



MOOT COURT SOCIETY | SYMBIOSIS LAW SCHOOL, NOIDA
Symbiosis International (Deemed University), Pune

9th ASCENT Moot Court Competition, 2020

Moot Proposition

1. On 15th January, 2020, the State of Sumimasen enacted the Humanitarian Assistance Fund Tax Act (“**HAFTA**”) to levy a tax on sale of specified goods within the states. The purpose of the tax was to create a Fund to be utilised offering humanitarian assistance – a form of social welfare for the residents of the state in need of medical assistance. Crucially, the Act empowered officers of the rank of Assistant HAFTA Collectors and above to collect the tax from traders who sell such specified goods, by merely visiting the premises of their shops, perusing the books of accounts made available to them, and passing an assessment order. (The relevant provisions of the Act are given in the Appendix)
2. The HAFTA, which was the brainchild and the pet project of the Chief Minister of the State, Mr. Koreiwa Nandesu, was passed with much fanfare as a major reform in healthcare in the State. While the opposition within the State decried the statute as nothing short of legitimised robbery, various other States, seeing the popular reception the move got, set to passing a similar statute in their States as well.
3. The trading community, however, was thoroughly unimpressed by the HAFTA, which began affecting not merely their profits, but also their day-to-day business, as HAFTA Collectors used to turn up at random hours at their shops, and pass assessment orders, demanding immediate payment of the tax. Various protests and bandhs were staged by the trading community at large – including those selling goods other than specified goods, since they did not appreciate the precedent this was setting – against the HAFTA, and especially the wide powers given to the HAFTA Collectors.
4. Mr. Umaewamo Shinderu, a significant trader in the State of Sumimasen, challenged before the High Court of Sumimasen the provisions of the HAFTA, specifically section 63, contending that the legislative prescription of not having to give reasons was in violation of his fundamental rights. He contended that the Act must be read down to make giving reasons mandatory. Apart from the challenge in the Court, he began a public

campaign against the HAFTA and Mr. Nandesu, claiming that Mr. Nandesu and his ministers were actually attempting to destroy the very fabric of democracy in the country by passing such destructive laws.

5. On 24th January, 2020, a day after Mr. Shinderu made an exceptionally incendiary speech, the Legislative Assembly passed a resolution, resolving to reprimand Mr. Shinderu for making exceptionable speeches against the Assembly, and to this end issued a summons demanding his presence on 31st January, 2020 for being reprimanded. Mr. Shinderu, upon being served, promptly issued an open letter to the Speaker, using intemperate language and refusing to appear as directed in the summons.
6. On 12th February, 2020, the High Court dismissed Mr. Shinderu's Writ Petition holding that the provisions of Section 63(3), whereby reasons are not required to be given for passing an assessment order, are not in violation of the Constitution. It held that given the very nature of the assessment, and the structure of the statute, though it is desirable that reasons are given for the assessment, the State of Sumimasen cannot be faulted for legislating that such reasons need not be given. Mr. Shinderu preferred a special leave petition before the Supreme Court against the decision.
7. Despite his letter, on 15th February, 2020, Mr. Shinderu was present in the House in terms of the summons. However, when he was brought to the floor, he refused to acknowledge the Speaker in the Chair. The reprimand was administered to him, whereafter the letter issued by him to the Speaker was read out. An indignant Mr. Shinderu defiantly admitted that he had written the letter, and dared the House to take any action it desires. The House unanimously resolved to punish Mr. Shinderu for contempt of itself, and directed that he be imprisoned for a period of ten days, and a warrant to such effect was issued.
8. Mr. Shinderu challenged the decision of the House by way of a Writ Petition in the Supreme Court. Though notice was issued by the Supreme Court to the Legislative Assembly of Sumimasen in the Writ Petition, the Advocate General appeared on the date fixed, and submitted that the Assembly will not be appearing in the matter, in view of the mandate of Article 212. The Supreme Court requested that the Advocate General assist the Court in the matter, but he politely refused, submitting that in view of his office, he was not in a position to assist the Supreme Court.
9. In the circumstances, the Court appointed an *amicus curiae* to assist the Court by making submissions in favour of the Assembly. The *amicus curiae* requested that the matter be referred to a bench of nine judges or

more in view of the opinion of the Court in Special Reference No. 1 of 1964. However, Mr. Shinderu as well as the Court conceded that the opinion in the said matter will not bind the Court. The request for reference to a larger bench was, thus, refused. The Court further directed that Mr. Shinderu's Special Leave Petition be heard with the Writ Petition, and framed the following issues for its consideration:

- 9.1. Whether in view of the provisions of Part III of the Constitution of India, the Legislative Assembly of Sumimasen has the power to imprison a person by an unspeaking order.
 - 9.2. Whether the provisions of Section 63(3) of the Humanitarian Assistance Fund Tax Act, 2020 are in violation of Part III of the Constitution of India.
10. The Court directed the Petitioner to file combined written submissions for both the Petitions, and further directed the Respondent in the Special Leave Petition, and the *amicus curiae* to file joint written submissions in the matter, and listed the same for hearing on April 5, 2020.

Notes:

- i) The names, characters, incidents are fictitious, and created for academic purposes.
- ii) The parties are at liberty to re-arrange the issues, and to create sub-issues. Sub-issues have to be wholly capable of being subsumed in the issue as formulated by the Supreme Court.
- iii) State of Sumimasen is a fictitious State in India. Its Legislative Assembly has not made any law in terms of Article 194(3).
- iv) The maintainability or admissibility of the Petitions is not disputed.
- v) Judgements that cite with approval the opinion in Special Reference No. 1 of 1964 are admitted to not be binding on the Court to the extent they reiterate Special Reference No. 1 of 1964.
- vi) The competence of the Legislative Assembly of Sumimasen to pass the HAFTA is not disputed.
- vii) It was conceded by all parties that aspect of whether the Legislative Assembly ought to have appeared before the Supreme Court, and the consequences of its non-appearance are not in issue, and will not affect the proceedings.

Appendix

Relevant provisions of the HAFTA:

61. Assessment of tax—No claim for tax shall be made by the Collector except by making an assessment for the amount.

62. Self Assessment—Where a return is furnished as required under Section 31 of this Act, which contains the information prescribed—

(a) The Collector is deemed to have, on the day of furnishing of the return, issued an assessment of tax payable for the amount specified in the return;

(b) The return is deemed to be a notice of the assessment served on the trader on the day that the return is filed.

63. Default Assessment—(1) If any trader fails to furnish returns required under this Act by the prescribed date, the Collector shall visit the shop of the trader concerned during reasonable hours and, upon verification of the books of accounts and material presented to him by the trader thereat, assess the tax payable to the best of his judgement, for the period for which return has not been filed.

(2) Where any assessment is made under this section, notice thereof shall forthwith be served upon the trader, raising a demand for payment of the amount assessed.

(3) It is clarified that no reasons need to be furnished for issuing an assessment under this section.

(4) Every effort ought to be made by the Collector concerned to not disrupt the business and functioning of the shop of the trader concerned when a visit as contemplated by this section is undertaken.

***** ALL THE BEST! *****