

**People for the Legacy of HRK & Raj Krishna & Associates**

**First Side<sup>1</sup>**

**versus**

**Poco Ética Inmoral, LLP & Très-Mauvais Ennuyé Corporation**

**Second Side<sup>1</sup>**

- a. 1. The Republic of Gariba is a sovereign federation of states with several union territories. The Republic got independent from imperial rule in the
- b. year 1947. By way of a neo-social contract, its people decided to have a referendum to choose members of the Constituent Assembly. The
- c. Constituent Assembly drafted an elaborate Constitution, which stood out as the longest ever written Constitution in the world.
- d.
- e. 2. The countryside of the Republic displays a very diverse profile, with hills in the north and the east, seas in the south and the south-west, and
- f. desert in the north-west. There are several perennial rivers which flow throughout the territory of Gariba which are the lifeline and sustenance
- g. for the people of Gariba.
- h. 3. Most part of the desert is situated in the State of Nirdhan, which is one of the states in the Republic. It is said that this State was once green and
- i. fertile, but subsequently the only perennial river in the state, the Saraswati, dried up due to tectonic movements which is a common
- j. feature in the sub-continent. However, the event came as a boon in disguise as it led to accumulation of massive petroleum, gas and coal
- k. reserves in the sub-soil.
- l.
- m. 4. The State of Daridra is an adjoining state, and is very densely populated. It has three important perennial rivers running across the State, with two
- n. of them very close to the state-border with Nirdhan.
5. In the year 1991, the State of Daridra invited foreign investment for

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<sup>1</sup> See note b

o. exploration of mineral resources in accordance with the Central  
p. Government policies. For over two years, mineral exploitation projects  
q. were sanctioned by the State of Daridra; with the actual allocations being  
r. done in the same fashion as coal and gas allocations, by the Central  
s. Government. Almost all these projects were adjoining the border of the  
t. State of Nirdhan, with a major concentration of the coal projects at a  
u. location historically called the “Legacy of HRK” Joint which was part of a  
v. triangular river basin close to the estuaries of the two perennial rivers,  
w. and had very high grade coal available for commercial exploitation.

6. The Government of Nirdhan alleged that in name of mineral exploration,  
there has been an attempt to steal sub-strata reserves from the State of  
Nirdhan. The State of Nirdhan through its Advocate General sent a legal  
notice requesting the State of Daridra to cease and desist from its actions  
forthwith, but to no avail. A copy of this notice was also marked to the Id.  
Attorney General, for the Central Government.

7. Thereafter, the State of Nirdhan filed an Original Suit in the Supreme  
Court of Gariba on 21.9.1993 where the Republic as well as the State of  
Daridra were made party-defendants which was registered as Suit no.  
1/1993.

8. Vide its order dated 21.11.1993, the Supreme Court refused interim relief  
of stay, while directing that the plaintiff is entitled to 15% share of all  
royalty received from the projects in question, as a *pro-tempore* measure,  
and the State of Daridra must maintain proper accounts of all revenue  
generated by the projects in question and get them audited by the  
Constitutional Auditor. The State of Daridra, immediately filed an  
Interlocutory Application for recall/modification of this order citing  
constitutional limitations of the Constitutional Auditor, which was  
numbered as IA no. 21/1993. This application, like the main case, is  
pending till date.

9. Since 1993, every time the matter was listed before the Court, one or the  
other parties would file some new document or pleading. All companies,  
domestic or foreign, right after making an investment in any project,  
would seek to intervene in any Interlocutory Application filed by either  
side, including the IA no. 21/1993; citing their interest in the projects.  
Due to the cash rich business generated, new projects kept on  
proliferating, and applications continued to be filed in in one or the other

k. of the already filed applications. This led to a situation where, hundreds  
l. of applications were filed, in several Interlocutory Applications filed by the  
m. parties to the suit. In IA no. 21/1993 itself, there were about 1500 IAs  
filed.

n. **10.** One of these applications, IA no. 30/2005 in IA. No. 21/1993  
o. pertained to the “Legacy of HRK” joint. This application was moved by a  
p. registered society called the **People for the Legacy of HRK**, through its  
q. secretary Shivkant Shukla which sought to intervene in the main suit.  
r. This application prayed that all the coal projects sanctioned at the Legacy  
s. of HRK joint are illegal since they have been done without following the  
auction method, which should be the sole method for allocation of coal.  
On 31.1.2005, the Court reserved its order on the plea of intervention,  
while observing that the issue deserves its attention and it may consider  
taking suo-moto cognizance if it is pleased to dismiss the intervention.  
Till date no one has heard of the final order in this regard.

