
**IN THE
HON’BLE HIGH COURT OF NIRDHAN**

IN THE MATTERS OF:

PEOPLE’S UNION FOR LIBERTIESS & DEMOCRATIC REFORMS.....PETITIONER 1

v.

REPUBLIC OF GARIBA.....RESPONDENT 1

AND

JEOPARDY CONTRACTS INC.....PETITIONER 2

v.

MAXIS BANK.....RESPONDENT 2

ON SUBMISSION TO THE HONOURABLE HIGH COURT OF NIRDHAN

**MOST RESPECTFULLY SUBMITTED
COUNSEL FOR PETITIONER**

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STATEMENT OF JURISDICTION

The Petitioners 1 and 2 approach the Hon'ble High Court of Nirdhan under Article 226 of the Constitution of Gariba.

STATEMENT OF FACTS

1. Jeopardy Contracts Inc. (Hereafter referred to as “JCI”) contracted with Jodhpur Gaon Panchayat Samiti (Hereafter referred to as “JGPS”) on 21.9.2011 for the construction of roads in Nirdhan. Disputes arose between the parties leading to the termination of the contract on 21.9.2013.
2. JCI sent a legal notice on 11.12.2014 for invoking arbitration in accordance with the contractual clause.
3. The arbitration culminated into an award dated 21.1.2015 in favor of JCI, which entitled JCI to the money under the performance bank guarantee.
4. On 24.1.2015, JCI wrote to Maxis Bank with a copy of the award, to return the money pertaining to the performance bank guarantee, with the interest accumulated thereon, which was thrice the principal.
5. Meanwhile JGPS filed a petition under Sec. 34 of the Act of 1996, before the High Court of Nirdhan, on 25.1.2015.
6. On 27.1.2015, Maxis Bank informed JCI that the admission of Petition under Sec. 34 amounts to an automatic stay on the award, and therefore until the final outcome of the Sec. 34 petition, it is not obliged to pay anything to JCI.
7. In response, on 28.1.2015, JCI raised its concern about immediate requirement of liquidity due to erosion of net worth, expenses for litigation, and pressure of the American Development Bank regarding the repayment of loan etc. However, Maxis Bank did not release any payment to JCI.
8. Realizing the difficulty, JCI challenged the constitutional validity of Sec. 34, by way of a writ petition.

9. The Governor of Nirdhan promulgated an Ordinance which amended the Nirdhan Panchayati Raj Act, 1994. This amendment provided for qualification for election as Panch or a member.
10. The Ordinance provided that in case of Zila Parishad or Panchyat Samiti he should pass examination of the Board of Secondary Education. And in case of Sarpanch in a Scheduled Area he should pass class V from a school in Nirdhan. But for Sarpanch in any other area he should pass class VIII from the school in Nirdhan.
11. Aggrieved by the Ordinance the People’s Union for Liberties and Democratic Reforms moved to the High Court during the winter holidays for listing the matter. The matter being urgent as the election notification was to be issued on 3rd of January, 2015. However the listing was denied by the High Court.
12. The People’s Union for Liberties and Democratic Reforms then moved to the Supreme Court under Article 32 of the Constitution through the Vacation Officer. After accepting the papers and affidavit the Vacation Officer informed the petitioner that the instructions from the Chief Justice are awaited.
13. However after 48 hours, repeated messages and reminders were sent to the PPS of the Hon’ble Chief Justice by the Registrar. But no listing was granted till the issuance of election notification. As soon as the election notification was issued the listing was granted and the matter could now be heard by the High Court of Nirdhan

STATEMENT OF ISSUES

A. WP No. 999/2015

- I. Whether the grant of an automatic stay is unconstitutional?**
- II. Whether the non-enforcement of arbitral award violates Petitioner’s Right to Property?**

