JUSTICE R.K. TANKHA MEMORIAL MOOT COURT COMPETITION 2015

Team Code – **N**

BEFORE THE HONOURABLE HIGH COURT OF NIRDHAN

Writ Petition (Civil) No. 999/2015 and 1021/2015

(Filed under Article 226 of The Constitution of Gariba, 1950)

People's Union for Liberties & Democratic Reforms and JCi

Versus

Republic of Gariba and Maxis Bank

Written Submission on behalf of the Respondent

Counsel for the Respondent

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STATEMENT OF JURISDICTION

The Petitioner has approached the Hon'ble High Court of Nirdhan under Art. 226 of the Constitution of Gariba, 1950. The Respondents reserve the right to challenge the same. The Memorial sets forth the facts and laws on which the claims are based.

STATEMENT OF FACTS

Nirdhan a desert state of the Republic of Gariba was considered as backward till 2011. Pursuant to a scheme devised for construction of highways and arterial roads by private parties, Jeopardy Contracts Inc. [JCi] entered into a contract with Jodhpur Gaon Panchayat Samiti [JGPS] for the construction of 115 Kms of road in a scheduled area of Nirdhan. However, due to certain issues at the time of culmination of the project the contract was terminated by JGPS on 21.9.2013.

JCi sent a legal notice on 11.12.2014 for invoking arbitration as per contractual clause and asking for 'termination payment'. In reply JGPS' counsel informed that the matter is covered under the Madhyastham Adhikaran Adhiniyam, 1983, and therefore no institutional arbitration can take place. JGPS also invoked the performance bank guarantee on 12.12.2014 by sending an email after business hours to the Maxis bank.

On 13.12.2014, JCi moved the High Court of Nirdhan by filing an urgent civil writ petition being WP (C) No. 99/2014. On 15.12.2014, the High Court took this matter 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. However, at 10.00 am, the branch manager of the Jodhpur Gaon branch of Maxis bank had acted on the email of JGPS and encashed the bank guarantee. At 10.01 am, as a result of a massive security breach in the systems of the Maxis Bank all transactions-in-progress were stalled.

Subsequently, disposing the writ petition the High Court directed the parties to arbitration. The arbitration culminated into an award dated 21.1.15 in favour of JCi. JGPS filed an application under sec. 34 for setting aside the award. On 24.1.15 JCi wrote to Maxis Bank demanding the money pertaining to the bank guarantee. However, the same was denied by the bank on the ground of strict compliance with RBI norms, and that the admission of the petition under section 34 amounted to an automatic stay on the award and that the invocation was prior to the stay order of the Court. On refusal by the bank, JCi moved the High Court challenging the constitutional validity of Sec. 34, by way of a writ petition, being WP 999/15.

In the meanwhile, the Governor of Nirdhan, on 20.12.14, promulgated an Ordinance which came into effect from 24.12.14, which amended the Nirdhan Panchayati Raj Act, 1994 as under:

"19. Qualification for election as a Panch or a member- *Every person registered as a voter in the list of voters of a Panchayati Raj Institution shall be qualified for election as a Panch or, as the case may be, a member of such Panchayati Raj Institution unless such person-*

(r) in case of a member of a Zila Parishad or a Panchyat Samiti, has not passed school examination of the Board of Secondary Education, Nirdhan or of an equivalent Board;

(s) in case of Sarpanch of a Panchayat in a Scheduled Area, has not passed class V from a School in Nirdhan; and

(t) in case of a Sarpanch of a Panchayat other than in a Scheduled Area, has not passed class VIII from a School in Nirdhan;"

People's Union for Liberties & Democratic Reforms moved the High Court of Nirdhan on 29th Dec. for an urgent listing, challenging the validity of the ordinance as violative of inter alia, basic fundamental and constitutional rights, since the election notification was to be issued on the 3rd of January, 2015.

On being denied the listing, 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" as notified on the website. However, no listing was granted till the issuance of election notification. Upon listing, the Apex Court was pleased to observe that the matter could now be heard by High Court of Nirdhan. People's Union for Liberties & Democratic Reforms

consequently moved the Hon'ble High Court of Nirdhan via a pro-bono petition WP (C) No. 1021/15.

