5TH JUSTICE R.K. TANKHA MEMORIAL NATIONAL MOOT COURT COMPETITION 2015

MEMORIAL FOR THE RESPONDENTS

IIN THE HIGH COURT OF NIRDHAN

AT GARIBA.

Writ petition no. 999/2015 and 1021/2015
(Under Art. 226 of The Constitution of the Republic of Gariba)

People's Union for Liberties & Democratic Reforms and JCi **…..Petitioners**

V.

Republic of Gariba And Maxis Bank **…. Respondents**

TEAM CODE : C

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V. KEY TO ABBREVIATIONS:

1.	**SC & HC**	**SUPERME COURT AND HIGH COURT**
2.	**SCC**	**SUPREME COURT CASES**
3.	**Art. & Sec.**	**Article And Section**
4.	**AIR**	**All India Reports**
5.	**&**	**and**
6.	**WP**	**Writ Petition**
7.	**No.**	**Number**

STATEMENT OF JURISDICTION

Writ petition no.999/2015

1. The Petitioners have approached this Hon'ble Court under Art. 226 of the Constitution of the Republic of Gariba which states that :

226. Power of High Courts to issue certain writs :

(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories

STATEMENT OF FACTS

1. The Republic of Gariba is a sovereign Federation which got independent from imperial rule in the year 1947 ; having a written constitution.
2. The state of Nirdhan was considered as backward till 2011 , when the then Governor decided to to devise a new scheme to construct the highways and arterial roads and by private parties and all the Panchayat Samitis were delegated powers to issue detailed project reports.
3. A company named Jeopardy Contracts Inc. ["JCi"] entered into an agreement with Jodhpur Gaon Panchayat Samiti [" JGPS"] on 21.9.2011 for 115 kms of road in a Schedule area in Nirdhan . At the time of culmination of the project , certain issues cropped up regarding land acquisition , design of the bridges etc . due to which the JGPS terminated the contract on 21.9.2013.
4. As per contractual mechanism and clause , JCi sent a legal notice on 11.12.2014 asking to invoke arbitration and the termination payment for the work already done .
5. JGPS sent an email on 12.12.2014 informing that the matter is covered under the Madhyaastham Adhikaran Adhiniyam,1983 and not the Arbitration and Conciliation Act, 1996. They also invoked the performance bank guarantee on 12.12.2014 by sending an email to Maxis bank after business hours.
6. On 13.12.2014 , JCi moved to the High Court of Nirdhan by filing an urgent civil writ Petition being WP (C) No. 99/2014 . The High Court took this matter as the first item on board on 15.12.2014 and granted "...an ad- interim ex-parte stay on invocation of bank guarantee if not already encashed ..." , and also directed "....all further action in this

regard by all parties to remain subject to the outcome of the proceedings...", with directions to immediately furnish copy by all means to the concerned parties. By 11:00 am , the copies of the order were served upon JGPS, and the Maxis Bank .

7. In the meantime, at 10:00 am , the branch manager of the Jodhpur Gaon branch of Maxis bank had acted upon the email of JGPS and encashed the bank guarantee. At 10:01 am , all the accounts and transactions in progress were instantly frozen due to a massive security breach and the amount under bank guarantee still remained in the account of JCi.
8. The head of the JGPS immediately convened a press conference alleging that the act of hacking is attributable solely to JCi . The corporate headquarters of JCi issued a statement to the press in response , denying such allegations .
9. The writ petition was disposed of directing the parties to seek appropriate interim remedies form the ld. Arbitrators under the Act of 1996, before the council for infrastructure Arbitration (CIA), and the objections regarding maintainability filed by the JGPS were dismissed. The Arbitration culminated into an award dated 21.1.2015 in favour of JCi which held JCi entitled to the money.
10. JGPS immediately filed a petition under Sec. 34 of the Act of 1996, before the High Court of Nirdhan on 25.01.2014.On 24.1.2015, JCi wrote to Maxis bank to return the money pertaining to performance bank guarantee, with the interest accumulated thereon, which was thrice the principal.
11. On 27.1. 2015, Maxis Bank informed that admission of petition under Sec . 34 amount to a stay on the award until the final outcome of award. In response, on 28.1.2015, JCi cited its concern about of liquidity and pressure of the Amerasian Development Bank regarding the repayment of loan etc.The Maxis Bank did not release any payment to JCi.

