR	International Convention on Civil and Political Rights,1966
ICESCR	International Covenant on Economic, Social and Cultural Rights,1966
ILO	International Labour Organisation
IUCN	International Union for Conservation of Nature
Mad	Madras
MIL	Maraco International Ltd.
Ori	Orissa
p.	Page No.
PAT	Patna
PIL	Public Interest Litigation

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Raj	Rajasthan
SC	Supreme Court
SCC	Supreme Court Reports
SCJ	Supreme Court Journal
Sec.	Section
u/a	Under Article
UDHR	United Nations Declaration on human rights.
UNFCCC	United Nations Framework Convention on Climate Change, 1992

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5. The Rio Submit, 1992
6. United Nation Declaration of Human Rights, 1948
7. International Convention on Civil and Political Rights, 1966
8. International Covenant on Economic, Social and Cultural Rights, 1966
9. United Nation Declaration on Indigenous People, 2007

STATEMENT OF JURISDICTION

The Honourable Supreme Court of Rambo has the jurisdiction in this matter under

Article 32 of the Constitution of Rambo which reads as follows:

“32. Remedies for enforcement of rights conferred by this Part

(1)The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2)The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.”

STATEMENT OF FACTS

1. The “Republic of “Rambo” is an island in the Pongean Sea. It has a lush topography. It is the tenth largest country in the world with a land area measuring 21,30,500 square kilometres, one of the fastest developing countries and the most populated country as well.. There are two national political parties, Democratic People Front (DPF) and Liberal People Front (LPF) and several regional parties. The country has ratified various international treaties such as UDHR, ICESER, UNFCCC. The Republic of Rambo on account of its coastline faces natural disasters frequently.
2. In February 2005, the government headed by DPF had proposed various developmental projects including environmental projects in the country. It had constituted a Committee to control Environmental hazards. In November 2005, the Committee had submitted its report suggesting various recommendations including reduction of carbon emissions, construction of sea walls and disaster management.
3. In February 2010, LPF came to power. In March 2011, an expert committee headed by the former Chief Justice of Rambo, Hon“ble J. Tikishaki was constituted for analysing the feasibility of implementation of the project among other things.
4. The committee recommended a revisit to the Disaster Management Program of the country stressing on the need to remove industries from the coastline which were adding to the pollutants and, to protect the fragile environment zones in the Country.
5. The Union Territory of Roah is an island that is not connected to the mainland of Rambo. It lies 200 kilometres off the eastern coast of the country. The extent of land in Roah is 5,13,500 square kilometres. Its topography includes lush mangrove forests. These forests consist of the indigenous population “Karyos” who are untouched by civilization. The people worshiped nature and followed traditional methods. The eastern coastline of Roah consists of rich forest reserves called Nacro forest.
6. In April 1989, 2, 10,000 square kilometres of Roah were declared as reserved forests. The Kayos were not relocated since, they were key to the protection of the environment and the forests
7. Due to population growth, land space became scarce in Rambo and thus, the unexplored civilization of the island of Roah was brought to light. The people in the mainland started moving to Roah. The price of land in Roah increased manifold

