



CHRIST
(DEEMED TO BE UNIVERSITY)
BANGALORE · INDIA



5TH TO 8TH NOVEMBER, 2020
(VIRTUAL)

KNOWLEDGE PARTNERS



AN INITIATIVE BY THE MOOT COURT SOCIETY, SCHOOL OF LAW,
CHRIST (DEEMED TO BE UNIVERSITY), BENGALURU



11th National Moot Court Competition
School of Law, CHRIST (Deemed to be University)



Moot Proposition

- A. On 15.08.1947 Nation of Meluha declared independence from the British Empire, however its exit from the colonization was a tumultuous one mired with struggles to integrate the many princely states that together constituted Meluha. As the Nation of Meluha began to start its journey as an Independent republic, it always prioritized the values it strived for which was liberty, autonomy and self-governance. During the transition from colony to a sovereign nation, British Empire constituted an interim government tasked to convince the princely states to join the Union of Meluha (Hereinafter referred to as the ‘Union’ or ‘Centre’) and in return it promised to engage with the states on the fundamental principles of federalism, economic cooperation and constitutional autonomy.
- B. The Interim Government of Meluha also began the mammoth task of drafting the Constitution and for this purpose guided by eminent persons as part of the Constituent Assembly. It was the desire of those who struggled for the freedom of Meluha that the Constitution reflected a unified Meluha and respects the diversity and autonomy of the many states that join it.
- C. On this promise and with princely states seeing merit in a unified Meluha, the Interim Government was successful in integrating the majority of the princely states. Each of such princely states entered into Instruments of Accessions with Meluha which were agreements authorizing the Union of Meluha to govern the states and also laid the governing principles of the Union and states relationship.
- D. Amongst princely states that joined the Union, the State of Chalukya particularly had high social and economic growth indicators, with an international repute for its models on local governance. The residents of Chalukya were culturally and ethnically distinct from the majority of Meluha. It however shared a degree of ethnical commonality with its bordering states. Many residents of Chalukya fundamentally opposed joining the Union on the grounds of lack of cultural similarity. In this backdrop the erstwhile princely State of Chalukya expressed reluctance to join the Union of India as it feared that due to political instability and limited development in other states joining the Union, the Central Government may be compelled and tempted to interfere in the constitutional functioning of the State Government and it’s autonomy to govern itself within the four walls of the accepted Constitution may not be respected.
- E. However, thanks to a shrewd Home Minister of the Interim Government Mr Mohan Bhargava, the Princely State of Chalukya executed the Instrument of Accession. However, under the terms of the Instrument it ensured that the clause “*Governance on the basis of*

principles of Cooperative Federalism and Economic Cooperation between the Centre and the State” was inserted.

- F. During the debates while framing the Constitution of Meluha, there were several eminent members who spoke on the structure of Centre-State relations, while keeping in mind the promises made to the erstwhile princely states. The then Prime Minister of the Republic of Meluha made a promise in the floor of the Constituent Assembly that *“The states shall possess and retain the status of autonomous units, together with residuary powers and exercise all powers and functions of Government and administration, save and except such powers and functions as are vested in or assigned to the Union or as are inherent or implied in the union or resulting therefrom”*. Based on this promise a unique relationship was developed between the Centre and the State and integrated into the constitution.
- G. One of the key aspects of the Centre-State relations enshrined in the Constitution of Meluha was the freedom to levy tax by the Centre and the State. The Centre was further obliged to devolve the funds collected through the various taxes levied by it to the states based on the recommendations of the constitutionally appointed Finance Commission.
- H. The states under the Constitution of Meluha had the power to levy multiple indirect taxes, which included the tax on value of goods, tax on entertainments and amusement, tax on advertisements, tax on luxury and tax on entry of goods within the territory of the states. Additionally, each state also levied and collected a Sales Tax under a legislation enacted by the Parliament. Due to the existence of multiple indirect taxes, each state had a distinct tax administration procedure posing a significant hurdle for trade and commerce.
- I. Due to the complexity in the indirect tax regime, there was a growing call for a unified tax structure which could subsume the multiple indirect taxes levied by the Centre and the State. The state of Chalukya opposed this idea as it was of the opinion that subsuming of state taxes and having it collected by the Union was principally against the concept of federalism. It also raised concerns of the Centre-State dispute resolution framework in a ‘Centre dominated tax structure’.
- J. In the year 2017 in the backdrop of a decisive mandate, the Ek Aur Party (Hereinafter referred to as “EAP”) based on the recommendations of Committees constituted by it, enacted the Goods and Services Tax, 2017 (Hereinafter referred to as “GST”). To enable the implementation of the GST, the Central Government amended the Constitution through the 101st Constitutional Amendment Act, 2016. The Constitutional Amendment subsumes various taxes levied by the State Governments and certain taxes levied by the Union Government into a unified tax structure. The amendment also established a GST Council with representation from Centre and State to recommend changes and improvements to the various aspects of GST.
- K. Considering GST was a first of its kind tax structure in Meluha and it considerably changed the federal economic structure between Centre and State. It was expected that the state