B. WP (C) No. 1021/2015

- III. Whether the non- availability of a vacation bench during holidays is unconstitutional?**
- IV. Whether the non-availability of a notified procedure for listing when the Court is not in session is unconstitutional?**
- V. Whether the non-grant of listing before the issuance of election notification can affect the merits of the case?**
- VI. Whether the Ordinance passed by the Governor of Nirdhan is ultra vires of Part IX of the Constitution?**
- VII. Whether the Ordinance violates the basic structure and constitutional principles?**

SUMMARY OF ARGUMENTS

I. Grant of an automatic stay is unconstitutional.

Grant of an automatic stay is violative of the provisions of the Constitution. Automatic stay on challenge to an arbitral award violates Article 14. It contravenes the doctrine of reasonable classification. The classification is not based on intelligible differentia. The differentia does not have a nexus with the object sought to be achieved by the Arbitration Act. Pendency of Section 34 applications is violative of the right to livelihood under Article 19. Indefinite pendency of Section 34 applications also violates Article 19(1)(g).

II. Non-enforcement of arbitral award affects Petitioner’s right to property.

Non-enforcement of arbitral award affects Petitioner’s right to enjoyment of their property. Such expropriation is in violation of Article 300-A since it does not serve any public purpose.

III. Non- availability of a vacation bench during holidays is unconstitutional

The Constitution guarantees everyone a right to move the Court under Article 32. This petitioner cannot exercise this right if there is no vacation bench to hear applications under Article 32 which is unconstitutional.

IV. Non-availability of a notified procedure for listing when the Court is not in session is unconstitutional

Article 21 guarantees every citizen a right to life which can be taken away by procedure established by law. Since there is no notified procedure for listing matter when the court is not in session, the non-availability of procedure is unconstitutional.

V. Non-grant of listing before the issuance of election notification cannot affect the merits of the case.

Since the petitioner moved the court within the time, act of the court cannot prejudice the petitioner, thereby not affecting the merits of the case.

VI. Ordinance passed by the Governor of Nirdhan is ultra vires of Part IX of the Constitution.

The Ordinance providing the qualifications is ultra vires of Part IX of the Constitution.

The weaker sections will not be adequately represented if such a qualification allows only educated people to contest in the elections.

VII. Ordinance violates the basic structure and constitutional principles

Right to political participation is an essential facet of democracy. The Ordinance restricts the citizens from participating in the elections by laying these educational qualifications.

It thus violates the basic structure of the Constitution i.e., democracy.

The Ordinance further without, any reasonable nexus with the object of Act discriminates between those who passed school from the Board of Nirdhan from those who passed school from an equivalent board. Therefore the Ordinance also violates the fundamental right to equality which also forms the basic structure of the Constitution?

ARGUMENTS ADVANCED

I. Grant of an automatic stay is unconstitutional.

1. It is humbly submitted that the grant of an automatic stay is unconstitutional as it violative of Article 14, Article 19, and Article 21 of the Constitution of India.

A. The treatment of an application under section 34 of the Arbitration and Conciliation Act is similar to that of a Section 96 appeal under the CPC.

2. Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter referred to as the ‘Act’) confers the right of ‘recourse to a court against an arbitral award’ by prescribing grounds for challenge.¹
3. Section 34(2)(b)(ii) stipulates that an arbitral award is liable to be set aside if it is in conflict with the public policy of India.² Public policy has been interpreted to include: a) contrary to the fundamental policy of India; b) contrary to the interests of India; c) contrary to justice and morality and d) patent illegality.³ This broadened conception of ‘public policy’ has resulted in an increased interference by the judiciary. In such circumstances, the challenge has been adjudicated in Court on merits.⁴ The High Court may re-examine facts and re-appreciate evidence in determining the validity of the arbitral award.⁵

¹ Section 34, Indian Arbitration and Conciliation Act, No. 26 of 1996.

² Section 34 (2)(b)(ii), Indian Arbitration and Conciliation Act, No. 26 of 1996.