8. With the advent of civilization to Roah, the Indigenous people were either pushed into isolation or exposed to forced assimilation. Moreover, the forests in the region were gradually cut.
9. The economy of Rambo suffered a huge setback in December 2010. In March 2012, a powerful cyclone named “Voldemort” ravaged the coastline of Rambo particularly the island of Roah. The island of Roah was affected by severe floods newly constructed Buildings were washed away and people moved into the Nacro forests. The markings of the forests were obliterated by the cyclone.
10. A PIL was filed by Ms. Kriantha before the Hon’ble High Court of Roah. The Court held that the authorities have to take steps immediately to strike a balance between providing a place for people to live and protecting the mangrove forests which were of prime importance to the Karyos and to the island of Roah.
11. Following the cyclone, the Rambo Coordinated Research Committee (RCRC), a Central Government accredited research institution reported an increase in sea water intrusion and identified Roah as a sinking island giving it a time of only 10 years. They advised the government to relocate the population prevent deforestation. The government decided to build sea walls that could protect the island for at least a decade.
12. The government invited tenders to construct sea walls and “Maraco International Ltd.” A company registered in the U.S. was selected; a construction site was set up in Roah at the beach to immediately begin construction activities. Within a month of the site being set up, there were constant complaints of respiratory problems on account of the dust and fumes emitted by the site by the people living in and around residential areas. There were complaints of noise as well especially during night time.
13. In August 2012, the “*Pro Bono Enviro Society*” an NGO, published a report in its annual magazine. In January 2013, due to wide protests in Roah, the Central Pollution Control Board (CPCB) directed the closure of the MIL under section 31A of the Air (Prevention and Control of Pollution) Act, 1981. The Court on appeal by MIL struck down the closure order, ordered the company to install necessary pollution control equipment to protect people and the environment from the hazards of air pollution.
14. In October 2013, the “*Pro Bono Enviro Society*” filed a PIL before the Supreme Court of Rambo against the Union of Rambo and MIL with regard to with regard to various issues which have been listed for hearing on 26th and 27th of October 2013.

STATEMENT OF ISSUES

ISSUE I:

Whether the Public Interest Litigation is Maintainable against Union of Rambo and Maraco International Ltd.

ISSUE II:

Whether Fundamental Rights of Indigenous People have been violated.

ISSUE III:

Whether Union of Rambo and Maraco International Ltd. can be made liable for environmental degradation

SUMMARY OF ARGUMENTS

Issue I

Whether the Public Interest Litigation filed against Union of Rambo and Marco International Ltd. is maintainable.

It is humbly submitted that, since Fundamental Rights of any group of Individuals have not been violated, the petition is not maintainable.

Issue II

Whether there has been violation of the rights of the Indigenous People.

It is humbly submitted that, no violation of the rights of the Indigenous people has occurred since, no special right is per se granted to the Indigenous people in Rambo. Also, the Government was only safeguarding the right to free movement as guaranteed under Article 19 of the migrant population. The Cutting of forests of Roah wasn't arbitrary as the Government followed the principle of Social and Economic Justice, thus, meeting the test of reasonableness. It is further submitted that since no right has been violated the need for rehabilitation doesn't arise.

ISSUE III

Whether Union of Rambo and Maraco International Ltd. can be made liable for environmental degradation

The Union of Rambo and Maraco International Ltd. cannot be made liable for the degradation of environment, since, the sea wall construction site which was located on the coast was out of extreme necessity and so the company is not liable for the pollution. Further, the Union of Rambo is not liable for climate change in Pongean Sea, since, the claim is based on a report whose validity cannot be corroborated, following which both Union of Rambo and MIL are not liable to pay compensation.

ARGUMENTS ADVANCED

I. WHETHER THE PUBLIC INTEREST LITIGATION FILED AGAINST UNION OF RAMBO AND MARCO INTERNATIONAL LTD. IS MAINTAINABLE.

A Public Interest Litigation can be filed under Article 32 of the Constitution for enforcement of Fundamental Rights¹, as guaranteed by part III of the Constitution.²

In the present case, there has been no violation of the fundamental rights since, the action taken by the State was in furtherance of the principle of economic and social justice and thus cannot be termed as arbitrary or as one which was without the application of the mind.

Also, on allegations of Air Pollution, since the High Court has already adjudicated upon a similar dispute the facts being silent as to whether the same was followed or not, no action against MIL lies. Further, no scientific data per se has been provided from the side of the petitioner to substantiate its allegations as regards to either air or water pollution and hence the PIL is not maintainable.

