

ශ්‍රී ලංකා විවෘත විශ්වවිද්‍යාලය

මානව ශාස්ත්‍ර හා සමාජ විද්‍යාපීඨය

නීති අධ්‍යයන දෙපාර්තමේන්තුව

නීතිවේදී උපාධි පාඨමාලාව - 4 වන මට්ටම

අඛණ්ඩ ඇගයීම් පරීක්ෂණය II - 2017/2018

LWU2314/ LLU4708 – ආණ්ඩුක්‍රම ව්‍යවස්ථා නීතිය II

කාලය පැය 1 යි



දිනය: 2019 අගෝස්තු 16

වේලාව: පෙ.ව.11.00 - මධ්‍යහන.12.00

අපහැදිලි අත්අකුරු සඳහා ලකුණු අඩු කරනු ලැබේ.

එක් (01)ප්‍රශ්නයකට පමණක් පිළිතුරු සපයන්න.

1. “මහජන සුභසාධන නඩුකර සම්බන්ධයෙන් මෙම රටෙහි මිත්‍යාවන් දෙකක් පවතියි. පළමු මතය වන්නේ, මහජන සුභසාධන නඩුකර අපගේ නීති රාමුව තුළ සිදු විය හැකි දෙයක් නොවන බව ය. දෙවැන්න නම්, මහජන සුභසාධන නඩුකර භාවිත නොවන බව ය .මෙම ප්‍රකාශ දෙකම සද්‍රෝශ්‍ය වන අතර ඉන් පිළිබිඹු වන්නේ මෙම රටෙහි මහජන සුභසාධන නඩුකර පිළිබඳව ඇති අසම්පූර්ණ අවබෝධය යි. මහජන සුභසාධන නඩුකර මෙම රටෙහි විශතැකි දෙයක්වන අතර සීමා සහිතව භාවිත වේ. අප අධිකරණය විසින් මෑත කාලයේ ඇති කළ නීති විද්‍යාව තුළින් නිරූපණය වන්නේ විනිශ්චයකරුවන් මහජන සුභසාධන ඉල්ලීම් වැඩි වශයෙන් පිළිගන්නා බවයි”

**Mario Gomez, ‘Litigating to Change: Public Interest Litigation in Sri Lanka’,
[2004] Sri Lanka Law College Review**

ශ්‍රී ලංකාවේ මහජන සුභසාධන නඩුකර ඇසුරින් ඉහත ප්‍රකාශයේ වලංගුභාවය සාකච්ඡා කරන්න.
 අදාළ ආණ්ඩුක්‍රම ව්‍යවස්ථාපිත ප්‍රතිපාදන සහ නඩු තීන්දු ඇසුරින් ඔබගේ පිළිතුර පහැදිලි කරන්න.

(ලකුණු 20)

2. සමන්ත යනු අතුරුදහන්වීම, පශ්චාත් යුධ සංහිඳියාව, පාස්කු ඉරිදා ප්‍රහාරය සහ ආගමික ප්‍රචණ්ඩත්වය වැනි දේශපාලනිකව සංවේදී මාතෘකා සම්බන්ධයෙන් ශ්‍රී ලංකාවේ ‘Hot News’

THE OPEN UNIVERSITY OF SRI LANKA
FACULTY OF HUMANITIES AND SOCIAL SCIENCES
DEPARTMENT OF LEGAL STUDIES
LL.B DEGREE PROGRAMME – LEVEL 4
CONTINUOUS ASSESSMENT TEST II – 2017/2018
LWU2314/LLU4708 – CONSTITUTIONAL LAW II
DURATION – ONE (01) HOUR



DATE: 16th August 2019

TIME: 11.00 a.m. – 12.00 noon

Illegible handwriting will be penalized.

Answer One (01) question only.

1. “There are two myths about Public Interest Litigation (PIL) in this country. The first is that PIL is not possible under our legal framework. The second is that PIL does not take place. Both these statements are wrong and reflect an incomplete understanding about PIL in this country. PIL can and does take place in a limited manner in this country. Recent jurisprudence by our courts indicates that judges are becoming increasingly receptive to public interest claims.”

**Mario Gomez, ‘Litigating to Change: Public Interest Litigation in Sri Lanka’,
[2004] Sri Lanka Law College Review**

Discuss the validity of the above statement in the light of public interest litigation in Sri Lanka.
Support your answer with relevant constitutional provisions and case law.