³ *Associate Builders v. DDA*, (2015) 1 S.C.J. 42 (para 12)

⁴ *McDermott International Inc. v. Burn Standard Co. Ltd. and Ors*, (2006) 11 S.C.C. 181 (Para 58)

⁵ *DDA v. R.S. Sharma*, (2008) 13 S.C.C. 80 (para 8).

4. A similar process of examination is observed under Section 96 of the CPC, which allows for an appeal against a decree of the court.⁶ Under a first appeal, the Court must refer, consider and re-appreciate questions of both fact and law.⁷ It may also re-examine and re-appreciate evidence.⁸
5. The only point of distinction between the two provisions is with respect to the grant of an automatic stay. The mandatory language of Section 34 inhibits the Court from directing execution during pendency of the challenge, thereby resulting in an automatic stay on the execution of the award.⁹ However, under the CPC, during the pendency of an appeal, a decree holder may get the decree executed.¹⁰ For the grant of a stay, the Petitioner must satisfy the Court of: a) substantial loss on execution, b) no unreasonable delay and c) furnishing of security by the applicant for due performance of the decree.¹¹

B. The grant of an automatic stay violates Article 14.

6. Article 14 of the Constitution grants equality before the law and equal protection of the laws.¹² The Supreme Court, through the evolution of case law, has established that Article 14 forbids class legislation, but not reasonable classification.¹³ The two conditions for the test of permissible classification are: (i) Classification should not be arbitrary, artificial or evasive. It

⁶ Section 96, Code of Civil Procedure, 1908.

⁷ *H.K.N.Swami v. Irshad Basith*, (2005) 10 S.C.C. 243 (para 3); *See also: Sanjay Singh Rawat and Others v. National Small Industries Corpn. Ltd. and Others*, (2005) 12 S.C.C. 146 (para 3).

⁸ *Narbada Devi Gupta v. Birendra Kumar Jaiswal*, (2003) 8 S.C.C. 745 (para 19); *See also: Jagannath v. Arulappa & Anr.*, (2005) 12 S.C.C. 303(para 2).

⁹ *NALCO v. Pressteel*, (2004) 1 S.C.C. 54 (para 10).

¹⁰ Section 96, Code of Civil Procedure, 1908; *See also: Inderchand Jain (D) through L.Rs. vs. Motilal (D) through L.Rs.*, (2009) 14 S.C.C. 663 (para 22).

¹¹ Order XLI, Rule 5, The Code of Civil Procedure, 1908.

¹² Article 14, Constitution of India, 1950

¹³ *Chiranjit Lal Chowdhuri v. The Union of India*, (1950) 1 S.C.R. 869; *See also: State of West Bengal v. Anwar Ali Sarkar*, (1952) Cri.L.J. 510 (para 25); *Budhan Choudhry and Ors v.State of Bihar*, (1955) 1 S.C.R. 1045 (para 7).

must be based on an intelligible differentia and (ii) the differentia must have a rational nexus with the object sought to be achieved by the statute in question.¹⁴

7. Equal protection is guaranteed with respect to not just substantive laws but also procedural laws.¹⁵ This implies that all similarly situated litigants are entitled to the same procedural rights for relief. All in the same class should be subjected to the same law; there cannot be selectivity within a class.¹⁶
8. The automatic stay mechanism amounts to procedural discrimination, violating Article 14.

i) **Classification is not based on an intelligible differentia.**

9. A Section 34 application under the Arbitration Act and an Appeal under the CPC are examined similarly. The High Court, in both situations, examines questions of fact and law and adjudicates on merits.
10. However, where a challenge to an award necessitates an automatic stay on its execution, no such automatic stay arises out of an appeal to a decree. The Court must be satisfied of ‘sufficient cause’ and ‘substantial loss’ to the applicant for stay of execution on appeal.
11. This procedural classification, therefore, is argued to be arbitrary and artificial. It is not based on a real and substantial distinction between the two applications. Essentially, this differential treatment of applications through procedural law is argued to be violative of Article 14.

¹⁴ *State of West Bengal v. Anwar Ali Sarkar*, (1952) CriLJ 510 (para 58).