II. WHETHER THERE HAS BEEN VIOLATION OF THE FUNDAMENTAL RIGHTS OF INDIGENOUS PEOPLE.

The fundamental rights of the indigenous people have not been violated since [II.1] No special right is guaranteed to them under the Constitution [II.2] No violation of Article 19; [III.3] and Article 21 of the Constitution³; [II.4] No violation of fundamental rights because of forced assimilation or isolation, therefore, no rehabilitation is required.

II.1. No special right guaranteed to the indigenous people under the Constitution

The term “indigenous people” is not recognized in India⁴ and so the indigenous people have not been guaranteed any special status, per se, unless recognized under the Constitution as Scheduled Caste or Scheduled Tribe. Therefore, all the tribals are considered to be indigenous, but all indigenous people are not considered as tribal⁵. To be safeguarded under

¹ Article 32(1) when r/w 32(2) itself states that, Article 32 can only be invoked for enforcement of rights as guaranteed by Part III and, for issuing writs to enforce Rights as guaranteed under Part III.

² *Andhra Industrial Works v.. Chief Controller of Imports and Ors* AIR 1974 SC 1539 ¶ 10, *Guruvayur Devaswom Managing Committee v. CK Rajan and Ors.* (2003) 7 SCC 546 ¶ 50, *BALCO Employees Union (Regd.) v. Union of India* (2002) 2 SCC 333.

³ Constitution of Rambo is *Pari Materia* to Constitution of India [hereinafter referred as Constitution]

⁴ Convention on Indigenous People, Available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/normes/documents/publication/wcms_106474.pdf, Last Accessed 18th October 2013.

⁵ *State Of Kerala And Another v. Peoples Union For Civil Liberties, Kerala State Unit And Others*, Civil Appeal Nos. 104-105 Of 2001.

Article 244(1) of the Constitution as Scheduled Caste and Scheduled Tribe the President has to recognize the indigenous people as Scheduled Tribe and Scheduled Caste or the area as the Scheduled area under Article 341 and 342 of the Constitution.

In the present case, the indigenous population “Karyos” cannot be considered as Scheduled Tribe or Scheduled caste, as the facts are being silent whether they have been declared by President as Scheduled Tribe, one cannot assume that, the same has been done.

II.2. Right to movement of the People of Rambo

The fundamental rights of the citizens, to reside and to settle freely throughout the territory of the Raoh, have been safeguarded under Article 19(1) (e) of the Constitution⁶. Also the UDHR⁷ and ICCPR⁸, recognize the freedom to movement and residence in the borders of the State. The international conventions are considered important to enlarge the scope of the fundamental rights.⁹

Therefore, the citizens of Rambo have a right to reside and settle in Roah as guaranteed under Article 19 (1) (d) and (e) and the Government being the guarantor of the fundamental rights have a duty to protect the rights of all the citizens of Rambo.

II.3. No violation of Article 19 of indigenous people

Article 19(1) (e) provides the right to reside and settle in any part of the territory of Rambo, however, reasonable restriction can be put on the same under Article 19(5) if it is in the public interest.¹⁰ Therefore, the rights of the indigenous people to reside and settle in the forest area is not an absolute right and can be restricted under Article 19(5) if it is in the public interest.¹¹

“Public interest” means a subject matter in which the rights of the public or a section of the public is interested¹² or the means of concern which is advantageous to people as a whole.¹³

⁶ *Court on its own motion v. Union of India*, 2012(12) SCALE 307, *Kharak Singh v. State of U.P.*, AIR 1963 SC 1295, *Waman Rao v. Union of India*, (1981) 2 SCC 362, *Bachan Singh v. State of Punjab*, AIR 1980 SC 898.

⁷ Article 13, UDHR.

⁸ Article 12, ICCPR.

⁹ *Orissa Mining Corporation Ltd. v. Ministry of Environment and Forest*, *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 at 249, *People's Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473 at 1487.

¹⁰ *Ibid* at 5.