(20 marks)

2. Samantha was a journalist who had constantly contributed on politically sensitive topics such as disappearances, post-war reconciliation, the Easter-Sunday attack and religious violence to the website named ‘Hot News’ in Sri Lanka. The ‘Hot News’ website is a well-known site in the country as it offers fast breaking news on these sensitive areas to the public. His recent piece on “social media ban and its influence on escalating religious violence” had become very popular and he had challenged the decision of the government as an irrational and stupid.

නම් වෙබ්අඩවියට නිරන්තරයෙන් ලිපි ලියන ලද මාධ්‍යවේදියෙකි. මහජනයාට මෙම සංවේදී කරුණු සම්බන්ධව ඉතා ඉක්මණින් උණුසුම් පුවත් ලබා දෙන බැවින් 'Hot News' වෙබ්අඩවිය රට තුළ හොඳින් දන්නා වෙබ්අඩවියක් බවට පත්ව තිබිණි. මෑතකාලීනව ඔහු විසින් ලියන ලද "සමාජ මාධ්‍ය වාරණය සහ එමඟින් ආගමික ප්‍රවණ්ඩත්වය උත්සන්න විමට ඇතිවන බලපෑම" නම් ලිපිය ඉතාමත් ප්‍රසිද්ධවූ අතර ආණ්ඩුවේ එම තීරණය අතාර්ථික සහ අමනෝඥ තීරණයක් ලෙස විවේචනය කර තිබිණි.

ලිපිය පළවීමෙන් දින දෙකකට පසුව, නිවස බලායමින් සිටි පොලිස් නිලධාරීන් දෙදෙනෙකු විසින් සමන්තව අත්අඩංගුවට ගනු ලැබුවේ මහජනයා අතර අසමානකොට සැලකීම සහ ප්‍රවණ්ඩත්වය ඇති කළ හැකි ජාතික සහ ආගමික වෛරය ඔහු විසින් ප්‍රචාරය කරන බව පවසමිනි. ඔහුව සති දෙකක් රඳවා සිටි අතර මහේස්ත්‍රාත්වරයෙකු හමුවට තවමත් ඉදිරිපත් කර නොමැත.

තවද, හදිසි නීති රෙගුලාසි යටතේ ආණ්ඩුවේ නීති බලධාරියා විසින් ආරක්ෂක තත්ත්වය මත මෙම වෙබ්අඩවිය හදිසියේම වාරණය කළේය. 'Hot News' වෙබ් අඩවිය නිතර නරඹන්නියක වන හිරුණිගේ අදහස වන්නේ ආණ්ඩුවේ මෙම තීරණය නිසා ඇයගේ අයිතීන්වලට බලපෑමක් සිදුව ඇති බවයි. ඇය දක්වන්නේ, මෙම හදිසිවාරණය හේතුවෙන් ඇයගේ තොරතුරු දැන ගැනීමට ඇති අයිතිය උල්ලංඝනය වී ඇති බවයි.

හිරුණි සහ සමන්ත අදාළ අධිකාරීන්ට එරෙහිව මූලික අයිතිවාසිකම් නඩුකර පැවරීමට අපේක්ෂා කරයි.

ශ්‍රී ලංකා ආණ්ඩුක්‍රම ව්‍යවස්ථාවෙන් (1978) සුරක්ෂිත කර ඇති කවර හෝ මූලික අයිතිවාසිකම් උල්ලංඝනය වී ඇත්ද යන්න සම්බන්ධව පාර්ශවයන්ට උපදෙස් දෙන්න.

අදාළ නඩුතීන්දු ඇසුරින් ඔබගේ පිළිතුර පැහැදිලි කරන්න.

(ලකුණු 20)

- නිමිකම් ඇවිරිණි -

Two days after the article was published, Samantha was arrested by two police officers on his way home saying that he propagated national and religious hatred that would amount to discrimination and violence among the public. He was detained for two weeks and has not yet been produced before a Magistrate.

Moreover, the website was suddenly banned by the competent authority of the government under the emergency regulations on security concerns. Hiruni, a regular viewer of 'Hot News' website is of the view that she has been affected by the decision of the government. She claims that her right to receive information has been violated due to this sudden ban.

Hiruni and Samantha wish to file fundamental right cases against the relevant authorities.

