



Remembering
PADMA BHUSHAN PROF. (DR.) N. R. MADHAVA MENON



PROF. N. R. MADHAVA MENON GLOBAL JURAL CONCLAVE 2022-23

- Mooting
- Students' Conference
- Judicial Colloquium
- Research Paper Presentation

PROF. N. R. MADHAVA MENON GLOBAL MOOTING COMPETITION, LAW STUDENTS' CONFERENCE & COLLOQUIUM 2022-23

15th to 18th February, 2023

MOOT PROPOSITION

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Prof. N. R. Madhava Menon Global Jural Conclave, 2022-23

Moot Proposition:

This moot proposition has been authored by Dr. Anant Vijay Maria, Advocate, Supreme Court of India and settled by Mr. R. Venkataramani, Senior Advocate, Supreme Court of India for the Prof. N. R. Madhava Menon Global Jural Conclave, 2022-23 (Mooting Competition). This moot proposition has been formulated solely for the purpose of this competition furthering the academic exercise.

1. The Republic of Grump and the Republic of Tots are neighbouring coastal sovereign countries located on Adrian, a small continent located in the Pacific Ocean bordering the Arabian Sea. Both countries' coasts are approximately 280 nautical miles from the Corsa Sea.
2. Tots is a developed country with a diversified economy, including a strong industrial sector that relies heavily on manufacturing and energy. Tots have many perennial rivers and dams, built on them some of which are used to generate hydroelectric power. They have a vast coastline and also is home to the largest coral reef reserve in the world. Tots has also commissioned a nuclear plant, both for energy generation and research. This plant is located in a district abutting the sea coast, and adjoining the coral reef reserve. Tots also wanted to explore the idea of incorporating and complying with nationally determined contributions (NDCs) as assured under the Paris Agreement.
3. Grump is a developing country, and its economy is based largely on fishing and agriculture. The Republic of Grump also shares a coral reef ecosystem on its west coast and is proud of eco-tourism in that area. It has a high growth projection and is going through an energy crisis due to a lack of resources to generate electricity. There have been multiple promises that are made by the PM to address the same and to bolster Grump as the future leader. The Industrial Revolution 4.0 is currently being witnessed and the country is harnessing it to attract foreign investors.
4. The Republic of Tan is another neighbouring island which has economic agreements with both Grump and Tots and has good friendly relations

with both nations. The Republic of Tan is a favourite for tourism purposes as it has the best beaches in the world and is blessed with unique flora and fauna. It equally attracts people to emerging dynamics of mental wellness camps from various parts of the world. It has now become a favourite destination for people of both Grump and Tots to retire and live a healthy life.

5. Tots in order to provide more employment as well as an increased GDP, conducted an extensive Environment impact assessment near its east coast namely in the State of Super. Super being a coastal region near the coral reef ecosystem was made to do an extensive study of its large coal mine area in the district of Khasra. This was considered the largest coal bloc of the finest variety and was to be developed over phases in order to ensure sustainable development. After, 7 years of extensive deliberation and environment impact assessment a report was prepared, and a go-ahead was given for its exploitation. The report was released by Mr Gavin Belson, Minister of Environment Affairs, Republic Tots. The right Hon'ble Minister in his speech stated "We are ushering a near era in Tots. Multiple employment, sustainable growth and an increase in overall revenue for the country. The report clearly shows that it is minimal or zero impact on the coral reef and thus the process of the auction will start soon." This created a global market frenzy as this led to multiple transnational corporations scrambling for this coveted coal mine.
6. The coal mine in question was called Prima and was the first one to be auctioned. The most interested Company was that of Republic of Grump named Bargin LLC Ltd. Bargin LLC is a transnational corporation which has multiple businesses located around the world and Ms Atlas who was the owner of the Company was listed in the top 10 richest people in the world. She was particularly interested in this venture as a means to help solve the energy crisis in Grump.
7. Bargin LLC participated in the auction process and was the H1 bidder (highest bid) and his bid was accepted by the government of Tots. The right Hon'ble minister Mr Gavin Belson announced in his press release "It is a momentous day for Tots as we have created thousands of jobs, and this will boost the economy as well as help in growth and development and bolster friendly neighbourhood. This advances our role as a major energy

player. All necessary clearances and approval have been granted to Bargain LLC for necessary exploitation purposes.”