¹¹ *Court on its own motion v. Union of India*, 2012 (12) SCALE 307; *Kharak Singh v. State of U.P.*, AIR 1963 SC 1295, *Waman Rao v. Union of India*, (1981) 2 SCC 362; *Bachan Singh v. State of Punjab*, AIR 1980 SC 898.

¹² *Kuttisankaran Nair v. Kumaran Nair*, AIR 1965 Ker 161.

¹³ *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481.

'Interest of general public' is a comprehensive expression intended to achieve the socio-economic justice for people by the State.¹⁴

Social justice is the recognition of greater good to larger number without deprivation of accrual of legal rights of anybody which are considered to be their fundamental rights¹⁵, and the Government while exercising its power and by subscribing to the concept of 'social justice' and 'economic justice' enshrined in the preamble¹⁶ might detract from some technical rule in favour of a party¹⁷, in order to do greater good to a larger number so as to act in consonance with the principles of equality and public trust.¹⁸

Further, the principle of "common good"¹⁹ depends on the economic and political philosophy of the government.²⁰

Therefore, in the present case the inaction of the government to restrict the movement of people from Rambo to Roah cannot be considered to be violative of Article 19, since, the Government has rather ensured social justice and has furnished its legal duty, by recognizing the fundamental rights of all the citizens of Rambo to have a quality of life, without interfering with the legal rights of indigenous people. Also, the fact that government was facing economic set back, they had no alternative to facilitate people with natural resources except that of allocating the available natural resources, proportionately.²¹

Hence, the Government has acted in the public interest and for the common good of all the citizens of Rambo. Therefore, there is no violation of Article 19 of the Constitution.

II.4. No violation Article 21 of the Constitution

In the present case, there has been no violation of Article 21 of the Constitution. To establish of the violation Article 21, the act should be subjected to the equality test of Article 14 and test of reasonableness under Article 19.²² Article 14 ensures fairness²³ and guarantees against

¹⁴ *Court on its own motion v. Union of India*, 2012 (12) SCALE307.

¹⁵ *Sadhuram Bansal v. Pulin Behari Sarkar*, AIR 1984 SC 1471, *S.R Bommai v. Union of India*, (1994) 2 SCR 644.

¹⁶ Article 39 (1) of Constitution.

¹⁷ *Sadhuram Bansal v. Pulin Behari Sarkar*, AIR 1984 SC 1471.

¹⁸ *Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh and Ors.*, (2011) 5 SCC 29, *Sachidanand Pandey and Anr.v. State of West Bengal and Ors.* (1987) 2 SCC 295.

¹⁹ Article 39(b), Constitution.

²⁰ *Bennett Coleman and Co. and Ors. v. Union of India*, (1972) 2 SCC 788.

²¹ ¶ 9, Moot Proposition.

²² *Maneka Gandhi v. Union of India*.AIR 1978 SC597.

²³ *Delhi Transport Corporation v. DTC Mazdoor Congress*, AIR 1991 SC 101; *Mahesh Chandra v. Regional Manager, U.P. Financial Corpn.*, AIR 1993 SC 935.

arbitrariness.²⁴ It provides that every action of the government must be informed by reasons and guided by public interest.²⁵ Article 19 provides that a restriction can be characterized to be reasonable if it strikes a balance between the fundamental right and restriction imposed thereon.²⁶

In the present case, the government of Rambo was continuously facing the problems of overpopulation and the measures taken by the government to control the same were protested²⁷, the inevitable consequence was that people had to seek new homes as a result of which people of moved to Roah where there could find the place to live and food to eat.²⁸

Therefore, it was a duty of the State to provide people who have moved to Roah with accommodation and basic standard of living guaranteed under Article 21 of the Constitution. Since, Article 21 envisages a right to life and personal liberty of a person, which not merely guarantees the right to continuance of a person's existence but a quality of life²⁹, and therefore, State is casted upon a duty to protect the rights of the citizen in discharge of its constitutional obligation in the larger public interest³⁰, guaranteed as a fundamental right under Article 21 of the Constitution.³¹

The onerous duty lies upon the State under the concept of 'sustainable development'³² recognized as a fundamental right under Article 21³³ to keep in mind the "principle of proportionality"³⁴ so as to ensure protection of environment on the one hand³⁵ and to undertake necessary development measures on the other hand³⁶, since, the economic development cannot be allowed to take place at the cost of ecology but the necessity to

²⁴*Express Newspaper Ltd. v. Union of India*, AIR 1986 SC 872; *Netai Bag v. State of West Bengal*, AIR 2000 SC 3313.

