



NIMS SCHOOL  
OF LAW

in association with

BAR COUNCIL  
OF INDIA



ALL-INDIA INTER-UNIVERSITY MOOT COURT COMPETITION

Moot problem subject  
for

3rd round

CONSTITUTIONAL LAW

IG: @nismootcourt  
law.nimsuniversity.org

+916376392508  
mootcourtbci2022@nimsuniversity.org

**Case Concerning Pollution and subsequent Closure of Zinc Factory in the Bokarsho  
State, Indica**

**M/S Tectonic Mines Ltd. Vs. State of Bokarsho**

**(U/A 136 Constitution of Indica)**

**(Before the Hon'ble Supreme Court of Indica)**

**Legal provisions and law under question:** The matter pertains to air and water polluting character of a Zinc factory. The provisions under which action was taken against the said factory are *Section 31A of the Air (Prevention and Control of) Pollution Act, 1981 and Section 33A of the Water (Prevention and Control of) Pollution Act, 1974*. The Bokarsho Pollution Control Board had ordered the closure of the factory. The factory approached the High Court on the basis of *Article 14 and Article 19 of the Constitution*. Special Leave Petition under *A. 136, Constitution* is to be decided by the Supreme Court. The same has been filed by the Petitioner factory, dissatisfied by the High Court decision against the State of Bokarsho.

1. M/S Tectonic Mines Ltd. is the world's largest diversified natural resources companies, incorporated under the Companies Act, 2013 and having its registered office at Mahanarmada State of Republic of Indica. The Company is engaged in exporting, extracting and processing minerals such as copper, iron ore, aluminium, oil and gas and commercial power. The founder of the said company Mr. Ambica Prasad is a leading capitalist and his name has been featuring continuously from the past five years in a prominent list of richest Asians. Mr. Prasad is also a well-known philanthropist. His contributions for the welfare of the tribal populations in the State of Bokarsho and State of Jamdeshpur is remarkable. Much before it became a Corporate Social Responsibility (CSR), Mr. Prasad was running charitable schools, colleges and hospitals in areas with large tribal population. It is also a policy of the M/S Tectonic Mines Ltd. that 50% of the employees of the company shall belong to the tribal population. In the year 2005, Mrs. Durgamati, the wife of Mr. Prasad and the Vice-Chairman of M/S Tectonic Mines initiated a research under the aegis of Ambica Prasad Institute of Social Science Research, Mumbanagar (capital city of State of Bokarsho). The aim of this research project was to codify the existing Traditional Knowledge associated with Bio-Diversity resources spread over the

different regions of Republic of India. Adivasi Bachao Andolan (ABA), a Non-Governmental Organization (NGO), based out of Bokarsho raised its voice through media, press-release and subsequently started a Dharna outside the institute as a reaction against the project. The research project, subsequently, could not succeed, due to passing of the Bio-Diversity Act, 2005, in furtherance of the Convention on Bio-Diversity, 1992. The said law made it compulsory to obtain prior consent (PIC) from the holder of the sacred Indigenous Knowledge and also made it compulsory to share the benefits being derived out of the Bio-Diversity resource or the associated Traditional Knowledge with the holders of the same. The legal complications involved were cited as the reasons for abandoning the project.

2. In the year 2017, the Company established a plant in Mumbanagar for production of zinc cathode, zinc rods, Hydrochloric Acid, Phosphoric Acid and other by-products in the process of smelting Zinc concentrate. The Zinc rod plant and the captive power plant were situated within the Zinc smelter complex of the Company's unit. The then government of the State of Bokarsho approved the setting up of the plant and further the State Industrial Promotion Board (SIPB) of the government allotted an extent of 100 hectares of land in an industrial complex developed by it at Mumbanagar. The manufacture of Zinc is classified as 'red category industry' signifying that the process is highly polluting and the effluents are hazardous. Therefore, prior environmental clearance of the Central Government of Republic of India was mandatory. On 20<sup>th</sup> January, 2017, the Ministry of Environment, Forest and Climate Change granted environmental clearances for the project. Thereafter, the Government of Bokarsho, the Department of Forest granted environmental clearance on 20<sup>th</sup> May, 2017. Further, in furtherance of Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 the Company was required to obtain consent to establish the plant. This was granted by the Bokarsho Pollution Control Board (BPCB) on 25<sup>th</sup> May, 2017. The permission was for manufacture of 234 tonnes of blister Zinc per day and 638 tonnes of Hydrochloric Acid per day.
3. Even though the Plant was located in the designated industrial area, the release of the pollutants significantly affected the Air Quality Index (AQI) of the city. Just after one year of operation of the plant i.e. on 31<sup>st</sup> May, 2018, the AQI shot up to 340 units. Residents of the city up to 10 km. radius of the plant could also feel burning sensation in their eyes and breathing issues during the working hours of the Plant.

This was also reported in Times of Mumbanagar dated 1<sup>st</sup> June 2018. ABA decided to protest against the setting up of the plant and after an agitation which continued for 6 months, filed Writ Petition (WP No. 1234) in the High Court of Bokarsho challenging the grant of environmental clearance and other related matters.