8. Bargain LLC subsequently incorporated itself as an LLC in Tots in accordance with its domestic legal regime and started exporting coal in tranches back to Grump. The energy crisis in Grump began to resolve and the prices of electricity began to be reduced by as much as 15% due to such direct supply. This was considered a very profitable venture for Bargain LLC and Ms Atlas's net worth increased by Rs 100 crore taking her into the top 5 richest people in the world.
9. In the meanwhile an NGO named “Protect Coral Reef” (PCR) stated protest campaigns due to the untreated effluents being discharged into the pacific and is in clear violation of international norms and in violation of environmental protection norms. They generated multiple studies stating that the Barrier Reef has started suffering a series of mass coral bleaching which is caused by rising sea temperature owing to over exploitation of coal. They also cited the Intergovernmental Panel on Climate Change, even if the world achieves its goal under the Paris Agreement of limiting global warming to 1.5 degrees Celsius above pre-industrial levels, the world will still suffer a loss of 70 to 90 per cent of reef-building corals. If temperatures rise by 2 per cent or more above pre-industrial levels, the Barrier Reef would be destroyed with 99 per cent of corals being lost. The NGO further suggested that this was the exact thing which is the problem of New International economic order and thus creating environmental damage in one country at the cost of development of the other. They lodged an international protest with multiple international NGOs participating as well as lobbying with international leaders to act as the reef is one of its kind, and irretrievable.
10. The leader of PCR Dr Haze said burning all the coal approved for mining at Bargain Site in Khasra site would alone use up 3.3 per cent of the world's remaining 'carbon budget' for limiting warming to 1.5C. If the mines also go ahead, this will rise to almost 6 per cent. However, in a newspaper report in a national daily “Patrakar” an article was published “No Country for jobs”, the article had quotations from several local leaders from various districts near the coal mine who was very happy with the business as it was giving them rightful employment. They were also certain that if

this stopped there will be huge economic and development set back.

11. The approval of the Bargin project seems to be an aggressive attack on the 1,100-mile-long reef in two deadly ways. First, by condoning the mining and burning of coal, which is heating up and acidifying the oceans and killing coral reefs. This impact has also started impacting the reefs in Grump as well as the west coast of Tan. Secondly, Bargin wanted to exploit a mine right near the coastal region of Grump. That means more industrialization in the area, more water pollution, more coal barges floating over the reef, and more risk of disasters that may dump dirty black rocks on one of nature's crown jewels.
12. The coral region started to deteriorate and there were massive landslides in Khasra due to mining work and about 2000 people lost their lives due to such massive landslides. The area became unfit for habitation and was declared a hazardous zone. The right Hon'ble Minister of Environment Mr Gavin Belson was faced with a lot of backlash and protest due to such environmental harm. In the meanwhile, 189,000 people were internally displaced, and Tots was unable to house them in 55 temporary sites. The citizens of Tots thus then instead of internal migration started shifting to neighbouring states of Grump and Tan. They were the freshest group of climate migrants, and it became a huge cause of concern for the international organisations. Further, the population exodus was also creating a refugee crisis in both nations. The Government of Tan sent the following diplomatic note, which was forwarded to the Government of Tots.
13. "The Embassy of the Tan takes strong note of the transboundary environmental harm being caused by the mining operation in your country. Bargin LLC does not have any rights in international to cause harm to coral reefs as well or affect the overall ocean health which has dire impacts due to shifting oceanic plates. There are already issues previously of Tsunami in this area and it causes loss of life and property on both the islands. The operation of mining is also causing an excessive exodus of a significant population, and this will become a huge humanitarian crisis supplemented with an environmental crisis in the immediate future.