12. JCi challenged the constitutional validity of Sec. 34 by way of the writ petition, being WP 999/2015 . The High Court of Nirdhan admitted the petition.
13. In the meanwhile, the Governor of the State of Nirdhan, on 20th December 2014 promulgated an ordinance which came into effect from 24th December 2014, which amended the Nirdhan Panchayati Raj Act , 1994 regarding the qualification for election as a panch or a member.
14. People's Union for Liberties & Democratic Reforms issued a public statement that the ordiance was replete with malice in law which promulgated the ordinance for 5 years instead of 6 months, and it is violative of the constitution since " We the people" does not , and cannot mean " We the literate people".
15. People's Union for Liberties & Democratic Reforms moved the High Court of Nirdhan on 29thDecember,2014 for an urgent listing and hearing, since the election notification was to be issued on 3rd January, 2015. The PPS to the Hon'ble Chief Justice informed the counsel that listing has been denied .
16. The People's Union for Liberties & Democratic Reforms moved the Hon'ble Apex Court under Art. 32 on 31.12.2014 through the "Vacation Officer". After the wait of 48 hours, the counsels for People's Union for Liberties & Democratic Reforms sought to escalate the matter .
17. People's Union for Liberties & Democratic Reforms filed a pro-bono petition WP (C) No. 1021/2015 in the High Court of Nirdhan challenging the vires of the ordinance .
18. The High Court of Nirdhan admitted the petition and given that important questions pertaining to the interpretation of constitution were involved , notices were issued to the ld. Attorney General as well as Republic of Gariba.

STATEMENT OF ISSUES

Regarding WP 999/ 2015 :

1. Whether Sec. 34 of the Arbitration and Conciliation Act , 1996 is Constitutional ?

2. Whether JCi is entitled to Bank Guarantee from Maxis Bank ?

Regarding WP 1021/2015 :

3. Whether the non- availability of a notified procedure and vacation bench is violative of Art. 21 of the Constitution of Republic of Gariba?

4. Whether the ordinance promulgated on 20th December,2014 is Constitutional ?

SUMMARY OF ARGUMENTS

1. **Sec. 34 of the Arbitration and Conciliation Act, 1996 is Constitutional.**

Sec. 34 of the Act, 1996 is constitutional as according to Sec. 34 (2)(b)(ii), the Arbitral award is in conflict with the public policy of India and should be set aside as the petitioner's works prejudiced the interest of public. So, the award made in favor of the petitioner is liable to be set aside under Sec. 34 of the Act. Thus, the application under Sec. 34 is maintainable.

2. **JCi is entitled to Bank Guarantee from Maxis Bank.**

The Maxis Bank has made strict compliance to the mandates of the Reserve bank of India and SC as well according to which it cannot enforce the award before disposal of the petition filed by the petitioners under sec. 34 of the Arbitration and Conciliation Act, 1996; which leads to court interference. That is why the petitioner is not entitled to the bank guarantee.

3. **The non- availability of a notified procedure and vacation bench is violative of Art. 21 of the Constitution of the Republic of Gariba.**

There is no fault on part of the respondent if the petition was filed by the petitioners during the annual winter vacations nor in the fact that once the election procedure starts, it cannot be stopped. However, the ordinance was promulgated by the Governor in good faith.

4. **The ordinance promulgated on 20th December, 2014 is Constitutional.**

The ordinance promulgated by the Governor is constitutional and not ultra-vires as the Governor under Art.243(k) read with Art. 213 have power to make laws regarding the elections of panchayats. Thus, no court can question the circumstances which led to take such action. Neither has it marginalized women and weaker sections in the elections.

