TC-J

5th NLIU Justice R.K. Tankha Memorial Moot Court Competition 2015

IN THE HON'BLE HIGH COURT OF NIRDHAN

IN WP NOS: 999/2015 and 1021/2015

IN THE MATTER OF

People's Union for Liberties & Democratic Reforms and JCi ...PETITIONER

V.

Republic of Gariba and Maxis Bank ...RESPONDENT

MEMORANDUM ON BEHALF OF THE RESPONDENT

TABLE OF CONTENTS

INDEX OF AUTHORITIES

CASES CITED

S.NO	CASES CITED	CITATION
1.	National Aluminium Co. Ltd. v. Pressteel& Fabrications (P) Ltd	2004 (1) SCC 540
2.	Dermott International Inc. v. Burn Standard Co. Ltd	2006 (11) SCC 181
3.	Union of India v. Modern Laminators	2008 Arb. LR 489 (Del.)
4.	GayatriBalaswamy Vs. ISG Novasoft Technologies Ltd	2014(6)CTC582
5.	Bharat Heavy Electricals Ltd. v. C.N. Garg	2001 (57) DRJ 154 (DB)
6.	DharamPrakashvs Union Of India	AIR 2007 DEL 155
7.	TPI Ltd v. Union Of India	(2001) 2 AD (Del) 21
8.	Union of India v. Harman Singh	1993 SCR (1) 862
9.	Javed v State of Haryana	AIR 2003 SC 3057
10.	Smt. Indira Nehru Gandhi v.RajNarain	AIR 1975 SC 2299
11.	BommegowdaVs.State of Karnataka	ILR 1992 Kar 3148
12.	Maharao Sahib ShribhimSinghji v. Union of India	AIR 1981 SC 234
13.	C. Narayanaswamy v. State	AIR 1992 Kar 28
14.	T.K.Kodandaram v. The Election Commission of India	AIR 2012 SC 2191
15.	R.K. Garg and Ors.Vs.Union of India (UOI) and Ors[1]	AIR1981SC2138
16.	DalmiaInd Ltd v. State of U.P.	AIR 1994 SC 2117
17.	K. Nagraj v. State of A.P	AIR 1985 SC 551
18.	Hurtade v. California	110 US 516

[1]AIR1981SC2138

STATUTES REFERRED

S.NO	NAME
1.	The Constitution Of India
2.	The Arbitration and Conciliation Act 1996
3.	Representation of People Act 1951

JOURNALS REFEERED

S.NO	NAME
1.	All India Reporter
2.	Supreme Court Cases
3.	Pakistan Law Decisions
4.	Current Tamil Nadu Cases

WEBSITES REFERRED

S.NO	NAME
1.	Wikipedia
2.	Manupatra
3.	Indian Kanoon
4.	SCC Online
5.	Election Commission Of India

STATEMENT OF JURISDICTION

The Hon'ble High Court of Nirdhan is empowered to hear this case by the virtue of Art.226 of the Constitution of India.

STATEMENTS OF FACTS

JCi entered into an agreement with JGPS on 21.9.2011 for 115 kms of road in Nirdhan. Certain issues arose due to which JGPS terminated the contract on 21.9.2013. In the contract, there was an arbitration clause. JCi sent a legal notice on 11.12.2014 to invoke the arbitration and also asked for 'termination payment'.JGPS invoked the performance bank guarantee on 12.12.2014 by sending an email after business hours to the Maxis bank. On 13.12.14 JCi approached the High Court ofNirdhan, and the petition was directed to be listed at 10.30 am on 15.12.14.On 15.12.2014, the High Court granted "an ad-interim ex-parte stay on invocation of bank guarantee if not already encashed" In in the meantime, at 10.00 am, Maxis bank had acted on the email of JGPS and encashed the bank guarantee. At 10.01 am, there was a massive security breach in the systems of the Maxis Bank. Therefore, the Bank guarantee still remained in the account of JCi.The High Court directed the parties to seek interim remedies from the ld. Arbitrators, under the Act of 1996. An award was passed on 21.1.2015 in favour of JCi and held it entitled to the performance bank guarantee which was challenged by JGPS in the High Court of Nirdhan. Then JCi challenged the constitutional validity of Sec. 34, being WP 999/2015. The High Court of Nirdhan admitted the petition.In the meantime, the Governor of Nirdhan promulgated an Ordinance on 20th Dec 2014,which came into effect from 24th Dec 2014 which amended the NirdhanPanchayati Raj Act, 1994, which added the Qualifications necessary for election, being class X for member of a ZilaParishad or a PanchyatSamiti, class V in the case of a Sarpanch of a Panchayat in a scheduled area and class VIII in case of a Sarpanch of a Panchayat other than in a Scheduled Area.PULDR moved the High Court of Nirdhan on 29th Dec 2014 for an urgent listing and hearing, as election notification was to be issued on 3rd Jan, 2015. No listing was granted. PULDR moved the Apex Court under Art. 32 on 31.1.2015 through the "Vacation Officer". No listing was granted till the issuance of election notification. On listing, the matter was to be heard by the High Court of Nirdhan.As a result, PULDR filed a pro-bono petition WP (C) No. 1021/2015, seeking to challenge the vires of the Ordinance in the High Court of Nirdhan.The High Court of Nirdhan admitted the petition. The two matters. (i.e. WP 999/2015 and WP 1021/2015) are to be listed together for final hearing.