²⁵ *M S Bhut Educational Trust v. State of Gujarat*, AIR 2000 Guj 160; *LIC v. Consumer Education and Research Centre*, AIR 1995 SC 1811.

²⁶*Om Kumar v. Union of India*, AIR 2000 SC 3689.

²⁷ ¶6, Moot Proposition.

²⁸ ¶7, Moot Proposition.

²⁹*Francis Coralie v. Union Territory Of Delhi*, Air 1994 SC 1844; *Vellore Citizens' Welfare Forum v. Union Of India*, (1996) 5 SCC 647; Principle 2 of Stockhom Conference,1973 , Principle 1 of Rio Declarartion,1992

³⁰*Consumer Education And Research Centre And Others v. Union Of India And Others* , Air 1995 SC 922.

³¹*Ibid* ¶ 28.

³²Brutland Commission Report, 1983; Principle 2 of Stockhom Conference,1973; Principle 1 of Rio Declarartion,1992.

³³ *Indian Council for Enviro-Legal Action v. Union of India* , (1996) 5 SCC 281; *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647.

³⁴*Thirumalpad v. Union of India and Ors.* (2002) 10 SCC 606; *M C Mehta v. Kamal Nath*, [1997] 1 SCC 388.

³⁵ *Court On Its Own Motion v. Union of India*, 2012 (12) Scale 307.

³⁶*Thirumalpad v. Union of India and Ors.* (2002) 10 SCC 606; *Subhash Kumar v. State Of Bihar*, AIR 1991 SC 420; *M.C.Mehta v. Union Of India*, AIR 1988 SC 1037; *Narmada Bachao Andolan v. Union Of India* (2000) 10 SCC 664; *A.P.Pollution Control Board v. M.V.Nayudu*, AIR 1999 SC 812; *T.N.Godavarmanthirumulpad v. Union Of India*, AIR 1997 SC 1228.

preserve ecology and environment should not hamper economic and other developments³⁷, which includes generation of revenue and public interest.³⁸

Hence, despite the fact that life of the indigenous people is dependent on the forest, the Government not only has to consider the necessity to preserve the ecology, while allowing deforestation, but also has to consider the importance of public projects for the betterment of the conditions of living of the people and the revenue generated from such projects.

Therefore, the fact that the new buildings were constructed by doing deforestation in some area of reserved forest cannot be considered to be violation of Article 21 as it is protecting the right to shelter of the citizens of Rambo and generates revenue which will further provide aid to the government to save the island from submerging. Also, the fact that the indigenous people³⁹ were not relocated from the reserved forest considering their importance to environment shows that the Government had indeed taken into account the needs and rights of the indigenous population and thus, it cannot be said that the Government violated the same. Therefore, the government had struck a balance to protect the fundamental right of all the citizens including indigenous population, so it cannot be considered that there has been violation of Article 21 especially the right to life of indigenous people, since; the action of the government is guided by public interest.

II.5. No forced assimilation or isolation, so no requirement of rehabilitation

In the present case, the rights of the indigenous people have not been violated on account forced assimilation or isolation, since; the movement of people to forest was rather an inevitable consequence. Further no law casts a duty upon the government to absolutely protect the indigenous people from assimilation or isolation, as it is considered that the gradual assimilation of the indigenous people in the mainstream of the society will lead to their betterment and progress.⁴⁰

Moreover the Government of Rambo has already promised to relocate the people of Roah considering the inhabitable conditions of island of Roah; therefore, the point of rehabilitation does not arise.