Please accept the assurance of my highest consideration

/s/

S. Hadid

Ambassador”

14. The NGO PCR did a massive protest and displayed the slogan “Bargain TNC did an Ecocide, yet the minister still abides”. This led to a furore in Tots and lead to the resignation of the environment minister. The President of Tots swiftly responding to the situation promulgated an ordinance whereby on the account of human rights violations by the transnational corporation as well as the environmental harm called “Make Coral Reef Great Again”. In the ordinance, measure to deal with the nationalisation of Bargin LLC was ordained with immediate effect as the only substantial harm done to human life as well as the environmental degradation and damage which was caused due to such profiteering and human greed. The Ordinance also introduced criminal sanctions wherein punishment of imprisonment of up to 5 years was brought into action for the key managerial person (KMP).
15. The company Bargin LLC was successfully nationalised, and all mining and exploration activities were stopped with immediate effect. The CEO and largest shareholder Mr Cristaniniho, who was a citizen of Grump and a resident of Tots for the past 18 years, was expelled from the country by an expulsion order dated 19th November 2020 bearing Order No.316 by the Ministry of Internal Protection and Security. He was also arrested secretly and placed in custody without any legal recourse as he was considered to be indulging in reckless profiteering and the prime accused in the eco-humanitarian crisis throughout the State of Tots and Tan. The takeover was without any compensation. The federal government of Tots claimed that it can confiscate any property in its territory as per the new ordinance in order to protect its rights as sovereign and the rights of its citizens.
16. The humanitarian crisis as well as the environmental degradation took a turn for worse when there were massive floods and death of fishes in the coastal regions due to such untreated discharge near the coast of Tan. Tan immediately proceeded to the International Court of Justice to prevent

any further harm and determination of violations as well as rectification under international law.

17. Tots and Tan are Members of the United Nations and are Parties to the Statute of the International Court of Justice (ICJ). Pursuant to Article 36, paragraphs 2 and 3, of the Statute of the ICJ, Tots has recognized the ICJ's jurisdiction as compulsory ipso facto but only on the condition of reciprocity on the part of other states. Grump has not recognized the ICJ's jurisdiction as compulsory ipso facto.
18. Tots and Tan are Parties to the Vienna Convention on the Law of Treaties.
19. Tots and Tan are Contracting Parties to the Convention on Biological Diversity (CBD). In accordance with Article 27, paragraph 3, of the CBD, when Tots and Grump ratified the CBD, both countries declared in writing that they would submit to the jurisdiction of the ICJ to resolve disputes concerning the interpretation or application of the CBD
20. Tots and Tan are Parties to the United Nations Framework Convention on Climate Change (UNFCCC) and are Parties to the Paris Agreement. Pursuant to Article 24 of the Paris Agreement and Article 14 of the UNFCCC, both countries submitted written declarations stating that with respect to any dispute concerning the interpretation or application of the UNFCCC or the Paris Agreement, they would submit the dispute to the ICJ. On April 22, 2016, Tots and Grump submitted their first Nationally Determined Contributions (NDCs) in accordance with the Paris Agreement.
21. High-level representatives from Tots and Tan attended and fully participated in the 1972 United Nations Conference on the Human Environment at Stockholm; the 1992 United Nations Conference on Environment and Development at Rio de Janeiro; the 2002 World Summit on Sustainable Development at Johannesburg; and the 2012 Rio+20 Conference at Rio de Janeiro.

Issues

- 1) Whether the present claim is maintainable before ICJ?
- 2) Whether did Bargin have any responsibility for ensuring Human rights and the protection of the environment? Whether Bargain can be held accountable for Ecocide or any other international harm under international law?

- 3) Whether Tots could confiscate Bargin as it did under the powers given under the ordinance and whether the President of Bargin Company was lawfully detained, and whether his subsequent denial of his diplomatic rights was justified. In the event they are justified do they deserve payment of compensation and apology or any other remedies in International Law?
- 4) Whether there exists any responsibility for Tan to provide refugee status to the citizens of Grump?
- 5) Whether Tots is responsible for environmental harm done to the coastal and coral reef-rich region of the Republic of Grump?



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LLOYD LAW COLLEGE

Add. : Plot No. 11, Knowledge Park - II, Greater Noida, (U.P.)

Tel : +91-9961884992, +91-9918968158

E-mail : profmenonmooting@lloydlawcollege.edu.in

Website : www.asianjuralconclave.org ; www.lloydlawcollege.edu.in