ISSUES RAISED

ISSUE 1: Whether the Section 34 of the Act is Constitutional?

ISSUE 2: Whether the Ordinance promulgated by the Governor of Nirdhan is Constitutional?

SUMMARY OF ARGUMENTS

ISSUE 1: Whether the Section 34 of the Act is Constitutional?

The section 34 is recourse against the arbitral award. If this section is held unconstitutional then there will be no recourse against the arbitral award. Then the arbitral award will be final and binding and the award can be called as "arbitrary award" and not arbitral award. Therefore the section 34 of the act is unconstitutional.

ISSUE 2: Whether the Ordinance promulgated by the Governor of Nirdhan is Constitutional?

The ordinance was promulgated to encourage education in the society with a good motive for the welfare of the people of Nirdhan. The promulgation of an ordinance by the governor of Nirdhan at the grass-root level was to set a role model in the union. Under Art. 213 of the Constituition of India the Governor has the power to promulgate an ordinance. Under Art.243G the State Legislature has the power to make laws relating to panchayats . Therefore, the ordinance promulgated by the Governor of Nirdhan is constitutionally valid

ARGUMENTS ADVANCED

ISSUE 1: Whether the Section 34 of the Act is Constitutional?

The counsel submits that the Supreme Court, in the case **National Aluminium**[2], that "…the mandatory language of section 34 (sec. 36) of the 1996 act, that an award, when challenged under sec.,34 within the time stipulated therein, becomes unexecutable. There is no discreation left with the court to pass any interlocutory order in regard to the said award except to adjudicate on the correctness of the claim read by applicant therein. Therefore, that being the legislative intent, any direction from us contrary to that, also becomes impermissiable." The Counsel submits that the Supreme Court had refused to take any steps regarding the automatic stay under section 34.

In **McDermott International Inc. v. Burn StandardCo. Ltd**.[3], the Supreme Court observed in paragraph 52 as follows:

"The 1996 Act makes provision for the supervisory role of Courts, for the review of the arbitral award only to ensure fairness. Intervention of the Court is envisaged in few circumstances only like in case of fraud or bias by the arbitrators, violation of natural justice etc. The Court cannot correct errors of arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So the scheme of the provision aims at keeping the supervisory role of the Court at minimum level and this can be justified as the parties to the agreement make a conscious decision to exclude the Court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it."

In **Union of India v. Modern Laminators**[4] , a learned Judge of the Delhi High Court read into Section 34 of the 1996 Act, the relevant portion reads as :"In my opinion, the power

[2]National Aluminium Co. Ltd. v. Pressteel& Fabrications (P) Ltd. 2004 (1) SCC 540

[3]2006 (11) SCC 181

given to the court to set aside the award,necessarily includes a power to modify the award, notwithstanding absence of express power to modify the award, as under the 1940 Act... If the powers of the court under S. 34 are restricted to not include power to modify, even where the court without any elaborate enquiry and on the material already before the arbitrator finds that the list should be finally settled with such modification and if the courts are compelled to only set aside the award and to relegate the parties to second round of arbitration or to pursue other civil remedies, we would not be servicing the purpose of expeditious/speedy disposal of lis and would be making arbitration as a form of alternation dispute resolution more cumbersome than the traditional judicial process."