³⁷ *Banwaslseva Ashram v. State of U.P.*, AIR 1987 SC 374; *T.N. Godavarmanthirumalpad v. Union Of India And Ors.*, (2002) 10 SCC 606.

³⁸ *Research Foundation For Science Technology And Natural Resource Policy v. Union Of India And Others*, AIR 2007 SC (Supp) 852.

³⁹ ¶5, Moot Proposition.

⁴⁰ *Narmada Bachao Andolan v. Union of India* (2000) 10 SCC 664.

III. WHETHER UNION OF RAMBO AND MARCO INTERNATIONAL LTD. CAN BE MADE LIABLE FOR ENVIRONMENTAL DEGRADATION

The Union of Rambo and MIL cannot be held liable as [III.1] Sea wall construction site can be located on the coast [III.2] MIL not liable for pollution [III.3] Union of Rambo not liable for climate change in Pongean Sea; [III.4] Union of Rambo and MIL not liable to pay compensation.

III.1. Location of Construction Unit at a proper place

III.1.1. Construction of sea wall permitted under The Coastal Regulation Zone Notification, 2011

The Coastal Regulation Zone Notification, 2011⁴¹, issued under the Environment Protection Act, 1986⁴², regulates permissible activities on the coast including the construction and operation of erosion control measures.⁴³ Seawalls are considered to be most effective⁴⁴ erosion control measure⁴⁵, as it provides protection to infrastructure, property, and human life⁴⁶, by preventing sliding of the soil by the wave action.

In the instant case, due to the susceptibility of Roah's coastline to natural disasters and threat of the island being submerged in ten years⁴⁷, it became imperative for the government to construct concrete seawall, permitted under CRZ Notification, 2011, so that it would withstand the strong tidal wave action, to protect the island until the inhabitants of the island are relocated.

⁴¹ Hereinafter referred to as CRZ Notification 2011.

⁴² Section 3 (2) (1) (v) Environment (Protection) Act, 1986.

⁴³ Regulation 4(f) Coastal Regulation Zone Notification 2011; IOC-UNEP-WMO-SAREC *Coastal Erosion Planning Workshop*, Sea Level Changes and their Impacts Intergovernmental Oceanographic Commission Workshop Report No. 96 -Supplement 1 Available at http://www.jodc.go.jp/info/ioc_doc/Workshop/w096s1.pdf, Last Accessed 18th October 2013.

⁴⁴ Ministry of Water Resources, *Technical Memorandum on Guidelines for Design and Construction of Seawalls*, May 2010, Government of India, Pg. 2, Available at <http://cwc.gov.in/CPDAC/Guideline/CWPRS%20-Technical%20Memoranda.pdf>, Last Accessed 18th October, 2013.

⁴⁵ Ibid. p 2.

⁴⁶ Basco D.R. *Seawall Impact on Adjacent Beaches: Separating Fact from Fiction* Journal of Coastal Research SI 399 Brazil, Available at http://siaiacad09.univali.br/ics2004/arquivos/149_basco.pdf, Last Accessed 18th October 2013.

⁴⁷ ¶ 11 of the Moot Proposition.

III.1.2. Construction Unit in sensitive area

The construction sites can be allowed in sensitive areas if it maintains the coastline⁴⁸, is in the national interest and is of utmost necessity⁴⁹. Necessity is the kind of pressure which the law recognizes as serious and sufficient.⁵⁰

In the instant case, the construction of seawalls was a matter of urgent necessity and national interest, since; the report released by Rambo Coordinated Research Committee stated that the island of Roah would become uninhabitable within ten years⁵¹, therefore, the construction of seawall was the only effective alternative, before the permanent place could be found for the settlement of those in Roah. Further, the lack of financial resources⁵² restricted the setting up of the construction site in any other area since factors such as transportation costs and labour would have made it difficult to operate.

