

MOOT PROBLEM

UNITY FOR RULE OF LAW v. UNION OF GRAND-LINE AND SL NARMA

WP. 125/2019

1. The Republic of Grand-Line is a country situated in South East Asia. Since ancient times, Grand-Line had been a melting pot of diverse cultures and ethnicity. It was a former colony of the Great Kingdom of Cookieland. Great Kingdom of Cookieland ruled Grand-Line for nearly 100 years. In the late 1950s, the demand for complete freedom from the rule of Cookieland was raised by the people of Grand-Line. Under the leadership of Mrs. Martha, the freedom movement gained pace. In the year 1965, the country of Grand-Line got its independence from the Great Kingdom of Cookieland. The Constitution of Grand-Line came into force in the year 1969. The Constitution of Grand-Line is in *pari materia* to the Constitution of India.
2. In 2015, 11th General Election was held in Grand-Line and after 20 years, the New Gen Party (NGP), under the leadership of Mrs. Aleena MJ, came into power with an astounding majority in the Lower House of the Parliament. The party has a religious teleological political ideology with the motto “Everything is Fair in Love and War”. The opposition party, Grand-Line Old Party (GOP), had majority in the Upper House of the Parliament. NGP ruled states were always under scrutiny by the higher judiciary for alleged maladministration and abuse of discretionary power.
3. In 2016, there were news reports of instances of corruption in the judiciary. Questions of nepotism and disregard of seniority were raised by many on the Bench and civil society members. One of the electoral promises which Mrs. Aleena gave was reformation in the judicial appointment and judicial accountability. The Parliament attempted to legislate upon the appointment of judges to the judiciary by way of 66th Constitutional Amendment Act, 2016 (*pari materia* to 99th Constitutional Amendment Act to the Constitution of India). But the

66th Constitutional Amendment Act was struck down by the Supreme Court of Grand-Line in the case of Judicial Accountability Group v. Union of Grand-Line on 13th December 2017, on the ground of violation of basic structure doctrines of independence of judiciary and separation of powers. While striking down the 66th Constitutional Amendment Act, the Supreme Court asked the Union Government to formulate a Memorandum of Procedure for appointment of judges to Higher Judiciary. On 24th January 2018, the Union Law Minister, Dr. Jenny Reddy, went on air in a public debate, criticizing the decision of the Court and went on to tell that the Supreme Court of Grand-Line is indulging in Judicial Adventurism and is violating the concept of separation of power.

4. On 14th April 2018, six of the senior most associate judges of the Supreme Court of Grand-Line addressed media expressing their anguish over the administrative functioning of the Chief Justice of Supreme Court. The disgruntled judges raised concerns about the deteriorating standards in the Supreme Court administration, mainly in the way “cases with far reaching consequences” were assigned to various Benches. They also alleged that the Chief Justice of the Supreme Court was acting mechanically under the external orders. They also alleged that the Union Government was undermining the independence of judiciary by going public with the Government’s criticism of the various judgments that put the Government in the dock.
5. The press conference attracted heavy discussion and the public opinion was divided on the topic. The critics in support of the anguished judges pointed fingers at the Union Government’s delay in finalizing Memorandum of Procedure. The Grand-Line Old Party also started a campaign against the Law Minister’s comment criticizing the judgment in Judicial Accountability Group v. Union of Grand-Line.
6. To tackle the public outrage, Mrs. Aleena asked Dr. Jenny Reddy to bring a legislation to regulate the conduct of the judges and accountability of the judges. Dr. Jenny introduced the Judicial Code of

Conduct and Accountability Bill in the Parliament of Grand-Line. The relevant provisions of the Bill are attached in the annexure.

7. With the permission of the Speaker, Dr. Jenny introduced the Bill as a money Bill. Leader of the opposition and the GOP party chairman, Mr. Rohan Al'Gul raised objection to the introduction of the Bill as a money Bill. He and other opposition legislators termed the action of the government as fraud committed on the Constitution. Disregarding the objections, the Speaker of the House held that the introduction of the Bill as a money Bill was procedurally correct. The Bill was passed by the lower house with majority. In the upper house, the opposition parties raised objection in the way the Bill was being introduced. They objected that the NGP was running the country as a totalitarian system. They alleged that the way the Bill was introduced was a strategy to circumvent the constitutional procedure for enactment of a legislation.
8. The opposition legislators kept on interrupting the discussion of the Bill in the upper house. In spite the interruptions, the discussion went on. Mr. Rohan and his fellow legislators staged a walk out. The Chief Whips of the opposition parties issued whips to their members not to attend the discussion of the Bill. Since the required quorum wasn't available for the 14 days, the Bill was deemed to be passed by both the houses.
9. President Luffy San gave his assent for the Bill on 14th October 2018. The Government notified the Judicial Code of Conduct and Accountability Act as having come into force from 1st January 2018. Mr. SL Narma, an advocate who has a habit of filing PILs, filed a complaint against the six judges for violating the code of conduct mentioned under Section 3(2)(f) and 3(2)(g) of the Judicial Code of Conduct and Accountability Act, 2018. The legislators of NGP in the parliament also requested the Speaker to admit a motion to impeach the six judges of the Supreme Court.
10. Many civil society organizations and lawyers' associations termed the Judicial Code of Conduct and Accountability Act, 2018 as an attack on the independence of the Judiciary and a means to curtail dissent against maladministration. The civil societies, retired judges, leading

jurists and others under the banner of Unity for Rule of Law filed a PIL challenging the constitutionality of the Act and the complaint filed by SL Narma. The Union of Grand-Line opposed the petition by stating that the doctrine of separation of powers is part of the Basic Structure and the Basic Structure can only be used to check the validity of a Constitutional Amendment and not an ordinary legislation. SL Namra resisted the petition by stating that a PIL can not be filed for representing the cause of the Supreme Court Judges.