The International Arbitration Act, 1974, was amended in 2010, with the object of giving effect to UNCITRAL Model Law. Part VII of the Act provides for "recourse against the award",the very same expression used in Section 34 of the Indian enactment.

In **GayatriBalaswamy Vs. ISG Novasoft Technologies Ltd.[5],** Madras High Court said the expression "recourse to a Court against an arbitral award" appearing in Section 34(1) cannot be construed to mean only a right to seek the setting aside of an award. Recourse against an arbitral award could be either for setting aside or for modifying or for enhancing or for varying or for revising an award. The expression "application for setting aside such an award" appearing in Section 34(2) and (3) merely prescribes the form, in which a person can seek recourse against an arbitral award. The form, in which an application has to be made, cannot curtail the substantial right conferred by the statute. In other words, the right to have recourse to a Court, is a substantial right and that right is not liable to be curtailed, by the form in which the right has to be enforced or exercised. Hence, in my considered view, the power under Section 34(1) includes, within its ambit, the power to modify, vary or

[4]2008 Arb. LR 489 (Del.)

[5]2014(6)CTC582

revise.Thesame conclusion can be arrived at, through a different route also. It is well settled that in a petition under Section 34, a Court does not exercise the powers of an Appellate Court. The jurisdiction vested under Section 34 is not an appellate jurisdiction. The Act is enacted mainly in the pattern of the Modern Law adopted by the United Nations Commission on International Trade law. The object and the reasons of the Act clearly indicate that the intention of the Act is to lay emphasis on speedy disposal of arbitration proceedings. The Act also seeks to minimise judicial intervention in the progress and completion of arbitration proceedings, which is crystal clear from a bare reading of Section 5 of the Act which provides that no judicial authority would intervene except where so provided in the Act[6].

In **Bharat Heavy Electricals Ltd. v. C.N. Garg**[7], the Delhi High Court held Section 13 as a constitutional one.In the said petition also two questions were raised for consideration of the Division Bench, one of which pertained to the constitutional validity of the provisions of Sub-sections (3) and (4) of Section A perusal of the judgment would indicate that challenge was made regarding the vires of the aforesaid provisions of Sub-sections (3) and (4) of Section 13 on the ground that there is no provision in the Act for removal of an Arbitrator by the court, though such a provision was contained in Section 11 of the Arbitration Act, 1940 and that no remedy is available to the aggrieved party under the Act for challenging the award on the ground of bias and prejudice on the part of the Arbitrator. The court concluded that there is no merit in the contention that Section 13(3) and 13(4) are ultra vires the Constitution of India on account of there being no provision in the Act to challenge an award

[6]Section 5.Extent of judicial intervention.- Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.

[7] 2001 (57) DRJ 154 (DB)

on the ground of bias and prejudice on the part of the Arbitrator. It was further held that going on with the ethos of the new Act of speedy progress of arbitration proceedings without judicial interference coupled with the fact that an aggrieved party is not without remedy, it cannot be said that the absence of a provision regarding removal of an Arbitrator renders the relevant provisions of the statute ultra vires the Constitution. It was conclusively laid down in the said decision of the Division Bench that absence of a provision for removal of an Arbitrator does not render the relevant statutory provision invalid or ultra vires the Constitution of India.

In **DharamPrakashvs Union Of India**[8], the Delhi High Court rejected the contention of the learned Counsel for the petitioner that the provisions of Section 13(3), (4) and (5) and Section 34 of the Act are ultra vires the Constitution of India. And said, It is clear and apparent that all the aforesaid provisions are to be harmoniously read and on harmonious reading of the said provisions, it is established that the said provisions are not ultra vires the Constitution of India, as alleged.

In **Union of India v. Harman Singh**[9], it was observed that it is the duty of the courts to promote intention of the Legislature by an intelligible and harmonious interpretation of the provisions rather than frustrate their operation. Interpretation has to be one that advances the intention of the Legislature and not one which frustrates it.

By applying the Doctrine of Harmonious Construction, the Delhi High Court said Sections 34 and 13 of the Arbitration and Conciliation Act, 1996 have to be read in a harmonious manner to give full effect to both provisions with neither of them becoming redundant and meaningless. A harmonious interpretation will make the two provisions more meaningful.