ARGUMENTS ADVANCED

1. WHETHER SECTION 34 OF THE ARBITRATION AND CONCILATION ACT, 1996 IS CONSTITUTIONAL ?

[1.1] Sec. 34 of the Arbitration and Conciliation Act , 1996 is Constitutional:

Sec 34. states that : **Application for setting aside arbitral award —**

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation: —Without prejudice to the generality of sub-clause (ii) it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

Thus according to Sec. 34 (2)(b)(ii), the Arbitral award is in conflict with the public policy of India and hence should be set aside. Whatever would tend to abstract public justice or violate a statute, whatever is against good morals, is against public policy.[1]Public policy means the principles and standards regarded by the legislature or by the Court as being of fundamental concern to the State and the whole of the society.[2]

The enforcement of an award should be refused as being contrary to public policy if it is contrary to the fundamental policy of the Indian law , country interest and its sense of justice and

[1] H.P.SIDC v/s R.P. Verma , AIR 2003 NOC 253 (HP)

[2] Citing Black Law Dictionary

morality. [3] Such an award to a Company like JCi shall promote the fraud and corrupt practices of JCi. As mentioned in the factsheet, it is evident from certain press clippings of national dailies regarding an incident when in some of the structural designs submitted by highly qualified engineers of JCi , the head of JGPS had pointed out flaws and such flaws were admitted by the engineers of JCi later on . This act have taken lives of hundreds of villagers who would have died due to faulty designs of the bridges to be built**,** The SC expounded that the award could be set aside if it if contrary to the public policy of India or the interest of India or to justice or morality.[4]

[1.2] The application filed for setting aside the arbitral award under Sec. 34 is maintainable :

It is humbly submitted that as the petitioner's works were against public policy ; thus the award is liable to be set aside under Sec. 34 of the Act . The SC confirmed this power of Court to entertain the applications under Sec. 34 , while dealing with the case of **McDermott International Inc. v/s Burn Standards Co. Ltd. [5]** Thus, the application under Sec. 34 is maintainable. In the case of **M/S Punjab State Industrial Development Corporation Ltd. v/s Mr. Sunil K. Kansal[6] :** It was held that power of Court while entertaining an application under

[3]Rail India Technical and Economic Services Ltd. v/s Ravi Constructions ,(2003) 4 RAJ 394 (Kar) : AIR 2002 NOC 30

[4] Renu Sagar Power Co. Ltd. v/s General Electric Co. . (1994) Supp (1) SCC 64 ; Oil and Natural Gas Corporation v/s Saw Pipes (2003) 5 SCC 705 ; ONGC v/s Western Geo International Ltd. (2014) 9 SCC 263

[5] (2006) 11 SCC 181

[6] 2013 (1) CIVIL COURT CASES 284 (P &H) (DB)

Sec34. Of Act is akin to the appellant jurisdiction so as to find out whether the award is liable to be set aside on any one or more grounds specified in Sec. 34 of the Act.

In **Vijay Kumar v/s Bathinda Central Corporative Bank[7] :** Normally , the Scope of interference with respect to an award passed by an Arbitrator is very limited . The award can be set aside if it attracts any of the grounds enumerated in Sec. 34 of the Act. Similarly , In **Damodar Engg. And Construction Co. v/s Board of Trustees for the Port of Calcutta[8] ,** it was held by the Hon'ble Supereme Court that the aggrieved party may apply to the Court if there is a ground, for setting aside the award, but the Court cannot be called upon to decide the matter.

Therefore, the petition is maintainable.