¹⁵ *Charan Lal Sahu v. Union of India*, A.I.R. 1990 S.C. 1480 (para 120).

¹⁶ *Shree Meenakshi Mills Ltd., Madurai v. Sri A.V. Visvanatha Sastri and Anr.* A.I.R. 1955 S.C. 13 (para 6).

ii) Differentia does not have a rational nexus with the object sought to be achieved.

12. The differentia, which is the basis of the classification and the object of the Act are distinct, and it is necessary for a nexus to exist between them.¹⁷ The purpose and objective behind the Act must be looked at to find a basis for the classification.¹⁸
13. This differentia does not have a reasonable nexus with the objective of the Arbitration Act. As a process, Arbitration seeks to expedite disposal of cases and avoid delays arising out litigation.¹⁹ An indefinite and prolonged period of restricting the execution of the award contravenes these objectives of the Arbitration Act. The same was observed in *NALCO v. Pressteel*, where the Court observed that the automatic suspension of an award defeats the very objective of the alternative dispute resolution system.²⁰ Therefore, there is lack of a rational nexus between the classification and the purpose of the Act.
14. It is humbly submitted that in the absence of an intelligible differentia and a rational nexus with the object of the Act the grant of an automatic stay under Section 34 is violative of Article 14.

C. Indefinite pendency of Section 34 applications is violative of Article 19 and 21.

15. Automatic stay on execution results in the protracted pendency of the Section 34 application. This renders the arbitral award indefinitely inexecutable. This unwarranted delay is violative of the awardees' constitutional rights as it deprives him from the benefits of the award.

i) Indefinite Pendency violates Article 21.

¹⁷ *Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and Ors*, (1959) 1 S.C.R. 279 (para 296).

¹⁸ *Jagdish Pandey v.Chancellor Bihar University*, A.I.R. 1968 S.C. 353(para 8)

¹⁹ *Stench Electronics Ltd. v. K.N. Memani & Anr.*, A.I.R. 1999 (Del) 198 (para 13).

²⁰ *NALCO v. Pressteel*, (2004) 1 S.C.C. 54 (para11).

16. Article 21 of the Constitution grants protection to a person's life and personal liberty.²¹ The right to life implies protection of the right to livelihood.²² Thus where a person's means of living are extinguished a person's right to life is infringed upon.²³

17. In the facts of the present case, there is a stay on execution of the award. Due to this, Petitioners are not at liberty to enjoy the benefits of the award. The petitioner's considerable investment in arbitration, the prolonged denial of the arbitral award, enormous bank loans and abhorrent expenses of litigation have led to an erosion of the Petitioner's net worth. In the absence of all liquidity, the petitioner's right to livelihood has been breached due to the unenforceability of the arbitral award.

ii) **Indefinite Pendency of arbitral proceedings violates Article 19.**

18. The primary objectives of Arbitration are the expeditious disposal of disputes and to avoid procedural delays that are characteristic to courts. Parties seek to resolve commercial disputes involving substantial amounts of money.²⁴ This necessitates tremendous investment in the arbitral proceedings.

19. Even after an award is made, these resources remain inaccessible due to the automatic stay mechanism. As is in the present case, Parties are deprived of substantial funds and lack resources to assume litigation. Due to this, Parties' ability to carry out trade and profession is crippled. This, it is contended, is violative of Article 19(1)(g).

20. In the alternative, Section 36 must be amended to provide for a stay on execution on a separate application by the concerned party.²⁵ The provisions of the Code of Civil Procedure would

²¹ Article 21, Constitution of India, 1950.

²² *Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni and Ors.*, A.I.R. 1983 SC 109 (para 13).

²³ *Olga Tellis and Ors. v. Bombay Municipal Corporation and Ors.* A.I.R. 1986 SC 180 (para 32).

²⁴ *HRD Corporation v. GAIL (India) Ltd*, 184 2011 D.L.T. 390 (para 44).