[8] AIR 2007 DELHI 155

[9] 1993 SCR (1) 862

Harmonious interpretation is necessary to "iron out the creases". Viewed in this manner there is no conflict in the two provisions.

And the court held Consequently, there is no merit in this writ petition, which stands dismissed, but we leave the parties to bear their own costs[10].

Normally in any judicial system a first appeal against a Court Judgment is a right of the party and hence the first appellate court needs to once again look into the merits of the case and pass a reasoned judgment. This is because the parties never have the right to choose their judge or their qualification or knowledge on particular filed of business. But in the arbitration cases the parties choose their arbitrators, knowledge and qualification and hence there need not be another appreciation of merits of the case. That is why the UNICITRAL model law as well as Indian Arbitration & Conciliation Act, 1996 restrict the scope of the appeal against an arbitral award. The objective of such a restriction is to avoid wastage of time by once again looking into the merits of the case and re-appreciate the evidence and to ensure finality of an arbitral award.

The S.34 of the Arbitration and Conciliation Act, 1996 was challenged by way of a Writ Petition filed under Article 22d of the Constitution of India in **TPI Ltd VS Union of India[11]**. The main ground of challenge was that a right to challenge an arbitral award on merits should not be denied to parties and in the absence of such a provision, Section 34 of the Arbitration and Conciliation Act, 1996 shall be unconstitutional. But the High Court dismissed the above said Writ Petition with an observation that arbitration is an alternate forum for redressal of disputes, and is selected by their own free will and they agree to the arbitrators decision by means of mutual agreement or contract, which gives a go by to the normal judicial forum

[10]DharamPrakashvs Union Of India AIR 2007 DELHI 155

[11](2001) 2 AD (Del) 21

otherwise available to the parties. That is because there is no compulsion or imposition by any statute compelling the parties to resort to arbitration if a dispute arises. That is also because the legislature has the power to specify the grounds on which the award can be challenged. Hence it was held that restrictions incorporated into S.34 of the Arbitration and conciliation Act, 1996 are constitutional and valid. Hence arbitral awards cannot be interfered by the courts on merits and their jurisdiction is confined to S.34.

ISSUE 2: Whether the Ordinance promulgated by the Governor of Nirdhan is Constitutional?

The proponents of this ordinance believe that since PRI representatives are the executing agency for village level rural development works, the minimum qualification is required so that they can curb large scale bungling, embezzlements of funds or other related corruption and due to the lack of minimum qualification such things go unabated as they are not well versed with the rules and regulations.

Neither the Indian Constitution, nor the Representation of the People Act has any mention of educational criteria for the candidates contesting elections. One of the reasons why the Constitution makers didn't specify any minimum educational qualification could be the fact that India's literacy rate was only 12 percent at the time of independence. In such circumstances, demanding a minimum academic qualification would have deprived many able leaders from joining politics.

After 66 years of independence there urges a strong need to implement or amend the constitution in such a manner that the representative of the people should at least have some minimum educational qualification.[12]

[12] www.elections.in/politicalcorner.htm Accessed on 13-02-15

"The Center is spending crores of money on panchayats and this goes directly to the sarpanch. There are thousands of pending cases of fund embezzlement against these elected representatives in the state and the standard excuse is that 'I am illiterate and put my thumb impression on whatever papers were given to me'. Which poses a strong question on the minimum qualification required which should be mandatory.

Earlier the audits were managed by the state government so the accountability was not with the sarpanch but now with funds to the tune of crores coming in for projects like MNREGA and others, there has to be better accountability. Let us take this decision positively as it will end up encouraging education in rural areas. We are confident this will lead to better literacy rate in the state and as it is we have a 50 percent reservation for women." Bhatt added that the two child norm (those with more than two children will be disqualified from contesting the panchayat polls) has helped in checking population growth and similarly the education eligibility will have a positive impact. "Through this experiment we will be able to address the literacy issue among elected representatives in a bottom upwards approach. If we cultivate educated sarpanches, we will eventually have educated MLAs and MPs,"

In the case **Javedv State of Haryana**[13]: A provision making a person having more than two living children ineligible to contest for the post of Panch or Sarpanch has been held to be Constitutional and in keeping with the objective of popularizing socio-economic welfare and healthcare of the masses.