2. Whether JCi is entitled to Bank guarantee from the Maxis Bank ?

[2.1] Strict compliance to the mandates of the Apex Court as well as RBI regarding Bank gurantee norms:

The Maxis Bank has complied strictly to the guarantee norms issued by the RBI in its Master Circular. [9]**Para No. 2.5. Payment of Invoked Guarantees**

The SC had observed **U.P. Co-operative Federation Private Ltd. v/s Singh Consultants and Engineers Private Ltd. (1988 IC SCC 174)** that the commitments of the banks must be honoured , free from the interference of Court. The relevant extract from the judgement of the SC is as under :

[7] 2013(4) ArbiLR 165: 2014 (1) CivCC 543 : 2014 (1) R.A.J. 579 :2013 (3) PLR 172 :2014 (1) L.A.R. 305 : 2013 (2) Law Herald 1732 : 2014 (1) R.C.R. (Civil) 87 (P&H)

[8] (1994) 1 SCC 370

[9] MASTER CIRCULAR : Guarantees and Co- acceptances

" We are, therefore, of the opinion that the correct position of law is that commitment of banks must be honoured free from interference by the Courts and it is only in exceptional cases, that is , to say , in case of fraud or any case where irretrievable injustice would be done if bank guarantee is allowed to be encashed , the court should interfere".

Thus, in the instant case, the Maxis bank can return the money pertaining to performance bank guarantee only after the disposal of petition made by JGPS u/s 34 of the Act of 1996 i.e. after the end of interference by the court .

[2.2]. JCi is not entitled to Bank guarantee :

The enforcement of Arbitral award in favour of JCi would not only amount to infringement of public policy but would also promote the defamatory acts of JCi. It is evident from the factsheet that the corporate headquarters of JCi issued a statement to the press stating that:"…..*the head of JGPS is an illiterate villager; his allegations arise out of his ignorance and naivety due to lack of formal education…".*[10]Such a statement is not only defamatory but immoral as well. Thus, a company like JCi is not entitled to the money pertaining to the performance bank guarantee.

3. WHETHER THE NON- AVAILABILITY OF A NOTIFIED PROCEDURE AND VACATION BENCH IS VIOLATIVE OF ART. 21 OF THE CONSTITUTION ?

[3.1] Once the election procedure starts, it cannot be stopped:

It is humbly submitted that once an election procedure gets started, it cannot be stopped. The Supreme Court held that the word 'election' in Article 329 (b) of the Constitution connotes the entire electoral process commencing with the issue of the notification calling the election and culminating in the declaration of result, and that the electoral process once started could not be

[10] Factsheet

interfered with at any intermediary stage by Courts.[11] An electoral process once started cannot be interfered or stopped in any manner. Court has no jurisdiction to handle such cases or interfere if election process has started.[12] Petitions in regards to objections can only be made prior to the Election Notification.[13]

[3.2] The Governor had no mala -fide intention:

It is submitted that the Governor had no mala-fide intention in promulgating the ordinance.

A Governor's ordinance cannot be regarded as mala-fide if there is no clear evidence of the Mala-fide intention,[14] **In Re K. Veerabhadrayya,[15]** in considering the power of the Governor to promulgate Ordinance under Section 88, Government of India Act, 1935:

"It is open to the Governor to prorogue the legislature at any time he pleases. It is a well-known fact that the Legislature, which is democratically constituted, is very slow to move in the matter of legislation, having regard to the rules of procedure laid down in that behalf, at any rate, when His Excellency the Governor has reasons to believe that immediate action is necessary, it will be more expedient to resort to the power of issuing an Ordinance under Sec. 88 rather than approach

[11] N. P. Ponnuswami Vs. The Returning Officer, 1 Namakkal Constituency (Supreme Court of India), Civil Appellate Jurisdiction) Case No. 351 of 1951$ (Decision Dated 21st January, 1952)

[12] As per the Code of Conducts issued by the Election Commission of India and supported by the Apex Court Guidelines;

[13] Neeraj Singh Thakur V. The State of Madhya Pradesh on January 19, 2015, Writ Petition Nos. 22/2015, 673/2015 & 816/2015, Election Commission Model Code of Conduct

[14] Vishwanath Agarwal vs State Of Uttar Pradesh, Lucknow, AIR 1956 All 557

[15] 1950 Mad 243 (AIR V 37) (F)

the Legislature for the necessary legislation. But as such immediate action is nowhere defined; there must be a clear indication to prove that His Excellency had no mala-fide intention."