may face certain revenue deficits while implementing GST. The Centre, in order to protect the revenue of the states and incentivize states to consent to the GST, Goods and Services tax (Compensation to states) Act, 2017 was enacted which casted an obligation on the Central Government to bridge the deficit incurred due to the implementation of the GST Act for a period of 5 years.

- L. From the time of implementation of GST it was unfortunate for the Centre that its ambitious idea of unitary tax structure faced the challenges of a slowing economy. Due to which the tax revenue anticipated by the Central Government were not frequently met and resulted in delay in the payment of both the share of tax collected and the compensation payable to the states.
- M. In March 2020 in the backdrop of weak economic performance of the Central Government, Meluha along with the rest of the world faced an unprecedented global health emergency with the outbreak of Slovid-19. Despite the Central Government's preparedness to address the outbreak of Slovid-19 it posed multi sectoral challenges for the Government to address. During this phase, the public health infrastructure across the country barring certain states proved insufficient and the Government struggled to impose a nationwide strategic plan to combat Slovid-19.
- N. The state of Chalukya and its neighbouring state, Pakshala, having sensed the pandemic early began implementing several measures, including a statewide lockdown, on their own. The Central Government noticing lack of uniformity in dealing with a health emergency declared Slovid-19 a 'disaster' under the Disaster Management Act, 2005. Further, the Central Government through the National Disaster Management Authority (hereinafter known as 'NDMA') under the Disaster Management Act, 2005 began issuing directions to deal with the nationwide pandemic.
- O. The orders of NDMA implemented by the National Executive Authority (hereinafter known as 'NEA') cut across the powers of the Central and State Government and emerged to be the nodal body to combat the pandemic. While the NEA initiated consultation with the State Governments before issuing any orders, it became difficult for it to accommodate all the views of the states. The State Government of Chalukya and Pakashala owing to their past investments in public health, began showing signs of recoveries from Slovid-19 and was keen to open its economy. However, the orders of the NEA came its way.
- P. In the order dated 15.05.2020 the NEA classified all districts in the country as red, orange or green zones in a bid to lift lockdown restrictions in an area-specific manner. Some States/Union Territories objected to the classification of certain areas/districts as red zones on the ground that these areas are very large. The states of Chalukya and Pakashala publicly voiced their objection to this order and pointed out that there was no need to keep economic activity on hold in an entire district when Slovid-19 cases had been reported only from a small portion of that district. The State Governments of Chalukya and Pakashala communicated their objections to the Central Government on this matter and also requested

to lift all restrictions for the movement of persons and goods within the state. The requests of the State Governments were placed before the NEA and which passed an order of rejection on 19.07.2020. Facing pressure from its resident and local industries, the states of Chalukya and Pakashala decided to contest the constitutional validity of the Order dated 15.05.2020 and 19.07.2020 before the Supreme Court of Meluha.

Q. The Slovid-19 impacted GST as both the Centre and State witnessed massive downfall in revenues. The global economic climate did not reflect any positive trends for an early recovery. This situation posed an issue for the Central Government to keep its commitment to pay the GST compensation.

R. For instance, for the year 2020-21 for the state of Chalukya the estimated GST Revenue was Rupees 35,000 Crores as per Section 6 of the GST Compensation to states Act, 2017. Based on the revenue trends of the state of Chalukya it would be able to collect only Rupees 18,000 Crores as GST Revenue. Therefore, there was a shortfall of Rupees 17,000 Crores. As part of the shortfall the Central Government stated that Rupees 9,000 Crores were losses due to the Implementation of the GST as provided under the GST Compensation to states Act, 2017. Whereas the remaining amount of Rupees 8,000 Crores was due to Slovid-19 or as the Finance Minister of the Union of Meluha chose to call it an 'Act of God'. To compensate the losses in revenue the Government provided two options to the states,

In the Context of state of Chalukya,

Option 1- Rupees 9,000 Crores out of the total shortfall of Rupees 17,000 Crores shall be borrowed by the state of Chalukya from the Reserve Bank of Meluha (RBM) through a special window and entire Rupees 9,000 Crores including its interest and principal was proposed to be paid back by the Centre.