STATEMENT OF ISSUES

1. WHETHER SECTION 34 OF THE ARBITRATION AND CONCILIATION ACT OF 1996 IS UNCONSTITUTIONAL?
2. WHETHER THE NON AVAILABILITY OF A NOTIFIED VACATION BENCH OR A NOTIFIED PROCEDURE FOR LISTING DURING HOLIDAYS IS UNCONSTITUTIONAL?
3. WHETHER THE ORDINANCE IS VIOLATIVE OF THE CONSTITUTION OF GARIBA?

SUMMARY OF ARGUMENTS

1) **Section 34 of the Arbitration and Conciliation Act of 1996 is constitutional.**

The Submission in this regard is two-fold. Firstly, that sec. 34 is in furtherance of the objects of the Act. It ensures supervision of Courts over the Arbitral Tribunal which is enshrined in the objects of the Act. Secondly, that the Arbitration Act is a self-contained code and thus the guidelines for granting injunction do not apply to it.

2) **The procedure notified for listing and adjudication of cases during vacation was duly followed.**

The Submission in this regard is two-fold. Firstly, that the procedure as per the Supreme Court Rules, 2013 and as provided for in the Supreme Court Circular was duly followed. Secondly, that as there is no parliamentary law on 'the manner in which a Supreme Court is to function', the Rules framed by the Supreme Court would thus prevail and the same cannot be declared unconstitutional.

3) **The Ordinance is not violative of the Constitution of Gariba.**

The submission in this regard is that the Ordinance cannot be called into question except on certain specified grounds provided in the Constitution and evolved through judicial precedents. Also the Ordinance is not violative of Article 14 or Article 19 (1) (a) of the Constitution of Gariba. The right to elect being a statutory right can be regulated by it. Finally, the Court cannot interfere in the election process once it is set in motion owing to the bar imposed by Article 243 – O of the Constitution.

ARGUMENTS ADVANCED

1) Section 34 of the Arbitration and Conciliation Act of 1996 is Constitutional.

It is humbly submitted that section 34 of the Arbitration and Conciliation Act, 1996 is in furtherance of the objects of the Act. The main objectives of the Arbitration and Conciliation Act include:-

'. . .(iv) to ensure that the arbitral tribunal remains within the limits of its jurisdiction;

(v) to minimise the supervisory role of courts in the arbitral process;. . .'

It is important to note in this regard, that the Arbitration and Conciliation Act, 1996 replaced the 1940 Act. One of the major defects of the 1940 Arbitration Act was that a party could access the court at almost every stage of arbitration, right from the appointment of the arbitrator to the implementation of the final award and the defending party could thus stall the proceedings. The New Act sought to correct this very mischief and thus drastically curtailed the courts' intervention thereby keeping with the object of minimum supervisory role of courts.

It is submitted that the object of minimum supervision by courts cannot be taken to mean no supervision by courts. 'Supervising' as defined in the Black's law Dictionary means *'regulating and monitoring a process or activity or tasks.'* If however section 34 is declared unconstitutional then there would be no supervisory authority to regulate and monitor the arbitral tribunal. The arbitral tribunal cannot be given unlimited and uncontrolled powers and supervision of Courts cannot be totally eliminated. It is also to be noted that if not for section

34 the wide powers that the arbitrator has been given under the Act, including that of ruling on his own jurisdiction[1] and ruling on the challenge to his independence or impartiality[2] would go unchecked.

It is the duty of the courts to promote intention of the legislature by an intelligible and harmonious interpretation of the provisions rather than to frustrate their operation.[3] It is submitted in this regard that allowing the arbitrator to rule on his own jurisdiction without any supervisory authority to monitor or regulate his acts under section 34 would not only frustrate the object of 'ensuring that the arbitral tribunal remains within the limits of its jurisdiction' but will also violate the principle of '*Nemo Judex in Causa Sua*'.