It is true that there are also some authorities for the principle of law that the abuse of power is no exercise of the power. This was conceded by their Lordships in **Liversidge v. Anderson**[16], but in that case there should be definite evidence of mala fide. Simply because they had been passed when the Legislatures were not in session or because they might affect the rights of parties in a pending litigation would be no ground to hold that the Ordinance was a mala fide one. Apart from the fact that the circumstances in which an Ordinance is passed is not justiciable, we think that this Ordinance cannot be termed to be a mala fide one.[17] To state Mala-fide intention of His Excellency it is important to state that the Ordinance was an outcome of fraud, the only way in which the exercise of power by the Governor or President can be challenged is by establishing bad faith or mala-fide or corrupt motive. An ordinance can be challenged only when His Excellency had some personal Mala-fide intention.[18] In the instant case, the Governor acted in good faith in the interest of the varying needs of the public.

[3.3] No violation of Art. 21 of the Constitution :

In response to the allegation of the petitioner that they were denied the right to speedy trial, the honorable Supreme Court held that: No outer limit can be fixed for the speedy trial, the Court moreover stated that there cannot be any maximum period for speedy trial by which court has to

[16] 1942 AC 206

[17] Prem Narain Tandon vs State Of Uttar Pradesh And Anr. on 3 August,1959, AIR 1960 All 205

[18] Fathima Beebi V. M.K. Ravindranathan LAWS(ker)-1974-12-14, High Court of Kerela

dispose the case. The Court give illustration of such causes over crowded court dockets, absence of presiding officers, strike by lawyers, delay by superior forum in notifying the designated judge. [19]

In the area of speedy trials, **Antulay**[20] is a case of cardinal importance. Holding that the fair, just and reasonable procedure implicit in Art. 21 created a right for the accused to be tried speedily, the court held that the right was available to accused at all stages, viz, investigation, inquiry, trial, appeal, revision and retrial. But the right could be denied on the ground that there was no undue delay. The court explained undue delay in following words:

> *While determining whether undue delay has occurred (resulting in violation of Right to speedy trial) one must have regard to all the attendant circumstances including nature of offence, number of accused and witnesses, the workload of the court concerned, vacations of the court, prevailing local conditions and so on - what is called the systemic delays. If due to systematic delays, due has occurred there cannot be any violation of Right to Speedy Trial.*[21]

Hence, there was no violation of Art. 21 of the Constitution.

4. .WHETHER THE ORDINANCE PROMULGATED ON 20TH DEC, 2014 IS CONSTITUTIONAL ?

[4.1] The ordinance is constitutional and not ultra vires:

It is submitted that the Governor acted intra-vires while promulgating the ordinance. The Apex Court relied upon the judgment stated by the honorable Privy Council that, "An ordinance may amend or repeal not only another ordinance but also any law passed by the legislature itself

[19] Ranjan Dwivedi V. C.B.I through Director General, A.I.R 2012 SC, 3217

[20]. *A.R. Antulay* v *R.S. Nayak* (1992) 1 SCC 225.

[21]. Id at 271.

subject to limitation as to its own duration.[22] It was held that the duration of ordinance itself is limited to the period laid down in Article 213 (2) (a) and there is nothing to prevent an ordinance to prescribe a sentence[23] or to make other provision such as creation of an office[24] or the rights created by the Ordinance, [25] which will endure even after the expiry of the ordinance.

