

## Umesh v. Union of India & Others

Neethisthan is a state in Indian Union. Rishi Prasad is an agriculturist living in the rural district of Dhampur in Neethisthan. He has two sons viz. Ramesh and Umesh and the former is an agriculturist and the latter is the Principal of the only Arts and Science College in the Grama Panchayath namely Modern College of Arts and Science. Rishi Prasad owned 9 acres of agricultural land and he transferred 6 acres of land to his elder son Ramesh on 02.09.2004, and remaining 3 acres of land and family house was transferred to his younger son Umesh on 23.01.2010, through gift deed. The mutation was effected on 02.11.2004, 25.03.2010 respectively.

On 06.01.2016 the students of Modern College of Arts and Science went on strike against the new education policy of the State Government. In the afternoon, the student agitation became violent and the Revenue Divisional Officer (RDO), Dinesh Singh ordered police firing in his capacity as the Sub Divisional Executive Magistrate. 5 students were killed in the police firing and Government ordered judicial enquiry. The report of the Enquiry Commission, submitted on 20.06.2016 contained a finding that the police firing was unnecessary. The finding is based on the oral evidence given by 5 persons, including Umesh, the Principal of the college.

In the state, the Maintenance and Welfare of Parents and Senior Citizens Act 2007 came into force on 25.01.2010. On 02.08.2016, Dinesh Singh in his capacity as Tribunal, sent a notice to Umesh under Section 5 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 seeking his explanation regarding the complaint sent by a Non Government Organization *Friends of Aged* containing the allegation that Umesh is not taking care of his father who is living in the old age home run by Sisters of Charity. After giving a personal hearing to Umesh, the matter was referred to the Conciliation Officer. The Conciliation Officer submitted the report that no amicable settlement is possible. But the report did not contain the details of conciliation proceedings conducted by him. On 21.11.2016, the Tribunal passed the following orders.

1. An amount of Rs.9000/- shall be paid to Rishi Prasad as maintenance out of which Rs.6000/- shall be paid by Umesh and remaining Rs.3000/- shall be paid by Ramesh.
2. The gift deed dated 23.01.2010 is void.

In the order it is stated that the order has been issued *suo moto* in consonance with Section 5 of the Act.

On 15.12.2016, Umesh filed a writ petition before the High Court of Neethistan stating that the procedure adopted by the Tribunal was patently illegal and the order reflected a grave bias of the Tribunal and the Tribunal had given a go bye to the principles of natural justice and adopted a procedure unknown to law. It is also submitted that the Tribunal had gone much beyond its jurisdiction. The petitioner further challenged the constitutionality of Sections 7 (2), 17 and 23 of the Act on the ground of violation of fundamental rights.

On behalf of Umesh all the contentions are refuted and he also challenges the maintainability of the petition. On behalf of Government of Neethisthan and Union of India, the contentions regarding the constitutional validity of the Act are refuted.

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