It is also to be noted that the legislature has the power to specify the grounds on which an award can be challenged.[4] The Supreme Court also in ***Babar Ali Vs Union of India*** case has held that '*The Arbitration and Conciliation Act,1996 is neither unconstitutional nor in any way offends the basic structure of the Constitution of India, as Judicial review is available for challenging the award in accordance with the procedure laid down therein. The time and manner of the judicial scrutiny can be legitimately laid down by the Act passed by the parliament.*'[5]

It is also submitted that the Law Commission while considering the validity of sec. 34 in its report on Amendments to Arbitration and Conciliation Act[6] noted that the Arbitration and Conciliation act treats a Domestic Award and a Foreign Award as the same. The Law Commission to correct this mischief has proposed to amend sec. 34 to give even more powers

[1] Sec. 16 of the Arbitration and Conciliation Act, 1996

[2] Sec. 13 of the Arbitration and Conciliation Act, 1996

[3] Union of India v. Harman Singh, 1993 SCR (1) 862, para. 10

[4] TPI Ltd. v. Union of India, 2001(3) RAJ 70 (Del), para. 2

[5] (2000) 2 SCC 178, para. 1

[6] Law Commission of India Report No. 246 (Amendments to Arbitration and Conciliation Act, 1996), Aug 2014, pg. 21, para. 34 and 35

to the courts under to set aside the award. Thus if sec. 34 was against the objects of the Arbitration Act then the Law Commission would not have proposed to increase the scope of intervention by the courts but would have rather curtailed its operation.

Application under sec. 34 amounts to an automatic stay on the arbitral award.

It is humbly submitted that the law has to be interpreted on an 'as is, where is[7]' basis, without considering of how it should be. Section 36 of the Arbitration and Conciliation Act makes it very clear that an arbitral award becomes enforceable as a decree only after the time for filing a petition under section 34 has expired or after the section 34 petition has been dismissed. This has also not been contested by the petitioner. Also, the Supreme Court in ***National Aluminium Co. Ltd. v. Pressteel & Fabrications***[8]*,* held that because of the mandatory language of section 34 of the Arbitration and Conciliation Act, 1996, an award, when challenged under section 34 within time stipulated therein becomes un-executable.

It is also submitted that the guidelines evolved by courts for granting temporary injunction, viz. to adjudicate on prima facie case, balance of convenience and irreparable injury, would not apply to the Arbitration & Conciliation Act as it is a self-contained code. The Supreme Court has also in ***Fuerst Day Lawson Limited v. Jindal Exports Limited***[9] held that the 'Arbitration & Conciliation Act is a self-contained code and it carries with it a negative import that only such acts as are mentioned in the Act are permissible to be done and acts or things not mentioned therein are not permissible to be done and where the special Act sets out a self-contained code the applicability of the general law procedure would be impliedly excluded.

[7] Legal Maxim - *de lege lata*

[8] (2004) 1 SCC 540

[9] (2011) 8 SCC 333, para. 89

It is thus submitted that the Arbitral award had become un-executable the moment the application under section 34 was filed by JGPS.

Delay in the enforcement of arbitral award does not amount to 'Expropriation'

It is humbly submitted that the delay caused in enforcement of the arbitral award does not amount to 'expropriation' as contested by the petitioner. It is submitted in this regard that the rights of the petitioner under the arbitral award have not yet been extinguished since the award is still pending enforcement. As the award has neither been enforced nor set-aside it does not amount to expropriation as was held in the landmark judgement of ***White Industries Australia Limited v. The Republic of India***[10]. The question of violation of the Bilateral and Multilateral treaties does not arise as there was no 'expropriation' in the first place.