In another case **Smt. Indira Nehru Gandhi v.RajNarain**[14] the Supreme Court said that the 'preamble' though a part of the Constitution, is neither a source of power nor even a limitation on that power, At para 666, the Court pointed out the utilitarian aspect of

[13]AIR 2003 SC 3057

[14] AIR 1975 SC 2299

thepreamblemaking it clear that the preamble was not something which was too holy to suffer the human touch.

In **BommegowdaVs.State of Karnataka**[15],the Preamble to the Constitution sets out the goals and undoubtedly one of the cherished goals enjoined by the Preamble is securing and preserving of democracy, the validity of a law however cannot depend upon the extent it accords with or detracts from the Preamble.

The basic structure of the Constitution does not provide a distinct ground to examine the validity or otherwise of a statute, the validity or otherwise of an ordinary statute can only be examined under two circumstances viz., (i) Whether it is within the competence of the Legislature that enacted it; (ii) Whether it offended any of the Fundamental Rights, Otherwise there can be no challenge much less can there be a challenge founded on the alleged violation of the basic structure of the Constitution.

In **Maharao Sahib ShribhimSinghji v. Union of India**[16],the Supreme Court said that the question of basic structure being breached cannot arise when we examine the vires of an ordinary legislation as distinguished from a constitutional amendment.

In **Smt Indira Nehru Gandhi v. Raj Narain**[17], the Supreme Court said "The theory of basic structure or basic features is an exercise in imponderables. Basic structure or basic features are indefinable. The legislative entries are the fields of legislation. The pith and substance doctrine has been applied in order to find out legislative competency and

[15]ILR 1992 Kar 3148

[16]AIR 1981 SC 234

[17]AIR 1975 SC 2299

eliminate encroachment on legislative entries. If the theory of basic features will be applied to legislative measures it will denude Parliament and State Legislatures of the power of legislation and deprive them of laying down legislative policies. This will be encroachment on the separation of powers."

That it is not open for anybody to question the timing of any enactment is the principle laid down by High Court of Karnataka in **C. Narayanaswamy v. State**[18] Speaking for the Bench ShivashankarBhat J., brushed aside an argument based on the propriety of the timing of the law enacted by the Legislature. His Lordship observed at para 18:

"Courts cannot examine the propriety of the timing of a law enacted by the legislature; it is for the legislature to choose the appropriate time to enact a law; having enacted the law the legislature may entrust the power to select the point of time from which the law should be enforced. In such a situation, no Court can examine as to whether the legislature was justified in enacting the law at a particular point of time; in other words, the legislature is the sole judge to be satisfied of the circumstances for enacting the law. This exclusiveness in arriving at its own satisfaction, by the Legislature has been recognised as available to the Governor also, while promulgating the ordinance."

In T**.K.Kodandaram v. The Election Commission of India**,[19],the Supreme Court held that right to contest an election or to vote at any election is neither a fundamental right nor a common law right.

To make a beginning, the reforms may be introduced at the grass-root level so as to spiral up or may be introduced at the top so as to percolate down. Panchayats are grass-root level

[18]AIR 1992 Kar 28

[19]AIR 2012 SC 2191

institutions of local self-governance. They have a wider base. There is nothing wrong in promulgating an Ordinance and putting a minimum educational qualification in Panchayats. It was promulgated only to promote and encourage education for the welfare of the society at large which will go a long way in future thereby contribute to the development of the nation which in its turn would benefit the entire citizens.

No fault can be found with the State of Nirdhan having enacted the legislation. It is for others to emulate. We are clearly of the opinion that the impugned provision is neither arbitrary nor unreasonable nor discriminatory.

None of the petitioners has disputed the legislative competence of the State of Haryana to enact the legislation. Incidentally, it may be stated that Seventh Schedule, List II - State List, Entry 5 speaks of 'Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration'.

In **R.K. Garg and Ors.Vs.Union of India (UOI) and Ors**[20], while considering the constitutional validity of a statute said to be violative of Article 14, it is necessary to bear in mind certain well established principles which have been evolved by the courts as rules of guidance in discharge of its constitutional function of judicial review. The first rule is that there is always a presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. This rule is based on the assumption, judicially recognised and accepted, that the legislature understands and correctly appreciates the needs of its own people, its laws are directed to problems made manifest by experience and its discrimination are based on adequate grounds. The presumption of constitutionality is indeed so strong

[20]AIR1981SC2138

that in order to sustain it, the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation.