t. **11.** The record of the matter became enormous, and every time the  
u. matter came up for hearing, given the limited time, only urgent and  
interim issues could be addressed.

v. **12.** In early 2012, it became known that due to some unforeseen  
w. tectonic movements, the commercial exploitation of the reserves at Legacy  
x. of HRK joint by the projects in question can be done in a viable manner  
y. only for about one more year. Any exploitation beyond this period would  
be commercially, geologically, and environmentally unviable. The  
government expert agencies confirmed this fact.

z. **13.** This led to a widespread agitation in the State of Nirdhan. Inspired  
a. by recent socio-political developments, people came out on streets and  
b. there were massive protests where people undertook fasts and resorted to  
c. non-violent demonstrations to demand immediate cessation of all work in  
d. the projects in question. All the people were in one voice, **“Legacy of  
HRK is ours, Legacy of HRK needs to be saved”**. Shiv Kant Shukla,  
Secretary of People for the Legacy of HRK Joint Society, a registered  
e. society, went on fast unto death at the Jantar-Mantar in the National  
Capital.

f. **14.** At this time, as the State of Nirdhan was nearing the assembly  
elections, the ruling party of the State of Nirdhan, which was also the

g. ruling party in the Centre, fearing building up of anti-incumbency, on  
h. 10.1.2012 requested the Governor to seek the appropriate authority to  
i. declare Emergency. The Governor held meetings with the Intelligence  
Bureau Chief, and Emergency was declared in the State of Nirdhan on  
23.2.2012.

j. **15.** The declaration of Emergency added fuel to the fire, and the  
k. protests grew violent. There were 40,000 arrests between the months of  
l. March 2012 to December 2012. On 31.1.2013, the Intelligence Bureau  
m. Chief, in a rare public appearance, made a statement that the agencies  
n. had reliable inputs that some foreign corporations funded anti social  
o. elements believing that the focus of the government would change to  
p. maintenance of law and order, and the corporations would be able to  
illegally exploit the reserves, which they were exploiting legally hitherto.  
Shivkant Shukla made a statement from the Jantar Mantar stating  
“People of Nirdhan, the Très-Mauvais Ennuyé Corporation is behind all  
the evil.” Other security agencies also cited involvement of foreign  
interests in the sudden incitement of violence.

q. **16.** This led to stringency on part of law enforcement agencies, and  
r. there were some incidents of brutality, reported by international human  
s. rights bodies, though there was no report in the local or national media in  
t. this regard. As per a report in the Human Rights Watch, Shivkant Shukla  
u. and 200 other people, who were peacefully protesting at the Jantar  
Mantar, under the banner of People for the Legacy of HRK Joint; were  
asked to leave in the mid night citing imposition of Sec. 144, CrPC by the  
concerned authority.

v. **17.** Certain PILs were filed in February 2013 in the High Court of  
w. Nirdhan with the lead petition being the one filed against the acts of  
x. disallowing peaceful protests forcibly, acts of brutality as well as for  
y. cancellation of all projects, by “People for the Legacy of HRK Joint”.  
However citing the judgment reported in **1976-2-SCC-521**, as a binding  
precedent, all such PILs were dismissed on the ground of locus standi  
due to the ongoing emergency.

z. **18.** The declaration of emergency was challenged *pro-bono-publico* in an  
a. Art. 32 petition by People for the Legacy of HRK. Corporations were also  
b. made party respondents with Très-Mauvais Ennuyé Corporation as the  
lead respondent, with the two states as well as Republic also impleaded

c. as respondents. While reinstating the prayers made before the High  
d. Court, another ground was added that the coal projects at the Legacy of  
e. HRK joint were illegal in as much as the Central Government had no role  
f. to play in allocation of Coal, which could be done by the State  
Government alone as all the mineral wealth belongs to the State only.  
This petition was registered as **WP 32/2013**.

