UGC Approved Journal
Research Link
Since March 2002
An International, Registered & Refereed Monthly Journal : Law
Research Link - 170, Vol - XVII (3), May - 2018, Page No. 48-50
ISSN - 0973-1628 ■ RNI - MPHIN-2002-7041 ■ Impact Factor - 2015 - 2.782

Case Comment "Government of the Lao People's Democratic Republic v Sanum Investments Ltd[1]"

The Singapore High Court also referred to the 2001 WTO Trade Policy Report on Macau, which stated that: "In 1999, Macau signed a double taxation agreement with Portugal, Macau also signed a bilateral agreement on investment protection with Portugal Macau has no other bilateral investment treaties or bilateral tax treaties" Relying on the above extract, the court opines that the BIT entered into by PRC do not automatically apply to Macau.

Ms. Sanya Yadav

In a recent decision of the Singapore High Court on the jurisdiction of an arbitral tribunal under a bilateral investment treaty between the People's Republic of China and the Lao People's Democratic Republic (PRC-Laos BIT), the Court held that the award on jurisdiction was to be set aside, finding that the bilateral investment treaty (BIT) in question did not extend to the investor's home State. This decision has implications for approximately 130 other BITs to which the People's Republic of China (PRC) is a party. While not dispositive, the decision increases the uncertainty as to whether a Macau Special Administrative Region of China (Macau) company would qualify for protection under a BIT agreed by mainland China.[2] It marked the first time that the Singapore courts have had to review an investment treaty arbitral award as well as deal with the interpretation of a BIT to which Singapore is not a party. The Singapore High Court granted an application under s 10(3) of the International Arbitration Act (IAA)[3] which provides that any party may make such an application within 30 days of receiving the tribunal's ruling. It was not disputed by the parties that the Singapore courts had jurisdiction to hear the appeal. The decision turned on the admission and consideration of two diplomatic letters, which raised issues on the technicalities of reviewing arbitral awards

The fundamental question in this request concerns the applicability of the BIT between the PRC and the Lao People's Democratic Republic (Laos) to the Macau. The second issue that arises concerns the interpretation of the dispute resolution article in that treaty.

In 1987, Portugal and PRC signed a joint declaration on the question of the Macau, which was then under Portuguese administration, being handed over to the PRC on 20 December 1999 (the 1987 Joint Declaration). Prior to the handover, on 31 January 1993, the PRC and Laos signed a bilateral investment treaty, on which the PRC-Laos BIT is silent on its application to Macau. One week before the Portugal handover administrative power of Macau to the PRC (on 13 December 1999), the PRC informed the United Nations Security-General (UNSG) of Macau's status in relation to the treaties deposited with the UNSG. On 20 December 1999, the Macau handover was performed. The defendant, Sanum Investments Ltd, was incorporated under the laws of Macau. In 2007, Sanum began investing in the gaming and hospitality industry of Laos. Disputes subsequently arose and Sanum commenced arbitral proceedings in 2012 against the Government of Laos, in accordance with the dispute resolution article of the PRC-Laos BIT alleging breaches of the treaty in relation to its casino and other investments in the hospitality industry in Laos.[4] The Government of Laos disputed the jurisdiction of the arbitral tribunal on the basis that the PRC-Laos BIT did not apply to Macau. In August 2013, Sanum commenced arbitration proceedings against Laos pursuant to the PRC-Laos BIT. In December 2013, the arbitral tribunal accepted jurisdiction over the dispute on the basis that the territorial scope of the PRC-Laos BIT included Macau.[5]

The Singapore High Court considered the following preliminary and substantive issues :

After the initial decision, the Laos Government decided to appeal to the High Court of Singapore. The Government of Laos, relying on S 10 (3) IAA In addition, it sought to admit fresh evidence the court found that the evidence submitted by Laos established an intention that the BIT did

Assistant Professor, Amity Law School, Amity University Rajasthan, Jaipur (Rajasthan)

not extend to Macau. The court was influenced in particular by two pieces of evidence which had not been presented to the tribunal, but which the court held admissible for the purposes of determining the application[6]:

Whether two diplomatic letters exchanged between the Laotian Ministry of Foreign Affairs and the PRC Embassy in Vientiane, Laos (the Two Letters), which were not adduced before the Tribunal, were admissible as evidence in the application. The Two Letters expressed both parties view that the PRC-Laos BIT did not apply to Macau;

The Two Letters that were only obtained after the arbitration proceedings had begun,7 January 2014 letter "Laos Letter" that was sent from the Laotian Ministry of Foreign Affairs to the PRC Embassy in Vientiane, Laos, which stated Laos' view that the PRC-Laos BIT did not extend to Macau and sought the views of the PRC Government on the same; and 9 January 2014 letter PRC Letter that was the PRC Vientiane Embassy's reply to the Laos Letter, stating its view that the PRC-Laos BIT did not apply to Macau unless both China and Laos make separate arrangements in the future .

In deciding the central question of whether the PRC-Laos BIT applies to Macau, the court looked to Article 29 of the Vienna Convention on the Law of Treaties (VCLT), which states that a treaty is binding on the entire territory of each contracting state unless it (1) appears from the treaty or (2) is otherwise established that the contracting states intended otherwise. The court then acknowledged that prima facie the PRC-Laos BIT applies to the entire territories of Laos and the PRC, which undisputedly includes Macau, but held that the second exception to the VCLT applied. The court noted that the first exception to Article 29 of the VCLT was not established since the language of the PRC-Laos BIT is inconclusive: it does not state whether it applies to Macau, nor does it expressly exclude Macau. Sanum, relying on the PRC-Russia BIT[7], which specifically excludes Hong Kong and Macau from its application, argued that the absence of a similar exclusionary clause in the PRC-Laos BIT shows that the treaty was intended to apply to Macau. The court, however, reasoned that at the time the PRC-Laos BIT was concluded in 1993, the PRC did not exercise sovereignty over Macau (which happened in 1999) and thus, both the PRC and Laos may have considered it unnecessary to exclude Macau. Therefore, the court held that no definite conclusion can be drawn from the language of the BIT.[8]

To establish the second exception, the court relied heavily on two diplomatic letters between the PRC (through its Embassy in Laos) and Laos stating the view of the PRC that the PRC-Laos BIT does not apply to Macau "unless both China and Laos make separate arrangements in the future". As a preliminary matter, the court rejected Sanum's argument that the letters should not be admitted as evidence because they were obtained only after the tribunal had issued its award. The court accepted Laos' explanation that the letters were not available earlier because it took time for diplomatic communications between Laos and the PRC to conclude. The court also specifically addressed the analogous situations between Hong Kong and Macau.[9] The court was of the view that the prevailing assumption with respect to Hong Kong is that PRC treaties do not apply to Hong Kong. The court then reasoned that because the arrangements made with respect to Hong Kong were likely used as a model for Macau and the basic laws of Hong Kong and Macau are similar in many respects, the PRC is likely to consider that its treaties do not apply automatically to Macau.

The Singapore High Court also referred to the 2001 WTO Trade Policy Report on Macau, which stated that: "In 1999, Macau signed a double taxation agreement with Portugal, Macau also signed a bilateral agreement on investment protection with Portugal Macau has no other bilateral investment treaties or bilateral tax treaties" Relying on the above extract, the court opines that the BIT entered into by PRC do not automatically apply to Macau.[10]

Therefore, the present case demonstrates that international law issues are justiciable by the Singapore Courts if they bear upon the application of Singapore law.[11] But Singapore High Court does not clarify whether full review applies when dealing with the facts. It is admitted that UNCITRAL Model law Art 16(3) affords parties right to request a national court to review an arbitral decision on jurisdiction. But it is unclear whether this would allow court to conduct a full rehearing in law as well as facts without any deference being paid to the tribunal.

In PT Tugu Pratama Indonesia V Magma Nusantara Ltd.[12] the Singapore Court held that the parties are allowed to bring and forward new legal arguments and thus at least with regards to question of law, it is clear that full review applies. Unfortunately, the High court in present case did not make its position clear as to the approach to be adopted while dealing with the facts.