²⁵ Law Commission Report no. 246 (page no 56).

govern such grant of stay. Further, Courts may adopt the practice of having dedicated benches for arbitration related matters.²⁶ Section 34 may also be amended to prescribe expeditious disposal of applications and in any case, within one year.²⁷ All proposed changes are in furtherance of the principles of minimal judicial interference and expediency in arbitral proceedings.

II. Non-enforcement of arbitral award affects Petitioner’s Right to Property.

21. Article 300-A of the Constitution grants the right to enjoyment of one’s property. The Sovereign may, only through sanction of law, rule or statutory order, acquire or possess any private property.²⁸ Such expropriation must only be for a public purpose or for the public good.²⁹
22. In the present case, Petitioners’ right to property is being substantially affected. Non-enforcement of the arbitral award deprives them of the enjoyment of their property. This deprivation, amounts to expropriation by the sovereign. Such exercise of the right of eminent domain lacks justification, as it does not serve any public purpose.
23. It is humbly submitted that the non-enforcement of arbitral award is violative of Article 300-A of the Constitution.

III. Non- availability of a vacation bench during holidays is unconstitutional.

24. Right to move the Supreme Court under Article 32 of the Constitution is a fundamental right and therefore refusing this right in any way would amount its violation.³⁰

²⁶ Law Commission Report no. 246 (page no 16).

²⁷ Law Commission Report no. 246 (para 25).

²⁸ *Planters Forum v. State of Kerala*, Decided on 17-1-2014 (para 102).

²⁹ *Jilubhai Nanbhai Khachar, etc. etc. v. State of Gujarat and another*, A.I.R. 1995 S.C. 142, (para 34).

³⁰ *Masthan Sahib v. Chief Commr, Pondicherry*, A.I.R. 1962 SC 797; (para 49)

25. Under Article 39A of the Constitution the State is to ensure that the operation of legal system promotes justice.³¹ The State must discharge its functions effectively to ensure that the fundamental rights are protected.³²

26. In the present case, the Vacation Officer accepted the affidavit after which instructions from Chief Justice were awaited. Despite repeated reminders, the Chief Justice acting in his administrative capacity did not list the matter till the issuance of election notification.

27. The unavailability of the Supreme Court at the right time has led to the violation of right to move the court thereby infringing Article 32 of the constitution. It is thus humbly submitted that the non-availability of the vacation bench is unconstitutional.

IV. Non-availability of a notified procedure for listing when the Court is not in session is unconstitutional.

28. Article 21 guarantees everyone a right to life and liberty, which can be taken away only by a procedure established by law.³³

29. Article 145 of the Constitution confers the Supreme Court with power to make rules for regulating the procedure and practice of Court. This includes making rules as to the proceedings in the Court for the enforcement of any of right conferred under Part III of the Constitution.³⁴

30. The Supreme Court rules provide for a vacation bench during the holidays for urgent matters.³⁵ The court offices may be open during the New Year holidays as the Chief Justice may direct.³⁶ The rules only provide that the Vacation Judge may exercise all powers over applications under

³¹ Article 39A, Constitution of India, 1950.

³² *Gaurav Kumar v. Union of India*, (2014) 9 S.C.J. 34 (para 40).

³³ Article 21, Constitution of India, 1950.

³⁴ Article 145 (1) (c), Constitution of India, 1950.

³⁵ Order II Rule 6, Supreme Court Rules, 2013.

³⁶ Order II Rule 3, Supreme Court Rules, 2013.

Article 32.³⁷ However there is no procedure established in the Supreme Court rules, which provides for recourse when the Chief Justice does not issue directions.

31. In the present case, when the petitioner moved to the court under Article 32 through the Vacation officer, there were no instructions issued by the Chief Justice. The Chief Justice failed to list the matter till the issuance of notification which caused prejudice to the petitioner. There are no provisions under any statute or the Supreme Court Rules to lay down a procedure regarding the applications under Article 32 when the Chief Justice does not respond. Therefore the right to life is being take away without any procedure established by law i.e., no rules and regulations to deal with this situation. Hence the non-availability of a notified procedure for listing when the Court is not in session is unconstitutional.

