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ALL-INDIA INTER-UNIVERSITY MOOT COURT COMPETITION

Moot problem subject  
for

1st round

PUBLIC INTERNATIONAL LAW,  
INTERNATIONAL ENVIRONMENTAL LAW,  
INTERNATIONAL HUMAN RIGHTS LAW

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**AHMED ASGAR ( Kabriliya v. Bibinca)**

**SUBJECTS: PUBLIC INTERNATIONAL LAW, INTERNATIONAL ENVIRONMENTAL LAW, INTERNATIONAL HUMAN RIGHTS LAW**

Bibinca is a coastal country based in the North Atlantic Ocean. It is a small island rich in natural resources that mainly remain unexploited and its economy thrives mainly on tourism and export of cocoa beans and rubber. Due to increase in tourist activities Bibinca's beaches have been suffering from an increase in plastic pollution which is why its local population has developed a strong network of environmental activists holding demonstrations against plastics and over exploitation of natural resources.

An air borne highly contagious respiratory disease strikes the island of Bibinca which originated in Alstania, a large prosperous and a highly industrialised country and spread to other parts of the world. Bibinca being a popular holiday destination amongst other countries, it also caught the disease through the incoming tourists. Due to the spread of this disease and to control it further Bibinca underwent a national lockdown. Its economy suffers a major blow as it is mainly dependent upon tourism and other countries issue advisories to their citizens warning them against travel to Bibinca because of the spread of this disease and the lockdown. Thus, people lose their only source of livelihood.

Therefore, in order to boost its economy it opens itself to investment in natural resources exploration. Therefore, it invites investment in its rubber industry but requires the investors to engage the local population in its business activities and to conduct it as per the domestic laws of Bibinca including the environmental law. Mr Adam Asgar, an industrialist a national of Kabriliya is involved in the business of rubber making. MrAsgar has been importing the raw materials required in the process of rubber making from Bibinca. Thus,MrAsgar takes full advantage of this invitation by the government of Bibinca to invest in its otherwise closed economy. Thus, he starts his operations in Bibinca through his company "Asgar and Asgar" registered in Kabriliya.

The government of Bibinca to further boost up the economy and create jobs for its youth opens the allocation of coal blocks to private sector. However only the firms registered in Bibinca could apply for the allocation of coal blocks in Bibinca. This allocation of coal blocks is limited to coal mining of 1.5 million tonnes per annum (TPA) and these would be

allocated for a period of 10 years. The company is required to make an upfront payment for a period of 10 years within the first year itself.

MrAsgar and his company learns about these coal tenders that have opened in Bibinca and in order to make use of this opportunity establishes a company "AsgarMining" in Bibinca along with two Bibincese nationals Mr Ahmed Eldin and MsRukhsana Zelensky. The company participates in the bid to receive coal allocation and successfully receives the same. For over five years they're involved in the process of coal mining. Due to excessive mining being conducted by them the fly ash from these mines starts settling over the tourist beaches.

The locals as well as the foreigners who once used to come and relax at Bibincese beaches started suffering from lung diseases due to this fly ash. Even the marine animals and coral reefs had to pay the brunt resulting in sharp decline in the number of tourists coming to Bibinca.

Ever since MrAsgar's Company started mining operations in Bibinca it saw protests from the woke citizens of Bibinca due to the deforestation that preceded the mining activity. However, no heed was paid by the newly elected government of Bibinca. Two of the activists even requested the government to expedite the EIA process on this 1.2 million tonnes per annum (TPA) coal mining project in Mir province of Bibinca.

Though the government started the EIA of the project but it allowed MrAsgar's Company to start its operations even before the preparation of final EIA report. The tenure of the government in Bibinca is 7 years when their lower house of the Parliament is dissolved for the new general elections. AsgarMining Company had been operating for six years since formulation of this new government. It was then that massive protests erupted in Bibinca against the current regime due to the environmental degradation being caused by coal mining as it had previously resulted in loss of tourism and spread of lung diseases amongst the locals as well as the long stay tourists.

As the State ofBibinca was nearing its election, the government suspended the mining operations on the basis of an interim EIA Report. During this time period the partners of AsgarMining Company, both Bibincese nationals quit the company and MrAsgar becomes the sole manager of this company. Thefinal report is then submitted by the Committee of

Experts, set up under the Environmental Protection Act, 1980, to the Government of Bibinca. The EIA report suggests grave degradation of the environmental resources if this mining project is allowed to operate. It even suggests that if mining is carried out in this area, the proximity of the coal reserves to the water bodies can also cause a harmful impact upon the marine animals thus disrupting the entire ecosystem.

Based on this EIA report, the Bibincese government completely halts the mining operations being run by Asgar and Asgar in Mir province of Bibinca. MrAsgar requests the government to atleast let his company operate to recover the payment it had made to the Bibincese Coal Company (government owned company). However, the government doesn't pay any heed to his request and instead sieze his assets in Bibinca. Heinitiates a number of court actions seeking to recover alleged debts from Bibincese Coal Company however a formal order is issued to deport him back to Kabriliya. Kabriliya alleges that this deportation was a step taken by Bibinca to prevent him from recovering his debts from the state-owned company.

Both the States are members of the United Nations and parties to the Statute of the International Court of Justice; the Vienna Convention on the Law of Treaties, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations.

Both the States submit their dispute to ICJ. The issues before the ICJ are:

- a) Whether seizure of Mr Adam Asgar's assets by the Bibincese government resulted in rightful expropriation?
- b) Does Mr Adam Asgar and his company AsgarMining Company have the right to diplomatic protection?