On one hand Singapore High Court admitting new evidences and adopted de novo review standard on the other hand the reasoning through which the Singapore high court arrived at this conclusion raise serious doubts as to the firmness of his solution.

References :

(1) *Edmund Leow JC, Government of the Lao People's Democratic Republic v Sanum Investments Ltd., 2 SLR (High Court 2015).*

(2) *Ibid.*

(3) *"International Arbitration Act (Chapter 143, 2002 Rev Ed)," n.d., http://statutes.agc.gov.sg/aol/search/display/view.w3p;page=0;query=DocId%3A%22fdb4f13d-0fdb-4083-806a-0c16554efd0b%22%20Status%3Ainforce%20Depth%3A0;rec=0;whole=yes.*

(4) *"Bilateral Investment Treaty between Public Republic's of China and Government of the Lao People's Democratic Republic," n.d., 56 Art 8.*

(5) *Guiguo Wang, International Investment Law: A Chinese Perspective (Routledge, 2014), 570571.*

(6) *"Singapore High Court Overturned Arbitral Tribunal's Decision," Global Arbitration News, accessed October 4, 2015,*

http://globalarbitrationnews.com/singapore-government-of-the-lao-peoples-democratic-republic-v-sanum-investments-ltd-singapore-high-court-overturned-arbitral-tribunals-decision-that-china-laos-bilateral-investment-20150209/.

***(7)** "Agreement Between the Government of the Russia Federation and The Government of the People's Republic of China on the Promotion an Reciprocal Protection of Investment," 2009, 6, http://investmentpolicyhub.unctad.org/Download/TreatyFile/774.*

***(8)** Bureau of Public Affairs Department Of State. The Office of Website Management, "Laos," Report (Department Of State. The Office of Website Management, Bureau of Public Affairs., April 10, 2013), laos|, http://www.state.gov/e/eb/rls/othr/ics/2013/204674.htm.*

***(9)** Tza Yap Shum v. Peru (n.d.) ARB/07/6.*

***(10)** Leow JC, Government of the Lao People's Democratic Republic v Sanum Investments Ltd., 2 SLR (High Court 2015).*

***(11)** Department Of State. The Office of Website Management, "Laos."*

***(12)** PT Tugu Pratama Indonesia v Magma Nusantara Ltd, 4 SLR(R), 257 (2003).*

Bibliography :

***(1)** "Agreement Between the Government of the Russia Federation and The Government of the People's Republic of China on the Promotion an Reciprocal Protection of Investment," 2009. http://investmentpolicyhub.unctad.org/Download/TreatyFile/774.*

***(2)** "Bilateral Investment Treaty Between Public Republic's of China and Government of the Lao People's Democratic Republic," n.d.*

***(3)** Department Of State. The Office of Website Management, Bureau of Public Affairs. "Laos." Report. Department Of State. The Office of Website Management, Bureau of Public Affairs., April 10, 2013. Laos|. http://www.state.gov/e/eb/rls/othr/ics/2013/204674.htm.*

***(4)** "International Arbitration Act (Chapter 143, 2002 Rev Ed))," n.d. http://statutes.agc.gov.sg/aol/search/display/view.w3p;page=0;query=DocId%3A%22fdb4f13d-0fdb-4083-806a-0c16554efd0b%22%20Status%3Ainforce%20Depth%3A0;rec=0;whole=yes.*

***(5)** Leow JC, Edmund. Government of the Lao People's Democratic Republic v Sanum Investments Ltd., 2 SLR (High Court 2015).*

***(6)** PT Tugu Pratama Indonesia v Magma Nusantara Ltd, 4 SLR(R) (2003).*

***(7)** "Singapore High Court Overturned Arbitral Tribunal's Decision." Global Arbitration SNews. Accessed October 4, 2015. http://globalarbitrationnews.com/singapore-government-of-the-lao-peoples-democratic-republic-v-sanum-investments-ltd-singapore-high-court-overturned-arbitral-tribunals-decision-that-china-laos-bilateral-investment-20150209/.*

***(8)** Tza Yap Shum v. Peru, (n.d.).*

***(9)** Wang, Guiguo. International Investment Law: A Chinese Perspective. Routledge, 2014.*

❁❁

UGC Approved Journal
Research Link
Since March 2002
An International, Registered & Refereed Monthly Journal : Law
Research Link - 170, Vol - XVII (3), May - 2018, Page No. 51-52
ISSN - 0973-1628 ■ RNI - MPHIN-2002-7041 ■ Impact Factor - 2015 - 2.782

How to Maintain Accountability in Indian Judicial life ?

