

SWAMI BHAGWANDEV V. UNION OF WISTERIA

1. Wisteria is a thriving multicultural democracy with a parliamentary form of government and a written constitution. The sixty year old nation was facing an unprecedented governance crisis, owing to the widespread corruption which pervaded state activity at almost all levels. Recently, there were serious allegations that the union agriculture minister and the railway minister had misappropriated large sums of money from the public exchequer.
2. Opposition parties, the media and NGOs called for the enactment of a new law to curb corruption. In this climate, social activist Rahul Limaye decided to stage a 'hunger strike' until the Central Government agreed to introduce in Parliament and pass what came to be known as the 'Anti-Corruption Ombudsman Bill': a law which would put in place an ombudsman like body to establish an anti-corruption grievance redressal system. Swami BhagwandeV, a spiritual leader renowned for his teachings in yoga, also decided to join Limaye's movement against corruption and participated in the hunger strike.
3. With public pressure mounting on the Central Government, the Anti-Corruption Ombudsman Act, 2011 was passed by Parliament without much debate or discussion. The Act provided that an independent body, known as the Anti-Corruption Ombudsman, would be formed primarily to tackle complaints dealing with corruption of public servants. The body was to be elected by a special selection committee consisting of the Prime Minister of Wisteria, the Leader of Opposition in the Lower House of Parliament, judges of the High Courts and Supreme Court and the outgoing members of the Anti-Corruption Ombudsman itself (after the first selection process). On receiving a complaint and conducting a preliminary investigation, the Anti-Corruption Ombudsman was empowered to: (i) initiate prosecution against public servants or private individuals or corporations allegedly involved in acts of corruption (ii) order cancellation of a contract, license or agreement which was the subject matter of investigation (iii) blacklist a private firm or company which it believed was involved in an act of corruption (iv) suspend a public servant from service pending a decision by a court of law. Additionally, the Anti-Corruption Ombudsman had the power to issue search warrants for the search and inspection of any premises subject to certain specified conditions. The power to investigate and prosecute complaints against judges of the Supreme Court and High Courts was also conferred upon it.
4. Soon after the Anti-Corruption Ombudsman Act entered into force, Swami BhagwandeV joined the single largest opposition party at the Centre. He contested elections to the Lower House of the Parliament of Wisteria and won by a resounding majority. Barely six months after his election, reports emerged in sections of the press that Swami BhagwandeV had allegedly accepted illegal gratification for the performance of his official duties. This coincided with a widespread debate amongst legal scholars across

Wisteria about the institution of the Anti-Corruption Ombudsman being undemocratic and one which 'possessed too much power for its own good'.

5. Much to the surprise of a large segment of the public, Swami Bhagwandeve filed a public interest litigation in the Supreme Court of Wisteria challenging the constitutional validity of the Anti-Corruption Ombudsman Act, 2011. In a public announcement, he subsequently said that after deep thought and reflection, he had come to believe that the Act in its present form would 'weaken rather than reinforce' the democratic set up in India.

Swami Bhagwandeve put forth the following contentions:

- (i). The Anti-Corruption Ombudsman Act, 2011 violated the rules of natural justice embodied in Article 14 of the Constitution.
- (ii). The Act had the effect of depriving citizens of Wisteria of their right to freedom of trade under Article 19(1)(g) of the Constitution.
- (iii). The Act contravened the right to life under Article 21 of the Constitution.

The Union of Wisteria, however, contended that:

- (i). The public interest litigation deserved to be dismissed as Swami Bhagwandeve had not approached the court with clean hands.
- (ii). The Anti-Corruption Ombudsman Act, 2011 did not violate the rules of natural justice embodied in Article 14 of the Constitution.
- (iii). The Act did not contravene the right to freedom of trade under Article 19(1)(g) of the Constitution.
- (iv). The Act was in consonance with Article 21 of the Constitution.

Note: The laws of Wisteria are in *pari materia* with the laws of the Republic of India. Participants are expected to restrict their arguments to the contentions enumerated above.