In another case at hand**Dalmia Industries Ltd. v. State of U.P**[21], the U.P.Government promulgated an ordinance acquiring 49% share of Dalmia Industries in the U.P. State Cement Corporation, a govt. undertaking. The validity of the Ordinance was challenged but the Supreme Court rejected all the contentions and ruled that the ordinance was made in public interest. The acquisition of shares of the Dalmia in the govt. Company was in public interest. The ordinance was not only in public interest and for public purpose but also was just and fair.

Under Article 243G[22] of the Constitution the Legislature of a State has been vested with the authority to make law endowing the Panchayats with such powers and authority which may be necessary to enable the Gram Panchayat to function as institutions of self-Government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein.

[21]AIR 1994 SC 2117

[22]243G. Powers, authority and responsibilities of Panchayats Subject to the provisions of this Constitution the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to

(a) the preparation of plans for economic development and social justice;
(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule

In the case of **K. Nagraj v. State of A.P.**[23], the Supreme Court in paragraph 31 has observed as follows (page 565) :

"It is impossible to accept the submission that the Ordinance can be invalidated on the ground of non-application of mind. The power to issue an Ordinance is not an executive power but is the power of the executive to legislate. The power of the Government to promulgate an Ordinance is contained in Article 213, which occurs in Chapter IV of Part VI of the Constitution. The heading of that Chapter is 'Legislative power of the Governor'. This power is plenary within its field like the power of the State Legislature to pass laws and there are no limitations upon that power except those to which the legislative power of the State Legislature is subject. Therefore, though an Ordinance can be invalidated for contravention of the constitutional limitations which exists upon the power of the State Legislature to pass laws it cannot be declared invalid for the reason of non-application of mind, any more than any other law can be. An executive act is liable to be struck down on the ground of non-application of mind. Not the act of a Legislature."

To make a beginning, the reforms may be introduced at the grass-root level so as to spiral up or may be introduced at the top so as to percolate down. Panchayats are grass-root level institutions of local self-governance. They have a wider base. There is nothing wrong in promulgating an Ordinance and putting a minimum educational qualification in Panchayats. It was promulgated only to promote and encourage education for the welfare of the society at large which will go a long way in future thereby contribute to the development of the nation which in its turn would benefit the entire citizens. No fault can be found with the State of Nirdhan having enacted the legislation. It is for others to emulate. We are clearly of the opinion that the impugned provision is neither arbitrary nor unreasonable nor discriminatory.

[23] AIR 1985 SC 551

None of the petitioners has disputed the legislative competence of the State of Haryana to enact the legislation. Incidentally, it may be stated that Seventh Schedule, List II - State List, Entry 5 speaks of 'Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration'.

'While the language of the Constitution does not change, the changing circumstances of a progressive society for which it was designed yield a new and fuller import to its meaning'.[24]

The counsel submits that the minimum educational qualification was the need of the hour, inasmuch as on account of low literacy rate it was a step to encourage people to acquire higher educational qualifications. Knowledge and wisdom is not subject to the certificates and degrees; it is a God-gifted virtue and there are numerous examples in the world and around us that even illiterate or semi-illiterate people have sea deep level of knowledge on account of their experience, inborn talent, deep non-academic studies etc., and in some cases informally educated or non-educated people have proved better than formally or well educated persons, but these are exceptions. Similarly, there are people who are degreeholdersand highly educated but proved failure and in some cases are parasites but those are also exceptions. Non-educated but knowledgeable people can guide, educate, train and transmit their wisdom and experience to the educated young generations who have to take over from them, and overtaking is a natural process for which one should be voluntarily prepared and accept the hard facts of the life. Service for the nation can be rendered even without being a member of the Assembly.

[24]Hurtade v. California-110 US 516

PRAYER

In light of the issues raised, arguments advanced and authorities cited it is most humbly and respectfully submitted that this Hon'ble Court may adjudge and declare that :

1. Sec. 34 of the Act of 1996 is constitutionally valid.
2. Ordinance which amended the NirdhanPanchayati Raj Act, 1994 is valid..

Or grant other such relief as the court may deem fit in the light of justice, equity and good conscience.

AND FOR THIS ACT OF KINDNESS THE RESPONDENT SHALL DUTY BOUND EVER PRAY.

COUNSELS FOR THE RESPONDENT