g. **19.** In a press briefing before the hearing, Shivkant Shukla said that  
h. his lawyers advised him to file a SLP in addition, which he refused to do  
i. believing that Art. 32 is the sole repository of fundamental rights, and  
j. cannot be fettered by procedural requirements in any manner. He relied  
k. on the judgment of the Madhya Pradesh High Court reported in **1975 Cri**  
l. **LJ 1809** and argued that the judgment rendered in **1976-2-SCC-521** is  
m. deemed to have been overruled due to overwhelming jurisprudence and  
n. scholarly material indicating that the said judgment is not correct, and  
there is already some observation even on the judicial record of the Apex  
Court in this regard. In a fitting response, the Id. Attorney General  
arguing for the government apprised the Court that no right, however  
vast, is unfettered, and procedure has to be followed even while invoking  
Art. 32. He also urged that the judgment rendered in the judgment  
rendered in **1976-2-SCC-521** cannot be held to have lost its precedential  
value, however overwhelming or concurrent the scholarly opinion be.

o. **20.** This led to the Hon'ble the Chief Justice of the Supreme Court  
p. constituting a special bench of 9 Judges, presided by herself, to hear the  
matter.

q. **21.** Très-Mauvais Ennuyé Corporation and others, including domestic  
r. companies, hired the services of Poco Ética Inmoral, LLP, which is a niche  
s. firm focusing on high-end corporate litigation, to assist it.

t. **22.** The National Bar Council annually published a list of Top Counsels  
u. of the Country. Poco Ética Inmoral, LLP organized a "Foreign Investment"  
v. conference on 30.1.2013 where it invited all the top counsels of the  
w. country as per the list of the Bar Council. During the conference, the  
attendees were requested to heartily participate in the discussions.  
However, at the end they were requested to give their views on several  
issues for Très-Mauvais Ennuyé Corporation in writing. These counsels  
x. were asked to raise a bill for such opinions, and were handsomely paid at

y. the conference venue itself.

z. **23.** The CFO of Très-Mauvais Ennuyé Corporation wrote an email on  
a. 31.1.2013 to the Managing Partner of Poco Ética Inmoral, LLP  
b. questioning whether the services of so many senior counsels were really  
c. necessary. It was promptly replied by Poco Ética Inmoral, LLP stating that  
d. Très-Mauvais Ennuyé Corporation is deep-pockets and it would be *penny*  
e. *wise pound foolish* if it does not consult all the good legal minds in the  
f. country.

g. **24.** During one of the conferences, Poco Ética Inmoral, LLP was  
h. informed by a senior counsel that an IA was filed by People for the Legacy  
i. of HRK in 1993 in Suit no. 1/1993 questioning the grant of coal blocks  
j. on the auction method on which some order was passed by the Court in  
k. 1994. As it was very relevant for the present case, the firm sought to  
l. check the ordersheets from the year 1993 till 2013 of the Suit no.  
m. 1/1993. However, due to hundreds of IAs filed in IA no. 21/1993, it was  
n. nearly impossible to trace the exact order. On an application filed for  
o. inspection, the Registry of the Court led the lawyers of Poco Ética  
p. Inmoral, LLP to a room full of record of Suit no. 1/1993. It was virtually  
q. impossible to trace the exact order passed in IA no. 30/2005 in IA no.  
r. 21/1993. Poco Ética Inmoral, LLP also sought under the RTI Act,  
s. information regarding orders reserved by Id. Judges of the Court.  
t. However, the Registry informed that no such record is maintained by it.  
As a matter of last resort, a request was made to the People for Legacy of  
HRK to render the information, however such request was turned down  
by the Society stating that they will not share any of their documents  
with the firm.

**25.** Poco Ética Inmoral, LLP filed a petition in the Supreme Court that  
the registration of IAs within IAs to the tune of hundreds, in cases of  
great importance, without there being proper case-status maintenance, is  
violative, inter-alia, of Art. 129 of the Constitution. It cited cases of MC  
Mehta and Godavarman Thirumalpad as illustrative examples of the non-  
availability of IA wise orders or status of such IAs on the website of the  
Court. It argued that the aspect of being a court of record is not only a  
prerogative for contempt, but also casts an enormous duty on the court  
and non-availability of the information and order, blocks the access to  
justice which is violative of the Constitution. It also argued that people  
have a right to know, which is plenary and paramount, over and above

u. the right to information, and such right was being hindered if not  
v. violated, due to non-availability of proper IA wise details pertaining to the  
w. hundreds of IAs. It further urged if several high courts could maintain a  
x. system where each filing can be seen, where the name of all parties can  
y. also be seen, on case-status page of their respective websites, there is no  
z. reason why such a system has not been instituted in the Apex Court.  
a. This petition was registered as **WP no. 45/2013** and directed to be heard  
b. with WP 32/2013. Poco Ética Inmoral, LLP and Très-Mauvais Ennuyé  
c. Corporation were the two petitioners, and the Supreme Court through its  
d. Secretary General and Republic of Gariba with People for the Legacy of  
e. HRK were impleaded as respondents. Written submissions, were filed by  
f. the Supreme Court and Union Government, the gist of which was that  
g. there is no right with the petitioners to exact a mandamus of the nature  
h. sought, and at best, petitioners' submissions can be considered in the  
i. policy framework on a progressive basis, but do not make out any case  
j. for any writ to be issued.