Option 2- The entire shortfall of Rupees 17,000 Crores may be borrowed by the state in the open market and Centre will service the interest and principal for Rupees 9,000 Crores but shall only pay the principal amount for the remaining loan of Rupees 8,000 Crores.

Under both the options the principal borrower are the State Governments. This arrangement did not go well with several State Governments as they felt that Centre was renegeing on its federal obligations.

S. The state of Chalukya and other state Governments across Meluha decided to collectively raise this issue before the GST council so that it could recommend to the Union to consider borrowing either through the GST Council or Union of Meluha itself. Many states, mostly those belonging to the Central opposition, brought this issue before the GST Council. These issues were considered before the GST Council and subsequently overruled. Considering this was the first serious experience of the dispute between Centre and State on matters of

GST, the states began to realize that the structure of the GST council may not be reflective of the principles of cooperative federalism.

- T. Having to now borrow under its own name and its objections not being considered effectively in the GST council, the state of Chalukya decided to approach the Supreme Court to challenge the Constitutional validity of article 279 A of the 101st Constitutional Amendment and sought direction from the Hon'ble Supreme Court of Meluha to quash the decision of the Union Government requiring states to borrow under its own name. It also requested the court to declare that the recommendations of the GST Council were binding on the Union Government.
- U. While the formalities for the challenge before the Hon'ble Supreme Court were being finalised, the Council of Ministers of Chalukya sent a communication to the Governor of the state to include the following paragraphs in her speech on the first day of business of the state's legislature:
- 1) In the backdrop of the pandemic and an economic crisis my Government believes that the Central Government has breached the basic tenets of federalism and economic cooperation while implementing various measures.
 - 2) My Government believes that if the Central Government does not address the issue of Goods and Services Tax in a manner satisfactory to all the stakeholders, My Government will consider withdrawing from the framework of Goods and Services Tax to safeguard its economic interests.

The Governor keeping in mind the constitutional framework, hesitatingly, read out the above two paragraphs in her speech.

- V. Subsequent to the Speech of the Governor, the House also unanimously passed the following resolutions:
- 1) "This House Resolves to reject the two options proposed by the Central Government for payment GST Compensation"
 - 2) "This House Resolves that it is Central Government that should borrow to appropriately compensate the states"
- W. Dr Siobhan Roy, a constitutional scholar, decided to challenge the insertion of the two paragraphs in the speech of the Governor before the Hon'ble Supreme Court. She felt such an insertion was in breach of fundamental constitutional practice and procedure. She was also of the opinion that the two inserted paragraphs may have also amounted to the state threatening the Centre. Further, Dr Roy also challenged the resolutions passed in the Assembly of state of Chalukya on the ground that it violated constitutional conventions and went beyond the scope of the state legislature amongst many other reasons.

X. The Hon'ble Supreme Court of Meluha having been called upon on 3 different matters noticed that the current situation in India was heading towards a constitutional break down of the Centre-State relationship. Hence it decided to club all the petitions and set up a bench of 9 judges to hear the following issues:

1. Whether the Orders dated 15.05.2020 and 19.07.2020 are Constitutionally valid?
2. Is Article 279 A of the 101st Constitutional Amendment Constitutionally valid and whether the recommendations of the GST Council are binding on the Central Government?
3. Whether the decision of the Union Government requiring states to borrow under its own name be quashed? and Should the Hon'ble Supreme Court direct the Centre to be the principal borrower for payment of GST Compensation.
4. Whether the insertion of two paragraphs in the Governor's speech, its contents and the resolution passed by the Legislature of Chalukya are Constitutionally valid.

Note-

1. ***The Laws of Meluha are pari materia with the Union of India.***
2. ***The Hon'ble Supreme Court of Meluha considers judgements of Indian courts to be of persuasive value but no more than any other jurisdiction following common law jurisdictions.***
3. ***Participants stand advised to devise a "litigation strategy". The issues can be argued in alternative/without prejudice, be divided into sub-issues, and can be added to or amended upon.***