Advise the parties as to whether any of their fundamental rights guaranteed by the Constitution of Sri Lanka (1978) have been violated.

Support your answer with decided cases.

(20 marks)

**** *All rights reserved* ****

இலங்கை திறந்த பல்கலைக்கழகம்
 மானுடவியல் மற்றும் சமூக விஞ்ஞானங்கள் பீடம்
 சட்டக்கற்கைகள் திணைக்களம்
 சட்டமாணி பட்டப்படிப்பு நிகழ்ச்சித் திட்டம் - மட்டம் 4
 தொடர் மதிப்பீட்டுப் பரீட்சை II - 2017/18
 LWU2314/LLU4708 அரசியலமைப்புச் சட்டம்
 காலம் : ஒரு (01) மணித்தியாலம்



திகதி : 16.08.2019

நேரம் : மு.ப 11.00- நண்பகல் 12.00

தெளிவற்ற கையெழுத்திற்கு புள்ளிகள் குறைக்கப்படும்.
 ஒரு (01) வினாவிற்கு மாத்திரம் விடையளிக்க.

1. “இந்நாட்டில் பொதுநல அக்கறை வழக்குகள் மீது இரு தொன்மங்கள் காணப்படுகின்றன. முதலாவது, எமது சட்டமுறையின் கீழ் பொதுநல அக்கறை வழக்குகள் சாத்தியம் இல்லை. இரண்டாவது, பொதுநல அக்கறை வழக்குகள் தொடரப்படுவதில்லை. இவ்விரு கூற்றுக்களும் பிழையானவை என்பதுடன், இவை இந்நாட்டின் பொதுநல அக்கறை வழக்குகள் மீதான பூரணமற்ற புரிதலைப் பிரதிபலிக்கின்றன. இந்நாட்டில் பொதுநல அக்கறை வழக்குகள் வரையறுக்கப்பட்ட முறையில் மேற்கொள்ளப்பட முடிவதுடன், மேற்கொள்ளவும்படுகிறது. எமது நீதிமன்றங்களது அண்மைய சட்டவியலானது, நீதிபதிகள் அதிகமாகப் பொதுநல அக்கறை வழக்குகளை ஏற்றுக் கொள்வதைக் காட்டுகிறது.”

**Mario Gomez, ‘Litigating to Change: Public Interest Litigation in Sri Lanka’,
 [2004] Sri Lanka Law College Review**

மேலுள்ள கூற்றின் வலிதாந்தன்மையை, இலங்கையின் பொதுநல அக்கறை வழக்குகளின் மீது, பொருத்தமான அரசியலமைப்பு உறுப்புரைகள் மற்றும் தீர்ப்புச்சட்டம் என்பவற்றை எடுத்துக்காட்டி ஆராய்க.

(20 புள்ளிகள்)

2. சமந்த எனும் ஊடகவியலாளர், இலங்கையின் ‘ஹொட் நியூஸ்’ எனப் பெயரிடப்பட்ட இணையத்தளத்தில் காணமற் போதல், யுத்தத்திற்குப் பின்னரான நல்லிணக்கம், ஈஸ்டர் - ஞாயிறு தாக்குதல் மற்றும் மத ரீதியான வன்முறை முதலான அரசியல் ரீதியான உணர்வுட்டும் தலைப்புக்களில் தொடர்ந்தும் எழுதுகிறார். ‘ஹொட் நியூஸ்’ இணையத்தளம் மக்களிற்கு இத்தகு உணர்வுட்டும் பரப்புகளில் விசேட செய்திகளை உடனடியாக வழங்குவதால் மிக பிரபல்யமான தளம் ஆகும். அவரது ‘அதிகரித்து வரும் மத ரீதியான வன்முறை மீதான சமூக வலைத்தளங்களின் செல்வாக்கும் தடையும்’ எனும் அண்மைய பதிவு மிகப் பிரபல்யமானதுடன், அது அரசாங்கத்தின் தீர்மானத்தை முட்டாள்தனமான பகுத்தறிவற்ற தீர்மானம் என கேள்விக்குப்படுத்தியிருந்தது.