Transparency is facilitated through the process of accountability. It is best achieved when one is accountable to law. The existing systems of accountability have failed, and the growing corruption is eating away the vitals of this branch of democracy. This lack of accountability had been best put forward by pt. Nehru in a diatribe, "judges of the Supreme court sit on ivory towers far removed from ordinary men and know nothing about them." The demi god's image has to be replaced, after all judges are also humans capable of making mistakes and commiting vices.

DANISH JAMAL

As We know that Independence of Judiciary is a recognized principle adopted by most of the democratic Countries including India. Today in India the Principle is the part of the basic structure of the constitution. But Problem here actually lies in the Understanding of Independence. It is respectfully submitted here on this point that the term 'Independence'. Should always be understood as Independence from executive and ' legislature' and not independence from Accountability.

'Judicial Accountability' is infact a corollary of the Independence of the judiciary. In other words if we simply put, Accountability refers to taking responsibility for your actions and decisions.

It generally means being responsible to any external body; some may insist accountability to principles or to oneself rather than to any authority with the power of punishment or correction.

Since accountability is a facet of independence the Constitution has provided in Article 235, for the 'control' of the High Court over the Subordinate Judiciary clearly indicating the provision of an effective mechanism to enforce accountability. Thus entrustment of power over subordinate judiciary to the High court preserves independence as it is neither accountable to the executive or the legislature.

The provision of the difficult process of impeachment has also been directed towards this goal. The absence of any mechanism for the higher judiciary except for extreme cases is because the framers of the constitution had thought that 'settled norms' and 'peer pressure' would act as adequate checks. However it hasn't happened completely in that manner. The main problem is that the judiciary is neither democratically accountable to the people nor to the other two organs.

The Supreme Court had rightly asserted that "A single dishonest judge not only dishonours himself and disgraces his office but jeopardizes the integrity of the entire judicial system."

This brings us the section on why do we need accountability. A campaign issued by the people's convention on Judicial Accountability and Reforms had mentioned, "The judicial system of the country far from being an instrument for protecting the rights of the weak and the oppressed had become an instrument of harassment of the common people of the country. The system remains dysfunctional for the weak and the poor…. (and had been) displaying their elitist bias."

Mona Shukla has listed down three promotions done by judicial Accountability :

(1) It promotes the rule of law by deterring conduct that might compromise judicial independence, integrity and impartiality.

(2) It promotes public confidence in judges and judiciary.

(3) It promotes institutional responsibility by rendering the judiciary responsive to the needs of the public it serves as a separate branch of the government.

Transparency is facilitated through the process of accountability. It is best achieved when one is accountable to law. The existing systems of accountability have failed, and the growing corruption is eating away the vitals of this branch of democracy. This lack of accountability had been best put forward by pt. Nehru in a diatribe, "judges of the

Department of Law, Allahabad University, Allahabad (Uttar Pradesh)

Supreme court sit on ivory towers far removed from ordinary men and know nothing about them." The demi god's image has to be replaced, after all judges are also humans capable of making mistakes and commiting vices.

The Fustant Article Doer is of the view that if we want proper implementation of the Concept of Judicial Accountability in India.

It is necessary to follow some code of Ethics from our Hon,ble Judges :

Themselves which are as such:-

(1) judicial decision to be honest : It is absolutely essential that in order that the judge's life is full of public confidence in the society. The judicial decision is to be honest and fair

(2) No man can be a judge in his own case : The basic code of ethics is the principle that no man can be judge in his own case.

(3) Administer justice : Judges must not fear to administer justice.