11. The Supreme Court of Grand-Line admitted the petition and has framed the following issues:

- a. Whether the PIL is maintainable.
- b. Whether the doctrine of Basic Structure can be used as a yardstick to declare an ordinary legislation unconstitutional.
- c. Whether the Court can review the tabling of a bill as Money Bill.
- d. Whether the Judicial Code of Conduct and Accountability Act, 2018, is violative of the principle of independence of judiciary.
- e. Whether the Judicial Code of Conduct and Accountability Act, 2018, is arbitrary and is infringing the freedom of speech and expression.
- f. Whether the Judicial Code of Conduct and Accountability Act, 2018 being applied retrospectively violates Article 20.

The matter is posted for final hearing on 2nd and 3rd March 2019.

ANNEXURE

RELEVANT PROVISION OF JUDICIAL CODE OF CONDUCT AND ACCOUNTABILITY ACT, 2018

1. Short Title and Commencement:

- (1) This Act may be called the Judicial Code of Conduct and Accountability Act, 2018.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazzatte, appoint.

3. Judicial Code of Conduct:

(1) Every Judge shall continue to practice universally accepted values of judicial life as specified in subsection (2).

(2) In particular, and without prejudice to the generality of the foregoing provision, no Judge shall—

(a) contest the election to any office of a club, society or other association or hold such elective office except in a society or association connected with the law or any court;

(b) have close association or close social interaction with individual members of the Bar, particularly with those who practice in the same court in which he is a Judge;

(c) permit any member of his immediate family (including spouse, son, daughter, son-in-law or daughter-in-law or any other close relative), who is a member of the Bar, to appear before him or associated in any manner with a cause to be dealt with by him;

(d) permit any member of his family, who is a member of the Bar, to use the residence in which the Judge actually resides or use other facilities provided to the Judge, for professional work of such member;

(e) hear and decide a matter in which a member of his family, or his close relative or a friend is concerned;

(f) enter into public debate or express his views in public on political matters or on matters which are pending or are likely to arise for judicial determination by him: Provided that nothing contained in this clause shall apply to the views expressed by a Judge in his individual capacity on issues of public interest (other than as a Judge) during discussion in

private forum or academic forum so as not to affect his functioning as a Judge;

(g) make unwarranted comments against conduct of any Constitutional or statutory authority or statutory bodies or statutory institutions or any chairperson or member or officer thereof, in general, or at the time of hearing matters pending or likely to arise for judicial determinations.

(h) give interview, to the media in relation to any of his judgment delivered, or order made, or direction issued, by him, in any case adjudicated by him;

(i) accept gifts or hospitality except from his relatives;

(j) hear and decide a matter in which a company or society or trust in which he holds or any member of his family holds shares or interest, unless he has disclosed his such holding or interest, and no objection to his hearing and deciding the matter is raised;

(k) speculate in securities or indulge in insider trading in securities;

(l) engage, directly or indirectly, in trade or business, either by himself or in association with any other person:

Provided that the publication of a legal treatise or any activity in the nature of a hobby shall not be construed as trade or business for the purpose of this clause;

(m) seek any financial benefit in the form of a perquisite or privilege attached to his office unless it is clearly available or admissible;

(n) hold membership in any organisation that practices invidious discrimination on the basis of religion or race or caste or sex or place of birth;

(o) have bias in his judicial work or judgments on the basis of religion or race or caste or sex or place of birth.

(3) No adherence to the Code of Conduct specified in subsection (2) may be considered as misbehaviour on part of a Judge.

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14. Complaint:

Any person making an allegation of misbehaviour or incapacity in respect of a Judge may file a complaint in this regard to the Oversight Committee.

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18. Composition of Oversight Committee:

(1) The Oversight Committee shall consist of the following, namely:—

(a) a retired Chief Justice of Grand-Line appointed by the President after ascertaining the views of a Committee consisting of Prime Minister, Chief Justice of Grand-Line and Leader of the Opposition Party as the Chairperson;

(b) a Judge of the Supreme Court nominated by the Chief Justice of Grand-Line as Member;

(c) the Chief Justice of a High Court nominated by the Chief Justice of Grand-Line as Member;

(d) Minister for Law and Justice as ex-officio Member;

(e) the Attorney-General for India as ex officio Member;

(f) an eminent person nominated by the President—
Member:

(g) Secretary, Ministry of Law and Justice as Member
Secretary.

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19. Power of the Oversight Committee

(1) The Oversight Committee shall, within one month of the receipt of a complaint relating to misbehaviour of a Judge of High Court or Supreme Court conduct an inquiry through an inquiry committee.

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37. Advice to the President for removal of the Judge:

If the Oversight Committee is satisfied that all or any of the charges of misbehaviour or incapacity of a Judge have been proved and that they are of serious nature warranting his removal, it shall request the judge to voluntarily resign and if

he fails to do so, then, advise the President to proceed for the removal of the Judge and the President shall refer the matter to Parliament.

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67. Insult or interruption to Oversight Committee

(1) Whoever insults, or causes any interruption, to the Scrutiny Panel or investigation committee or Oversight Committee while the Oversight Committee or Scrutiny Panel or investigation committee or any of their members is doing scrutiny or conducting any investigation or inquiry under this Act, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.”

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69. Repeal

The Judges (Inquiry) Act, 1968 is hereby repealed.

