

Case Against India Attending Commonwealth Summit in Sri Lanka

"Due to genocide and war crimes committed by the Sri Lankan Government against Tamils in that island"

CHENNAI, INDIA, October 22, 2013 /EINPresswire.com/ --

Acting Chief Justice Agarwal and Justice M.Sathyanarayana of Chennai High Court heard a case today against India's External Affairs Ministry for delaying a response to a petition urging India not to participate in the upcoming Commonwealth Conference in Sri Lanka due to genocide and war crimes committed by the Sri Lankan Government against Tamils in that island.

The above mentioned petition was sent to the Indian External Affairs Ministry by Professor Sarawathy Rajendran, the Coordinator of the Solidarity Center of Transnational Government of Tamil Eelam (TGTE).

The writ petition was filed in Chennai High Court by Professor Saraswathy. The case number is: w.p.28656/2013. The petitioner was represented by Advocate Saravanan and Advocate Ajitha.

One of the questions raised by the Chief Justice was whether the petitioner expects that India should be against China, Pakistan, Bangladesh, Sri Lanka, and other countries due to private reasons. Advocate Saravanan responded by saying that the petitioner has stated her position clearly in the memorandum submitted to the External Ministry. The Chief Justice asked the petitioner as well as the advocate himself to ponder this question.

Case was adjourned to October 24, 2013.

Details:

From:
Mrs. Saraswathi
Prof. of Sociology (Retd),
No.29, Journalists Colony,
Thiruvanmiyur, Chennai – 600041.

To:

The Secretary,
Ministry of External Affairs,
Government of India,
New Delhi- 110001.

Sir,

Sub: Demanding for explanation of propriety of Republic of India attending the CHOGM

Conference to be held in Srilanka in the 2nd week of November 2013 - Request for India to abstain from participation – Reg.

This representation is made by us with humble request to the Government of India, to abstain from participation in the CHOGM conference proposed to be held in November 2013 in Srilanka. We, as citizens of India, committed to upholding of human rights and the adherence to International Covenants prescribing mandatory compliance to Principles of Human Rights, are constrained to make this request in the interest of the Tamils living in Srilanka.

Art 51 of the Constitution of India mandates the Indian Republic to endeavour for promotion of International peace and understanding.

Art 51 reads as follows:

Promotion of International Peace and Security-The state shall endeavour to-

- a) promote international peace and security;
- b) maintain just and honourable relations between nations;
- c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another;

The International Covenant on Civil and Political Rights (ICCPR) mandates as follows:

“ The State Parties to the Present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

In Article 2(1)

“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

In Article 6(1)

“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”.

In Article 6(3)

“When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide”.

In Article 7(1)

“No one shall be subjected to tortured or to cruel, inhuman or degrading treatment or punishment.”

In Article 26

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language religion, political or other opinion, national or social origin, property, birth or other status”.

In Article 27

“In those States in which ethnic, or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language”.

III. In the Convention on the prevention and punishment of the Crime of Genocide, 1948,
Art 1 States as follows:

“The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish”.

IV. In the Convention on the Rights of the child

Article 24(1) states

“ State Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services”.

Article 37

“ (a) no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
(b) no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
(c) every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
(d) every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

“State Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child”.

The Directive Principles of State Policy enshrined in the Constitution of India, though directory in nature, is also to be strictly adhered and followed by Government of India. The Art 51 of the Constitution of India, extracted above minces no words in the stand to be taken by the Republic of India in its relations with other nations. The foreign policy of India is certainly to be guided by the directive principles of state policy in as much as the Constitution of India is Supreme.

The several covenants and charters extracted above to which the Republic of India is a signatory clearly mandates the following:-

- (i) Adherence to Human Rights
- (ii) Punishment for Crime of Genocide
- (iii) The relief from torture or cruel, inhuman degrading treatment

The International Conventions and covenants among others are binding on the Union of India as comparable to municipal laws in view of the authoritative pronouncements of the Hon'ble Supreme Court of India in the several cases.(1970(3)SCC 400,1984(2)SCC 534,1997(6)SCC 241)

Infact, Sec 86 of C.P.C. provides for filing of suits against foreign rulers with the permission of the Central Government which decision should be taken after affording reasonable opportunity of hearing.

With respect to the atrocities committed by the State of Srilanka against the ethnic minority of Tamil population during the war against the LTTE in 2009, is well documented and within the knowledge of the Government of India.

Infact, the Government of India has voted in favour of a resolution calling upon the State of Srilanka to investigate the complaints with its own report of LLRC (Lessons Learnt and Reconciliation Committee). Further, the evidence available in public domain namely the "Report of the United Nations Secretary General panel of experts on accountability on Srilanka dated 31.03.2011. Several reports like Report of the Amnesty International regarding the arbitrary detentions, and enforced disappearances and other Human Rights violations etc, The report of the Permanent People's Tribunal on Srilanka dated January 2010 and Human Rights reports by U.S. State Department dated 2011, The report titled 'Killing fields of Srilanka' by the Channel 4 of the United Kingdom are a few documentations of the blatant violations of Human Rights by the State Machinery in Srilanka.

The CHOGM is a creation of a commonwealth charter which provides for the promotion and protection within international law. The common wealth charter has its core values which are Adherence to Human Rights and Rule of Law.

The commonwealth on earlier occasions has even suspended countries like Pakistan and Zimbabwe for violations of principles affirmed in the Commonwealth Charter. Adopting the same yard stick, the State of Srilanka also ought to have been suspended from the Commonwealth for the unimaginable atrocities committed against the civilians of the Tamil ethnic minority.

However, this representation is restricted to the demand of boycott of the CHOGM to be held in Srilanka during November 2013.

It is pertinent to note that the commonwealth state of Canada has already announced its decision to boycott the CHOGM meeting to be held in Srilanka in view of the atrocities committed by the State of Srilanka against the ethnic Tamil minorities during 2009 and thereafter. Several mainstream political parties in Tamil Nadu namely the AIADMK, the DMK, the MDMK, the PMK, the DMDK, the CPI, the PUDIYA TAMILZHAGAM, the VCK, the MMK, the SMK which constitute representation of a huge majority of the population in Tamil Nadu, have also demanded the boycott of the CHOGM meet by India.

In view of the settled legal principles namely, the mandatory compliance to International Covenants and charters signed by India and in view of the over-whelming evidence of Genocide against the Tamil Community in Srilanka by the State of Srilanka and in view of the strong relationship with the Tamil Community across the Palk Straits with the Tamil citizens of India, We being citizens of India, having commitment to principles of human rights, law and justice thereby having a right to make this

request to the Government of India to adhere to the legal provisions entrained in the Constitution of India and the International Covenants and charters, to refrain from participating in any manner in the CHOGM conference proposed to be held in Srilanka in November 2013.

We request you, Sir, to kindly give us an opportunity of personal hearing in the course of consideration of this representation to put forth our points of view in more detailed manner.

Yours Sincerely,

Mrs. Saraswathi

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