

JUSTICE P.B. SAWANT SIXTH NATIONAL MOOT COURT COMPETITION 2018-19

MOOT PROBLEM

Mr. J. K. Rawal Kumar v. Central Bureau of Investigation

1. Indiyana is a Republic, Sovereign, Democratic country with the parliamentary form of government. It has written constitution which is considered as supreme law of the land. The distribution of powers amongst Federal Government and State Governments is one of the essential features of the written constitution of Indiyana.

2. The framers of the constitution have recognized many basic human rights as fundamental rights and placed it in part III of the constitution. Many fundamental rights like right to life and personal liberty, right to equality, right to speech and expression are guaranteed against state authorities. The constitutional courts being the protector of these rights wherever required, have utilized the instrument of judicial review effectively.

3. On 26th August, 2017, news broke on electronic media about the raids conducted by federal agency of Indiyana, Central Bureau of Investigation (herein after CBI) in many parts of country and consequential arrest of some people in connection of child trafficking for child prostitution. The action of CBI was in pursuance of the alert issued by INTERPOL, an International Police Organization. It was contended by CBI that the arrested person who were involved in children exchange programs that are being conducted in various countries with the object of familiarization of diverse culture were involved in certain malpractices such as selling children for prostitution. The action of CBI was a shock for the society as majority of arrested people were prominent personalities including Mr. J. K. Rawal Kumar, a social worker.

4. Mr. Rawal Kumar is an influential, famous personality working for many social causes in Mahayana, a developed state in Indiyana. He is a supporter of civil rights of citizens and great critic of governmental policies encroaching on rights of people. An orphanage named 'Child Home' for providing food, shelter and primary education to children is being runned by him. As recognition of his work, Mr. Rawal Kumar has received various awards from public bodies and the Government of Mahayana.

5. The action of CBI has evoked many issues and debates in society. To clarify, the State Government of Mahayana issued an official statement stating that neither the state police were involved in the arrest of Mr. Rawal Kumar nor the Home Department received any information about the matter. Further, the state government condemned the action of CBI and

expressed its dissatisfaction stating that the arrest was made without proper jurisdiction. The state government emphasized that it had by Government Order (GO) No. 42 of the Home Department dated August 1, 2017 withdrawn the general consent given to CBI, wide Government Order (GO) No. 29 of home department dated May 20, 2017. The Government Order No. 29 permitted all members of the DSPE/CBI to exercise the powers and jurisdiction under the Act No. 25 OF 1946 in the State of Mahayana. Under the said Act, the withdrawals of general consent by concerned state prohibit the CBI to carry out searches or to investigate in that state without the consent from the concerned state government. This governmental statement invited great debate on legality of action of CBI. It was also rumoured that state Government was unhappy with the manner of investigation by CBI in the state which resulted in the withdrawal of general consent.

6. Feeling aggrieved by the arrest and detention by CBI, Mr. Rawal Kumar approached the Federal Court of Indiyana. Some fundamental questions of constitutional importance have been raised in his petition. He has taken the stand that he is a reputed social worker and the manner in which he was arrested by the CBI was violative of due process of law and right to life and personal liberty guaranteed by the constitution of the Indiyana.

He has stated that CBI does not have legal mandate to take cognizance of cases in Mahayana and started *suo moto* investigation in the present case since CBI does not have original jurisdiction to deal with matter. For this, he has relied upon the official statement of Government of Mahayana.

The petition raised another interesting point that being an anti-corruption body CBI has the jurisdiction to investigate, matters related to corruption only and it cannot deal with alleged special crime i.e. child trafficking in the present case. The petition has also stated that the law governing the working of CBI is pre-constitutional law and the CBI was not considered as police anywhere in the constitutional scheme.

7. To justify its action, the press conference was called by the CBI. It was contended that the CBI has its own role under the Delhi Special Police Establishment (DSPE) Act, 1946 passed by the central legislative body of Indiyana and under it, has the jurisdiction to deal with any matter. Answering specifically the issue of absence of consent by the State of Mahayana, the CBI stated that the action of withdrawal of consent by the state had no effect on the power of CBI regarding arrest and further investigation as the investigation by CBI in this matter was commenced long before the withdrawal of consent.

8. The CBI further emphasized its authority to investigate the present matter considering the international ramification of the offence involved and constraints on the state police to investigate the matter. CBI also claimed that it being the representative of Indiyana in INTERPOL was bound to take action on the alert issued by INTERPOL. It further mentioned that the accused in present case is suspected to be the member of international gang involving

child trafficking for child prostitution. It further stated that after completing preliminary enquiry (PE) as per CBI Crime Manual and on the basis of substantial evidence collected, the suspected were arrested by the CBI. The CBI has stated that it has been the part of constitutional scheme since the inception of constitution, it being provided for, under the 7th Schedule of constitution. It has further underlined that in Indiyana there are some other investigation agencies having national jurisdiction to investigate the matter without consent of State are also functioning.

The matter is placed for final hearing and following Issues are framed by the Hon'ble Federal Court:

- 1. Whether the arrest of Mr. Rawal Kumar by the CBI violates the Due Process of Law?**
- 2. Whether the CBI is authorized to arrest the accused on an alert issued by INTERPOL without the consent of the State Government ?**
- 3. Whether the general consent given by the State Government to CBI for Investigation of a particular crime can be revoked before the completion of Investigation?**
- 4. Whether the establishment of DSPE/CBI as police force is contrary to constitutional philosophy of distribution of power between centre and state?**
- 5. Whether the role defined and powers conferred on CBI under the DSPE Act, 1946 are constitutionally valid?**

Note:-

- **Indiyana is country like India and its laws/rules/regulations are pari passu to that of India.**
- **Disclaimer – This moot problem is imaginary. Any resemblance with any fact, case, person or character is merely coincidental.**