An ordinance would be invalid for contravention of the constitutional limitations to which the State Legislature is subject e.g. Articles 13, 14, 254.[26] In short, when the competence of the President (Art. 123) or of the Governor (Art. 213) is questioned, what the court has to determine is whether Parliament or the State Legislature (as the case may be) was competent to make the impugned law. If yes, the President and Governor can promulgate the same law through ordinance.[27] In **Krishan Kumar Singh V. State of Bihar[28]** , an Ordinance has only a temporary life and it is not a permanent law like an act, ordinance when temporary law cease to operate or expires, Section 6 of General Clauses Act, 1897 can have no application because in term of Section 6 it is applicable only to repeals. However if any action is taken during the subsistence of such a law or ordinance has a permanent effect, that permanent effect may not be wiped out when ordinance or temporary law ceases to operate. So, the permanent effect of ordinance may

[22] Vide Emperor V. Benoarilal (1945) 49 CWN 174 (PC); CF Jnan Prasanna V. Province of West Bengal (1948) 53 CWN 27 (71) (FB), Arun Shankar V. State of Tamil Nadu (2001) 1 MLJ 215.

[23] Joginder V. Superintendent AIR 1933 Cal 280, Jatindra V. Province of Bihar AIR 1949 FC 175

[24] Haran V. State of W.B., AIR 1952 Cal, 907

[25] State of Orrisa V. Bhupendra, AIR 1952 SC, 945

[26] Bhupendra V. State of Orissa, AIR 1960 Ori 46(54)

[27] Sat Pal V. Lt. Governor, AIR 1979 SC, 1550 (Parah 3)

[28] (1998) 5 SCC, 643

continue. This is an exception to general rule that ordinance ceases to have effect even when it lapse or comes to an end.

In **T. Venkata Reddy V. State of Andhra Pradesh**[29] , the Supreme Court held that when an ordinance ceased to operate as a result of state legislature, the ordinance would not become void ab-initio and there would be no revival of position as it stood prior to the promulgation of ordinance. Action taken under the ordinance would remain effective until passing of an act with retrospective effect restoring the earlier position. In cases such as *Javed vs State of Haryana*, which – in treating the right to vote and run for office as purely statutory rights – had rejected challenges to similar restrictions. We had also argued that the last decade has seen a shift in the Supreme Court's understanding of the role of elections in a democracy, starting with *Union of India vs Association for Democratic Reforms* (2002 SC), in which the Court held that the right to vote, while not a fundamental right, was nonetheless a 'constitutional right', and through *PUCL vs Union of India* (2003 SC) to *PUCL vs Union of India* (the NOTA case, 2013 SC), where the Court held that the *act* of voting is an exercise of Article 19(1)(a) freedoms. In conclusion, a legislative enactment that goes beyond simply regulating the modalities of voting (and therefore affects the statutory 'right to vote') and actually *disenfranchises* sections of the population (thereby affecting the constitutional 'freedom of voting') must be subjected to more rigorous scrutiny than a standard Article 14-rationality review (as in *Javed*). The logic of voting applies equally to the logic of running for office.

[29] AIR 1985 SC 724

The right/freedom to vote, and the right/freedom to stand for office are conceptually inseparable, as they form equally integral parts of the democratic process. Consequently, the same logic applies to the latter. Admittedly, Article 84of the Constitution (dealing with the legislature) requires candidates "possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament", thus expressly envisaging the possibility that Parliament may pass a law limiting the entitlement to participate in the democratic process on the basis of certain qualifications. Nonetheless, the freedom-of-voting decisions of the Supreme Court indicate that legislation that directly *disenfranchises* persons (by 'disenfranchise', I mean both the right to vote and the right to stand for office) ought to be subjected to more rigorous scrutiny than a 'rational review' standard. In 2013, this view was affirmed by the famous "NOTA judgment" of the Supreme Court. The directions to include a "None of the Above" option in the EVMs was grounded in the reasoning that voting – as an integral part of the democratic process – is protected expression under Article 19(1)(a).