c. **26.** In the meanwhile, the People for the Legacy of HRK Joint applied  
d. for legal aid from the SCLSC for the above matters. It requested that  
e. services of an able team of Counsels from the list of best counsels of Bar  
f. Council, be granted to them to help them fulfill their avowed object of  
g. saving the "**Legacy of HRK**". It also requested for hiring of services of a  
h. professional legal firm, **Raj Krishna & Associates**, which is known as the  
i. best and the biggest firm in the Country, with a commendable track  
j. record of pro-bono work. Raj Krishna & Associates forthwith gave its  
k. consent to be engaged pro-bono in the matter.

h. **27.** The SCLSC informed that not a single counsel in the given list is  
i. available to be engaged on behalf of the People for the Legacy of HRK. The  
j. matter went to media and the members of the **People for the Legacy of**  
k. **HRK** expressed sorrow over the ability of deep pocket corporations to  
l. block access to justice.

l. **28.** Raj Krishna & Associates sent a legal notice to Poco Ética Inmoral,  
m. LLP and Très-Mauvais Ennuyé Corporation that their conduct in  
retaining all the best counsels as per the published list throughout the  
country is anti-competitive and also violates access to justice. It also  
amounts to assisting in formation of a cartel which is illegal. This issue  
was widely reported in the media and the Supreme Court took suo-moto  
cognizance of the matter and directed Poco Ética Inmoral, LLP and Très-

Mauvais Ennuyé Corporation to show cause why costs may not be imposed in the interest of justice for their conduct. This matter was registered as **Suo-Moto Case no. 1/2014** and posted for hearing with **WP no. 45/2013** and **WP no. 32/2013**. Raj Krishna and Associates was allowed to present the case against Poco Ética Inmoral, LLP and Très-Mauvais Ennuyé Corporation, who were impleaded as respondents.

**29.** Therefore, in the three petitions, the following are the prayers by the first side:

- i. That WP 32/2013 be allowed.
- ii. That WP 45/2013 be dismissed.
- iii. That Suo-Moto Case 1/2014 be allowed.

**30.** The following are the prayers by the second side:

- i. That WP 32/2013 be dismissed.
- ii. That WP 45/2013 be allowed.
- iii. That Suo-Moto Case 1/2014 be dismissed.



**Nota Bene:**

- a.** All references, actual, deeming or fictional; are fictional. The legal system applicable to India, applies *as it is* to the Republic of Gariba, with all its laws (including subordinate legislation), and judgments. The High Court of Nirdhan functions in the same manner like the Delhi High Court.
- b.** Due to the nature of issues involved, all the three matters are coming up for final hearing at motion stage itself before a 9 judge bench of the Supreme Court presided over by the Chief Justice. In the interest of justice, the Hon'ble Court was pleased to club the matter and divide the issues to be argued by the two sides, where each side constitutes of petitioner in

some case and respondent in other.

- c. 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 from**. It is permissible to concede issue(s) at the time of oral arguments subject, however, to appropriate explanation readily available on the query of the bench. However, the written submissions must address all the issues. After the submission of the memorials is complete, a list of issues that can be argued by either side will be published on the competition web-page.
- d. Any citations, without actual para/page references, will invite negative marking. Unnecessary citations and *passim* references are to be avoided. In case of oral arguments, primary references for all case-laws being referred is mandatory and no participant will be allowed to cite a case-law from a secondary source like text-books or commentaries. Primary reference may be made to select treatises which are treated as authorities in their own right.
- e. The moot problem is the way it is, with full application of the principal of “**as is, there is...whatever where is**”. No queries or requests for clarifications will be entertained.
- f. Please avoid use of any plastic materials or binding for the Memorials. Use simple color-paper sheets for identification of respective sides.

-Drafted by Rishabh Sancheti, Advocate, Supreme Court of India