III.2. Marco International Ltd. not liable for Pollution

III.2.1. No liability for Air Pollution

Air pollution is the presence of pollutants in the atmosphere in concentrations that tend to be injurious to human beings or biodiversity.⁵³

In the instant case, there were allegations by the people residing around construction unit of some respiratory problems, and because of the constant protest, an order was passed by the High Court to install necessary pollution control equipment⁵⁴, to protect the people and since it cannot be construed, whether the order has been followed or not, an inquiry needs to be carried out in that regard. Until the petitioner proves the company's non-compliance with the High Court's orders, it cannot be reasonably ascertained that the company Maraco International Ltd. is liable for polluting the atmosphere and causing harm to the people.

⁴⁸ Regulation 4 (i) (f) of CRZ Notification 2011, Pg. 5.

⁴⁹ *In Re: Airports Authority of India Ltd.*, AIR 1999 SC 2367.

⁵⁰ *Ramsumaran Prasad v. ShyamKumari*, AIR 1922 P.C. 856.

⁵¹ ¶ 11 of the Moot Proposition.

⁵² ¶ 9 of the Moot Proposition.

⁵³ Section 2 (a) The Air (Prevention And Control Of Pollution) Act, 1981.

⁵⁴ ¶ 14 of the Moot Proposition.

III.2.2. No liability for Noise Pollution

A need or necessity is compulsive, urgent, an imperative demand for use of public.⁵⁵ Noise pollution can be permitted by the State Government, at night, if it is in the public interest, even though it violates the fundamental right to sleep.⁵⁶

In the present case, considering the susceptibility of the coastline of Roah to natural disasters and the fact that the island of Roah is already on the verge of submerging, it became imperative for the government to allow the construction during the night as well, considering it to be in the public interest and of absolute priority⁵⁷, so as to save the people of island until relocated.

III.3. Union of Rambo not liable for climate change in Pongean Sea

The Union of Rambo is not liable for the climate change in the Pongean Sea area.

III.3.1. Report released by the NGO *Pro Bono Enviro Society* not valid

In scientific matters of complex nature, reference has to be made to a specialized expert body to examine the matter if all relevant considerations have been taken note of.⁵⁸ The entire claim of Rambo being major polluter in the Pongean Sea⁵⁹ is based on the report released by an NGO, not supported by any substantial scientific data, to impute its validity. Therefore, without any substantial evidence, the government of Rambo cannot be held liable for causing climate change, when measures are being taken to control the same.⁶⁰

Arguendo, if it needs to be established that Rambo is a major pollutant, the Court may appoint an expert committee, for gathering facts and data in regard to the complaint of breach of fundamental right⁶¹, to look into the veracity of the report released by the NGO as there have been no precedents where liability is caste upon State merely on basis of the NGO report without any further inquiry.⁶²

⁵⁵ *The State of Karnataka and Anr. v. Shri Ranganatha Reddy and Anr.* AIR 1978 SC 215, *Nand Kishore Gupta and Ors. v.State of Uttar Pradesh and Ors.* AIR 2010 SC 3654.

⁵⁶ *Forum, Prevention of Envn. & Sound Pollution v Union of India and another*, (2005) 8 SCC 796.

⁵⁷ ¶ 12 of the Moot Proposition.

⁵⁸ *A.P. Pollution Control Board v. Prof.M.V.. Nayadu and Ors* 1999 1 SCR 235.

⁵⁹ ¶ 13 of the Moot Proposition.

⁶⁰ ¶ 3 of the Moot Proposition.

⁶¹ *Bandhua Mukti Morcha v. Union Of India & Others* , 1984 SCR (2) 67.

⁶² *Bandhua Mukti Morcha v. Union Of India & Others* , 1984 SCR (2) 67; *S. Jagannath v Union of India and Others*, W.P.(C) No. 561 of 1994; *G. Sundarajan v Union Of India And Others* JT 2013 (7) SC 266.