அவ் ஆக்கம் பிரசுரிக்கப்பட்டு இரு நாட்களின் பின்னர், சமந்த அவன் வீடு திரும்பும் வேளையில், பொது மக்கள் இடையே வன்முறை மற்றும் பாகுபாட்டை ஏற்படுத்தக்கூடிய தேசிய மற்றும் மத ரீதியான வெறுப்புணர்வை பரப்புவதாக கூறப்பட்டு இரு பொலிஸ் அதிகாரிகளால் கைது செய்யப்பட்டான். அவன் இரு வார காலம் தடுத்து வைக்கப்பட்டதுடன், நீதவான் முன் முன்னிலைப்படுத்தப்படவில்லை.

THE OPEN UNIVERSITY OF SRI LANKA
FACULTY OF HUMANITIES AND SOCIAL SCIENCES
DEPARTMENT OF LEGAL STUDIES
LL.B DEGREE PROGRAMME – LEVEL 4
CONTINUOUS ASSESSMENT TEST II – 2017/2018
LWU2314/LLU4708 – CONSTITUTIONAL LAW II
DURATION – ONE (01) HOUR



DATE: 16th August 2019

TIME: 11.00 a.m. – 12.00 noon

Illegible handwriting will be penalized.

Answer One (01) question only.

1. “There are two myths about Public Interest Litigation (PIL) in this country. The first is that PIL is not possible under our legal framework. The second is that PIL does not take place. Both these statements are wrong and reflect an incomplete understanding about PIL in this country. PIL can and does take place in a limited manner in this country. Recent jurisprudence by our courts indicates that judges are becoming increasingly receptive to public interest claims.”

**Mario Gomez, ‘Litigating to Change: Public Interest Litigation in Sri Lanka’,
[2004] Sri Lanka Law College Review**

Discuss the validity of the above statement in the light of public interest litigation in Sri Lanka.
Support your answer with relevant constitutional provisions and case law.

(20 marks)

2. Samantha was a journalist who had constantly contributed on politically sensitive topics such as disappearances, post-war reconciliation, the Easter-Sunday attack and religious violence to the website named ‘Hot News’ in Sri Lanka. The ‘Hot News’ website is a well-known site in the country as it offers fast breaking news on these sensitive areas to the public. His recent piece on “social media ban and its influence on escalating religious violence” had become very popular and he had challenged the decision of the government as an irrational and stupid.

மேலும், இணையத்தளம், பாதுகாப்பு அக்கறை காரணங்கள் எடுத்துக்காட்டப்பட்டு, அவசரகால ஒழுங்கு விதிகளின் கீழ் அரசாங்கத்தின் தகைமையுள்ள அதிகார சபையால் திடீரென தடை செய்யப்பட்டது. 'ஹோட் நியூஸ்' இன் வழக்கமான பார்வையாளரான 'ஹிருணி' அரசாங்கத்தின் இத்தீர்மானத்தால் தான் பாதிப்புற்றுள்ளதாகக் கருதுகிறாள். இத்திடீர் தடையின் காரணமாகத் தனது தகவல் பெறும் உரிமை மீறப்பட்டுள்ளதாக அவள் கோருகிறாள்.

ஹிருணி மற்றும் சமந்த இருவரும் தொடர்புடைய அதிகாரசபைகளிற்கு எதிராக அடிப்படை உரிமைகள் வழக்கினைத் தொடர விரும்புகின்றனர்.

1978 ஆம் ஆண்டின் இலங்கை அரசியலமைப்பால் உறுதிப்படுத்தப்பட்ட அவர்களது அடிப்படை உரிமைகள் ஏதேனும் மீறப்பட்டுள்ளதா என திறந்தவர்களுக்கு அறிவுரை வழங்குக.

உமது விடையைத் தீர்க்கப்பட்ட வழக்குகளால் ஆதாரப்படுத்துக.

(20 புள்ளிகள்)

பதிப்புரிமை பெற்றது.

Two days after the article was published, Samantha was arrested by two police officers on his way home saying that he propagated national and religious hatred that would amount to discrimination and violence among the public. He was detained for two weeks and has not yet been produced before a Magistrate.

Moreover, the website was suddenly banned by the competent authority of the government under the emergency regulations on security concerns. Hiruni, a regular viewer of 'Hot News' website is of the view that she has been affected by the decision of the government. She claims that her right to receive information has been violated due to this sudden ban.

Hiruni and Samantha wish to file fundamental right cases against the relevant authorities.

Advise the parties as to whether any of their fundamental rights guaranteed by the Constitution of Sri Lanka (1978) have been violated.

Support your answer with decided cases.

(20 marks)

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