V. Non-grant of listing before the issuance of election notification cannot affect the merits of the case.

32. “*actus curiae neminem gravabit*” is a principle which implies that an act of the court shall prejudice no one. This maxim is based upon the justice and good sense which provides a safe guideline for smooth functioning in the administration of the law.³⁸ The courts in India have held that this maxim covers even those acts of the courts where opinion over legal matters is formed based on improper assessment of the facts and circumstances in the case.³⁹ The test for such a principle is to see whether or not any party has suffered, on account of the court’s action, which it would not otherwise suffer.⁴⁰ It is the duty of the court to ensure that such an act is

³⁷ Order VI Rule 6, Supreme Court Rules, 2013.

³⁸ *U.P.S.R.T.C v. Imtia Hussain* A.I.R. 2006 S.C. 649.

³⁹ *South Eastern Coal Fields Limited v. State of MP* (2003) 8 S.C.C. 648(para 9).

⁴⁰ *Margaret Almedia and Ors v. Bombay Catholic Coop Housing Society Limited and Ors.* A.I.R. 2012 S.C. 1438 (para 7).

rectified so as to not prejudice the rights of the parties.⁴¹ Therefore any delay that is caused on account of courts action cannot affect the merits of the case.⁴²

33. In the present case, after a wait of 48 hours the petitioner decided to escalate the matter through the Registrar to the PPS of the Chief Justice. The Hon'ble Chief Justice did not respond despite repeated reminders and no listing was granted till the issuance of election notification. Upon the listing the Apex Court decided that the matter could now be heard by the High Court of Nirdhan. This act of the Apex Court without considering the fact that the election notification would be issued the next day should not prejudice the petitioner. The delay caused by the court cannot affect the merits of the case as the petitioner moved to the court in time. Therefore non-grant of listing before the issuance of election notification cannot affect the merits of the case.

VI. The Ordinance passed by the Governor of Nirdhan is ultra vires of Part IX of the Constitution.

34. Article 213 of the Constitution of India confers power on the Governor of a State to promulgate laws during recess of the Legislature.⁴³ Such a power requires the existence of immediate circumstances for Governor/President to act upon.⁴⁴ The courts therefore can review the constitutionality of the Ordinance and accordingly strike it down if proved unconstitutional.⁴⁵

35. Article 243 (G) of the 73rd Constitutional Amendment Act entrusts the States with the powers and responsibilities of the Panchayati Raj Institution to promote local self-governance.⁴⁶ This

⁴¹ *State of Rajasthan v. Surendra Mohnot* A.I.R. 2014 S.C. 2925, (para 27).

⁴² *Japani Sahoo v. Chandra Sekhar Mohanty* A.I.R. 2007 S.C. 2762, (para 38).

⁴³ Article 213, Constitution of India, 1950

⁴⁴ *A.K Roy v. Union of India*, (1982) 1 S.C.C. 271 (para 29).

⁴⁵ *K. Nagraj v. State of Andhra Pradesh* (1985) 1 S.C.C. 523 (para. 31).

⁴⁶ Article 243G, Constitution of India, 1950.

Amendment was made in light with Article 40 of the Constitution which promoted organization of village panchayat.⁴⁷ It aims at providing inclusive governance at the grass root level.⁴⁸