Now, what does it mean to say that the "right" to vote is statutory, but the "freedom" to vote is constitutional? When examining the *NOTA* judgment, I've suggested that the only way of reconciling the two is as follows: the legislature is permitted and entitled to regulate the election *process* (which it does through the Representation of Peoples Act, and other similar statutes). The legislature can prescribe the modalities of how elections are to be carried out, and thus it can (within reason) determine *how* the freedom to vote is to be exercised. However, if the legislature makes a law that regulates or restricts not *how* the electoral process is to be carried out, but *who* is entitled to participate in it, then such a law must be subjected to rigorous scrutiny by the Courts – because that goes to the very heart of the constitutional freedom itself.

[4.2] No Court can question the circumstances which exist to take an immediate action:

The Constitution of the Republic of Gariba permits under Art. 243K (4) that:

"Subject to the provisions of this Constitution, the Legislature of a state may, by law, make provision with respect to all the matters relating to, or in connections with, elections to Panchayats." And Art. 213(2) states that: An ordinance promulgated under this article shall have the same force and effect as an act of legislature of the State assented to by the Governor. Thus, the ordinance is constitutional.

The Government of India reacted against the suggestion of the minority in Cooper's cases by inserting CL. (4) in Article 123 (as well as Article 213), by enacting the 38th Amendment Act, 1975, to expressly provide that the 'satisfaction' of the President (or of the Governor), under Cl. (1), that circumstances exist which render it necessary to take immediate steps, "shall not be questioned in any court on any ground".[30] Once the conditions set out in Article 213 for exercising the power of the Governor to promulgate an ordinance are satisfied, then the ordinance cannot be challenged on the ground that there was no urgency or that there was no satisfaction by the Governor as to the circumstances which warranted him to take immediate action.[31]

[4.3] Ordinance does not marginalize women and weaker sections in the election:

[30] Rustom Cavasjee Cooper V. Union of India AIR 1970 SC, 564

[31] C. Vadiappan And Ors. vs The State Of Tamil Nadu, (1984) 1 MLJ 96

By promulgating such an ordinance, the Governor has made a reasonable classification which is permitted under Art. 14 of the Constitution. The varying needs of different classes of persons often require separate treatment.[32] From the very nature of society there should be different laws in different places and the Legislature controls the policy and enacts laws in the best interest of the safety and security of the State. The classification, however, must not be 'arbitrary, artificial or evasive' but must be based on some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislation.[33] Not only this, the rule of natural justice can be excluded in case of legislative action plenary or subordinate.[34]

In this way the ordinance does not marginalize women and weaker sections in the elections due to the prevailing skewed literacy standards.

[32] Chiranjit Lal V. Union of India, AIR 1951 SC, 41, as per Das, J.; State of Bombay V. F.N. Balsara, AIR 1951 SC 318, per Fazal Ali, J.; Kedar Nath V. State of West Bengal, AIR 1953 SC 404

[33] R.K. Garg V. Union of India, AIR 1981 SC 2138, Re-Special Court Bill, AIR 1979 SC 478; Air India V. Nargesh Neerza, AIR 1981 SC 1829; R.C. Cooper V. Union of India, AIR 1970 SC 564; Ameronisa V. Mahboob, AIR 1953 SC 91.

[34] Madras City Wine Merchants Assn. V. State of T.N. [(1994)5 SCC 509]

PRAYER

Wherefore in light of the facts stated , issues raised, arguments advanced and authorities cited, it is humbly prayed that this Hon'ble Court be pleased to adjudge and declare that:

1. Sec. 34 of the Arbitration and Conciliation Act , 1996 is Constitutional.
2. JCi is not entitled to Bank guarantee from Maxis Bank.
3. The ordinance promulgated by the Governor of the State of Nirdhan on 20th December 2014 is Constitutional.
4. The non- availability of a notified procedure and vacation bench is not voilative of Art. 21 of the Constitution of the Republic of Gariba.

And to pass any other order as the Hon'ble Court may deem fit in the interests of justice, equity and good conscience and for this act of kindness , the counsel shall always pray.

Counsel for the Respondents