III.3.2. Not enough scientific data to validate decrease in number of sea turtles

The Union of Rambo cannot be made liable for the decrease in the number of sea turtles by the use of motor boats post migration. Firstly, since there is no sufficient scientific data or material facts to support the same, secondly, the use of motor boats is the only feasible means by which the people in Roah could commute to and fro from the island, thirdly, the exact location and number of sea turtle before and post migration is unknown. Hence it is unreasonable to assume that the decrease in their numbers was due to the use of motor boats. The report of the NGO is a mere conjecture in this regard and an expert committee should be appointed for looking into the validity⁶³ of the entire report.

III.3.3. The State is not liable for the haze over the Pongean Sea

Haze layer is the one which is not in contact with the earth's surface⁶⁴ and due to long-range transport; the urban haze can spread over an entire continent added to an ocean basin⁶⁵.

The allegation against Union of Rambo cannot be made for being the major contributor of the Pongean haze, since it cannot be reasonably ascertained which country is the major polluter in the continent, forming the Pongean haze. Therefore attributing the entire responsibility to Rambo is unreasonable, when the Government has taken necessary measures of safeguarding the environment like that of allocation of appropriate funds for the proposed environmental projects, appointment of an expert committee for studying the various methods of reducing the release in greenhouse gases, following which, a Bill was introduced in the Parliament.⁶⁶

III.4. Union of Rambo and MIL not liable to pay compensation

III.4.1. Applicability of Doctrine of Public Necessity

The doctrine of public necessity is derived from the maxim *salus populi suprema lex* i.e. the welfare of the people is of paramount importance.⁶⁷ To achieve the public good, the property,

⁶³ Ibid.

⁶⁴ World Meteorological Organization: International Meteorological Vocabulary, WMO - No. 182 At <http://wmo.multicorpora.net/MultiTransWeb/Web.mvc#>

⁶⁵ Ramanathan and Ramana, *Atmospheric Brown Clouds: Long Range Transport and Climate Impacts*, Scripps Institution of Oceanography (SIO) University of California CA 92037 September 2003

⁶⁶ ¶¶ 2, 3, 5 and 9 Moot Proposition.

⁶⁷ *Rekharani Maitra & Ors. v. Additional District Magistrate & Ors.* C.R. No. 9063 (W) of 1983.

liberty and life of an individual can be placed in jeopardy in the case of existing, immediate and overwhelming necessity.⁶⁸

In the instant case, the construction of seawalls was a matter of urgent necessity and national interest, so as to delay the submerging of island and thereby to protect the life of people. Therefore, by constructing sea wall the State was performing its duty to safeguard the well-being of the people, keeping in mind that the needs of environment need to be balanced with the needs of community at large in a developing country⁶⁹ and hence there is no liability for any wrong committed by the Union of Rambo.

Also, since the liability of polluting the environment cannot be imputed to the company or the government, they are not liable to pay damages.

⁶⁸ *Malverer v. Spinke* (1537) Dyer, (Part I), 356.

⁶⁹ *BSES Ltd. v. Union of India* 2001 (1) Bom CR 394; *Dahanu Taluka Environment Protection Group v. Bombay Suburban Electricity Supply Company Ltd.* (1991) 2 SCC 539.

PRAYER

In the light of the issues raised, arguments advanced and authorities cited, may this Hon'ble Court be pleased to:

1. Dismiss the writ petition.
2. In the alternative declare and adjudge:
 - a. That the Respondents have not violated the fundamental rights of the indigenous people.
 - b. That the Respondents are not liable for environmental degradation.

AND/OR

Pass any other order that it deems fit in the interest of Justice, Equity and Good Conscience.

And for this, the Respondents as in duty bound, shall humbly pray.

COUNSELS FOR THE RESPONDENTS