4. On 23<sup>rd</sup> July 2018, the Division Bench, which heard the matters, ordered for closure of the plant. However, the Division Bench by order dated 23<sup>rd</sup> December 2018, lifted the order of closure and permitted the plant to operate on experimental basis for about two months from 26<sup>th</sup> December, 2018 to 28<sup>th</sup> February, 2019. On 09<sup>th</sup> March, 2019, an expert committee constituted by the High Court opined that the Company can be allowed to operate and the Division Bench taking note of such report, permitted the operation, by order dated 23<sup>rd</sup> March, 2019. Presumably during the period when the plant was to operate on experimental basis, the full production capacity could not have been achieved or was not permitted, but eventually the BPCB while issuing the consent order dated 20<sup>th</sup> April, 2019, permitted the petitioner to operate full capacity, i.e., 234 tonnes of blister zinc per day and 638 tonnes of Hydrochloric Acid, per day.
5. On becoming operational for the second time the polluting character of the industry became worse. The newspaper reports dated 15<sup>th</sup> May, 2019, suggested that the local fisher men communities who were residing downstream from the plant had to shift their location because the Zinc slag being released by the industry was proving to be a hazard for the fresh water species, resulting in a decline in the number of fishes which they could hunt prior to the industry becoming operational. On 20<sup>th</sup> May, 2019, the BPCB, received a complaint from the fishermen community's representative against the environmental degradation so caused. The Company was called upon to show cause as to why action should not be initiated based on such violation and public complaint. The BPCB, by order dated 1<sup>st</sup> June, 2019, directed closure of the plant under Section 31A of the Air Act and Section 33A of the Water Act and power supply was ordered to be disconnected.
6. Against the order, the Company filed a Writ Petition (WP No. 2904) before the High Court alleging that the order so passed was not within the Board's jurisdiction. It was argued by the counsel representing the Company that to exercise power under these provisions, factum of pollution is a must. Further, such power can only be used where there is urgency and in a given situation, where emergent action is required in the matter, when act of pollution is continuous and when following normal course of

action will delay the matters and to ensure prompt action considering the emergent situation. It was also alleged that the State government was motivated by political considerations and was under pressure to shut down the plant. It was thus a colourable exercise of power.

7. In the Writ Petition it was further submitted that pollution caused by the Zinc slag was the main reason for closure of the plant for the second time. However, it was the BPCB which while granting approval in the year 2010, had permitted the use of Zinc slag as a land fill. Further, the Writ Petition stated that in furtherance of the authorization so received for sale of the slag to third parties, M/S Tectonic Mines Ltd., i.e. the petitioner entered into agreements for sale of slag and the same was brought within the knowledge of the BPCB. In furtherance of the agreement, the private party stored the slag on a piece of land adjacent to the plant and no action was taken against the said third party. It was further stressed on the non-hazardous nature of the zinc slag.
8. The petitioners further argued that the activities were being carried on in furtherance of the renewal of consent order which had happened after the expert committee gave recommendations in the month of March, 2012 to the Court. Further, it was submitted that shutting down the plant was a targeted political attack because there were 67 other industries, in the Industrial Complex, including three thermal plants. Thus, the order of BPCB was violative of Articles 14 and 19(1)(g) of the Constitution of India. Support was further taken of the Tehri Dam (ND Jayal and Anr. Vs Union of India) judgement and the Kudankulam Nuclear Power Project judgement (G. Sundarajan vs. Union of India) of the Hon'ble Supreme Court of India and it was contended that within the purview of Article 21 of the Constitution is the Right to Sustainable Development of the citizens. The contours of this right are inclusive of environmental protection but at that time also emphasise upon developmental aspects. A balance thus needs to be created and economic progress cannot be disregarded for a holistic growth of the society.
9. However, the High Court of Bokarsho ruled in favour of the BPCB and dismissed the petition. Subsequently, calling it a "retrograde step" by the High Court, M/S Tectonic Mines Ltd. has now filed an appeal against the order before the Supreme Court under Article 136 of the Constitution. The plea states that "Instead of being self-sufficient in Zinc, a situation has been created by which

Indica now imports \$2 billion worth of zinc from China,” Since, the plant met 36% need for zinc in the country and it was not in public interest to keep it closed. The Bokarsho government during the hearing on maintainability on the other hand argued in the apex court that the plant has been a source of pollution for over 20 years and slag had been dumped all over the city in 11 places.

10. The SLP is now listed for final hearing on the following issues :

- I. Whether the order of suspending the operation of the plant situated in Mumbanagar was arbitrary and amounted to violation of Article 14 of the Constitution of Indica ?
- II. Whether not taking an action against other industries operating in the industrial complex and prohibiting the operation of the plant was a violation of Article 19(1)(g) ?
- III. Whether blatantly stopping the operation of the industry amounts to violation of Article 21, in furtherance of the principle of sustainable development?

Note:

1. The laws of the State of Republic of Indica are in parimateria with the laws of India.
2. The matter is to be heard by the Hon’ble Supreme Court.