36. Article 243D under Part IX of the Constitution guarantees reservations of seats for Scheduled Castes, Scheduled Tribes and women. The purpose behind this provision was to ensure adequate representation of Scheduled Caste, Scheduled Tribe and women. The reason behind backwardness of such sections is lack of access to resources and awareness to gain education and employment.⁴⁹ The objective of decentralization is not only to ensure smooth governance at the grass root level but also to make governance “participatory, inclusive and accountable”.⁵⁰ This provision thereby ensures adequate representation and empowerment of the weaker sections of the society along with local self-governance.⁵¹
37. In the present case, the Governor of Nirdhan promulgated the Ordinance four days before the issuance of election notification without their existing any circumstances upon which the Governor was expected to act immediately. The Ordinance is thus a colorable exercise of power on the grounds of urgency which did not exist in the present case. The Ordinance can thus be struck down if it violates any constitutional principle.
38. This Ordinance provides for grounds for disqualification of member of a Panchayati Raj on grounds of lack of education up to a certain grade. Such an education qualification requires the member of Sarpanch in Scheduled Area to pass Class V and any other area to pass Class VIII. The women and people from the weaker sections would not be adequately represented if this qualification is applied in the current elections because of the high illiteracy rate. Keeping in mind that Nirdhan is a backward region with skewed literacy rate such an Ordinance would be

⁴⁷Article 40, Constitution of India, 1950.

⁴⁸ *Bhanumati and Ors v. State of Uttar Pradesh Through its Principal Secretary and Ors*, (2010) 12 S.C.C. 1, (para 12,19).

⁴⁹ *K. Krishna Murthy v. Union of India* (2010) 7 S.C.C. 202 (para 11).

⁵⁰ *K. Krishna Murthy v. Union of India*, 2010 7 S.C.C. 202 (para 33).

⁵¹ *K. Krishna Murthy v. Union of India*, 2010 7 S.C.C. 202 (para 5).

ultra vires with Article 243D of the Constitution. This indeed would frustrate the purpose of the 73rd Amendment in the Constitution as there would be no participatory local self-governance at the grass root level in Nirdhan. The Ordinance would therefore violate Article 243D and is ultra vires of Part IX of the Constitution of Gariba.

VII. The Ordinance violates the basic structure and constitutional principles

A. Ordinance violates principles of democracy violating the basic structure of the Constitution.

39. Democracy and free and fair elections form the basic structure of the Constitution.⁵² Village level democracy is the foundation for democracy in India.⁵³ The 73rd Amendment was made in light with principles of “*decentralization, grass root level democracy, public participation, gender equality and social justice*”.⁵⁴ Introduction of any disqualification in the village level could be disastrous for the democracy at the grass root level.⁵⁵

40. Democracy means equal participation for effective exercise of power by the people in the administration of the Government. It connotes State of affair over which ever citizen has an equal participation in governance.⁵⁶ True democracy will not exist if right to participate is taken away from the citizen.⁵⁷

⁵²*People’s Union for Civil Liberties v. Union of India* (2013) 10 S.C.C. 1; See also: *Indira Nehru Gandhi v. Raj Narain* (1975) 1 S.C.C. 198; *Kuldip Nayar v. Union of India*, A.I.R. 2006 S.C. 3127; *Kesavananda Bharti v State of Kerela*, (1973) 4 S.C.C. 225.

⁵³ *Anokh Singh v. Punjab State Election Commission and Harchand Singh v. State of Punjab*, A.I.R. 2011 S.C. 230, (para 32).

⁵⁴ *Anokh Singh v. Punjab State Election Commission and Harchand Singh v. State of Punjab*, A.I.R. 2011 S.C. 230, (para 28)

⁵⁵ *Anokh Singh v. Punjab State Election Commission and Harchand Singh v. State of Punjab*, A.I.R. 2011 S.C. 230, (para 33)

⁵⁶ *R.C. Poudyal v. Union of India* ,(1993) 1 S.C.R. 891(para 47).

⁵⁷ *Ministry of Information and Broadcasting, Govt. of India v. Cricket Association of Bengal*, A.I.R. 1995 S.C. 1236(para 15).