(4) Equal opportunity : Parties to the dispute be treated equally and in accordance with the principles of law and every judge does not belong to any person or section or division or group. He is the judge of all people.

(5) Maintenance of distance from relatives : Since judging is not a profession but a way of life, the judge must keep distance the parties to the dispute and their lawyers during the conduct of the trial.

(6) Too much of activity and participation in social function be avoided : To much activity and participation in social function be avoided by a judge.

(7) Media Publicity be avoided : As far as possible a Judge should keep off the media. He should refrain from expression in media on matters either pending before him or likely to appear for judicial consideration.

References :

(1) Pimentel, David : 'Reframing the Independence Vs Accountability Debate, Page 15.

(2) Verma, J.S. : Mechanism for Judicial Accountability, Page 1.

(3) Divan, Amit : Judicial Integrity, Page 1.

(4) As per mana Shukla Judicial Accontability An Aspect of Jucial Indipendence in Judical Accountbility it is necessary to follw some code of Ethics from our Homble Judges themselves which are as such.

❁❁

UGC - APPROVED - JOURNAL

UGC Journal Details

Name of the Journal :	Research Link
ISSN Number :	09731628
e-ISSN Number :	
Source:	UNIV
Subject:	Accounting;Anthropology;Business and International Management;Economics, Econometrics and Finance(all);Education;Environmental Science(all);Finance;Geography, Planning and Development;Law;Political Science a;Social Sciences(all)
Publisher:	Research Link
Country of Publication:	India
Broad Subject Category:	Arts & Humanities;Multidisciplinary;Social Science

Print

शोध-पत्र भेजने संबंधी नियम

(1) शोध-पत्र **1500-1700 शब्दों से अधिक नहीं** होना चाहिए।

(2) हिन्दी एवं मराठी माध्यम के शोधपत्रों को कृतिदेव 10 (Kruti Dev 010) में टाईप करवाकर 'पेजमेकर 6.5' में भेजें।

(3) पंजाबी माध्यम के शोधपत्रों को अनमोल लिपि (AnmolLipi) या **अमृत बोली** (Amritboli) या **जॉय** (Joy) में टाईप करवाकर 'पेजमेकर 6.5' में भेजें।

(4) अंग्रेजी माध्यम के शोधपत्र टाईम्स न्यू रोमन (Times New Roman), एरियल फोंट (Arial) में टाईप करवाकर 'पेजमेकर 6.5' या 'माइक्रोसाफ्ट वर्ड' में भेजे जा सकते हैं।

(4) शोधपत्र की विधि - **(1)** शीर्षक **(2)** एबस्ट्रेक्ट **(3)** की-वर्ड्स **(5)** प्रस्तावना/प्रवेश **(5)** उद्देश्य **(6)** शोध परिकल्पना **(7)** शोध प्रविधि एवं क्षेत्र **(8)** सांख्यिकीय तकनीक **(9)** विवेचन या विश्लेषण **(10)** सुझाव **(11)** निष्कर्ष एवं **(12)** संदर्भ ग्रंथ सूची।

(6) संदर्भ ग्रंथ सूची इस प्रकार दें -

For Books :

(1) Name of Writer, "Name of Book", Publication, Place of Publication, Year of Publication, Page Number/numbers.

For Journals :

(2) Name of Writer, "Title of Article", Name of Journal, Volume ....., Issue ....., Page Numbers.

Web references :

http://utc.iath.virginia.edu/interpret/exhibits/hill/hill.html

(7) गुजराती माध्यम के शोधपत्र **हरेकृष्णा (Harekrishna), टेराफोंट वरुण (Terafont Varun), टेराफोंट आकाश (Terafont Aaksah)** में टाईप करवाकर 'पेजमेकर 6.5' में भेजे जा सकते हैं।

(8) शोधपत्र की साफ्टकॉपी रिसर्च लिंक के ई-मेल आईडी researchlink@yahoo.co.in पर भेजने के बाद हॉर्डकॉपी, शोधपत्र के मौलिक होने के घोषणा पत्र के साथ हस्ताक्षर कर 'रिसर्च लिंक' के कार्यालय को प्रेषित करें।

❁❁