41. In a democracy, the Legislature needs to reflect the image and will of people. And if only educated people are made eligible to stand in India then they would not represent the masses as majority in India are illiterate.⁵⁸ Mere possessions of education qualifications do not guarantee “comprehension” which the Constitution envisages.⁵⁹ Assuming that well educated people will be able to serve the people better is overlooking the realities. Much depends on the character, dedication, calibre of the candidate which education qualification cannot guarantee.⁶⁰ In the case of *G. Narayannswamii v G. Pannerselvam*,⁶¹ the Supreme Court held that candidature will not be set aside on grounds of lack of graduation. The Constitution framers intentionally omitted to leave education qualification of the candidates.⁶²
42. Similarly, Republic of Gariba incorporates democratic form of government. Democracy which forms the basic structure of the Constitution will not exist if the people in Nirdhan are not given to participate in the government. The qualification provided for in the Ordinance takes away the people’s right to participate in the PRI. Such educational qualification in Nirdhan which has skewed literacy standard would not represent the majority of the masses going against the principles of democracy. Also passing Class V and VIII for the post of Sarpanch in Scheduled Area and other area respectively does not guarantee comprehension of the Constitution. This Ordinance thus violates the principles of democracy and people’s right to participation which forms the basic structure of the Constitution. Therefore this ordinance which provides for educational qualification for the post in village panchayat should be struck down.

B. Ordinance violates the principle of equality forming the basic structure of the Constitution.

⁵⁸ *Hardwari Lal v. The Election Commission of India*, 1977 I.L.R. 2 (Punjab and Haryana) 269 (para 176).

⁵⁹ *Baljeet Singh v. Election Commission of India*, A.I.R. 2001 (Del.) 1(para 27).

⁶⁰ *People’s Union for Civil Liberties v. Union of India*, A.I.R. 2003 S.C. 2363 (para 32).

⁶¹ *G. Narayanaswami v. G. Pannerselvam and Ors*, A.I.R. 1972 S.C. 2284 (para 3).

⁶² *G. Narayannswamii v. G. Pannerselvam* A.I.R. 1972 S.C. 2284 (para 16).

43. Article 14 of the Constitution guarantee equal protection of law and before the law.⁶³ Equality forms the basic structure of the Constitution.⁶⁴ In order to pass the test of reasonable the legislation should satisfy two conditions. Firstly that the classification should be based on some intelligible differentia. Secondly, it the classification should have some nexus with the object of the legislation.⁶⁵ Right to contest in elections is an important right in a democracy. A ban on candidature must be based on some reasonable nexus with the object to be achieved.⁶⁶
44. In the present case the Ordinance which amended the Nirdhan Panchayati Raj Act, 1994 provides for education qualification. In case of Sarpanch in Scheduled Area or any other area he is required to pass Class V and Class VIII from a School in Nirdhan. However in case of member of a Zila Parishad he should pass examination of Board of Secondary Education or any equivalent board. In addition the classification made between the qualifications for these two posts have no reasonable nexus with the object of the Act. Since passing only from a school in Nirdhan and not an equivalent board being mandatory for a candidate standing for the post of Sarpanch has no reasonable nexus with the object of promoting education in Nirdhan. The ban on the candidature has no reasonable object to be achieved. Therefore such discrimination between candidates violates of equality also disturbing the basic structure of the Constitution.

⁶³ ARTICLE 14, CONSTITUTION OF INDIA, 1950.

⁶⁴ *Indira Sawhney v. Union of India*, 1992 Supp (3) S.C.C. 217 (para 150).

⁶⁵ *Dr. Subramanian Swamy v. Director, Central Bureau of Investigation*, A.I.R. 2014 SC 2140 (para 39).

⁶⁶ *Anokh Singh v. Punjab State Election Commission and Harchand Singh v. State of Punjab*, A.I.R. 2011 S.C. 230 (para 28).

P R A Y E R

In the light of the arguments advanced, it is humbly prayed before this Hon'ble High Court of Nirdhan that it may:

1. Adjudge that Section 34 is unconstitutional on account of an automatic stay.
2. Adjudge that the non-availability of a vacation bench and a notified procedure during holidays is unconstitutional.
3. Adjudge that the Ordinance is unconstitutional.

For which the petitioner shall duty bound pray.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.