2) **The procedure notified for listing and adjudication of cases during vacation was duly followed.**

The Submission in this regard is three fold. Firstly, the procedure of hearing matters during vacation is enshrined in ***Rule 6 of Order II and Rule 6 of Order VI of the Supreme Court Rules, 2013.***

Rule 6 of Order II reads as: *'the Chief Justice may appoint one or more Judges to hear during summer vacation or winter holidays all matters of an urgent nature which under these rules may be heard by a Judge sitting singly, and, whenever necessary, he may likewise appoint a Division Court for the hearing of urgent cases during the vacation which require to be heard by a Bench of Judges.'*

Rule 6 of Order VI reads as: '*During the vacation, the Vacation Judge sitting singly may, in addition to exercising all the powers of a Judge in Chambers under these rules, exercise the powers of the Court in relation to the following matters, namely:*

[10] White Industries Australia Limited v. The Republic of India, UNCITRAL, Final Award (30 November, 2011)., at 12.3.6

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(5) Applications under article 32 of the Constitution of an urgent nature which do not involve a substantial question of law as to the interpretation of the Constitution. . .'

On a harmonious reading of the two rules it can be interpreted that the Chief Justice is empowered to constitute a vacation bench during the annual winter break as well. It is also submitted in this regard that the matter which the Petitioner sought to submit to the jurisdiction of the Supreme Court involves a substantial question of law and which the single judge is not empowered to adjudicate upon and thus the Chief Justice could not have allowed listing of such a matter.

The second contention is that the procedure of listing during vacation was duly followed. The procedure is notified by the Supreme Court from time to time through circulars. The Supreme Court Circular dated 9/12/14[11] on listing of matters during holidays has been reproduced as under:-

'It is hereby notified that advocates seeking relief in urgent matters either on court holidays or after court hours shall first approach a senior officer (vacation officer) of the Registry specially deputed for the said purpose, who shall after screening the papers, seek directions from the Hon'ble Chief Justice of India and thereafter inform the advocates concerned about the directions.'

The third contention of the Respondent is that where a substantial question of law regarding interpretation of the Constitution is involved, such a matter cannot be decided in haste. Also, the rules framed for listing and hearing during vacation are made by the Supreme Court with the approval of the President pursuant to Article 145 of the Constitution and cannot be

[11] Supreme Court of India, Circular F. Nos.4/Judl./2014, dated 09/12/2014.

discarded as arbitrary. In ***Purno Agikok Sangama v. Pranab Mukherjee***[12], it was held that *'the procedure that is required to be followed by Court while exercising jurisdiction conferred by either the Constitution or the Parliament by law, could be laid down only by the Parliament and until the Parliament makes such a law, by the rules made by the Supreme Court.'*

3) The Ordinance is not unconstitutional

(i) Restrictions on challenge to an Ordinance:

It is humbly submitted before the hon'ble Court that as per Article 213 (1) of the Constitution of Gariba: "*If at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinance as the circumstances appear to him to require*".

Now as per the above mentioned Article the Governor has a vested power to promulgate an ordinance in times of necessity. However, it is not a discretionary power, but must be exercised with the aid and advice of the Council of Ministers.[13]

The Courts cannot examine the question of satisfaction of the Governor in issuing the Ordinance[14], or that there was no need for taking immediate action.[15] The only question which the Courts are concerned with are – (i) Legislative competence; (ii) whether the Legislature or either House thereof was not in session when the Ordinance had been promulgated. Promulgation of ordinance is legislative in nature and the Court cannot interfere

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[12] 2012 (9) SLT 103, Para. 9

[13] Cf Cooper, R. C. v. Union of India, AIR (1970) SC 564 (para 21, 227)

[14] D. C. Wadhwa & Ors v. State of Bihar and Ors. 1987 AIR 579

[15] R. K. Garg v. Union of India AIR (1981) SC 2138

with a legislative malice as it is beyond the pale of jurisdiction of the law Courts.[16]The Supreme Court has, however, held that since Ordinance making power is a legislative and not an executive act, an Ordinance cannot be invalidated on the ground of (a) non application of mind, or (b) ulterior motive or purpose, any more than any law passed by the Legislature.[17]

Now it is prayed before the hon'ble Court that there was due deliberation on bringing the reforms. However, given the fact that elections were fast approaching, it was felt that an Ordinance was the best way to put this into effect. Also worth mentioning in this regard is that it is not the sole discretion of the Governor but the collective will of the Council of Ministers who are the policymakers of the Government.

(ii) Right to contest is a statutory right

It is prayed before this Court that in a leading case it was observed that, "*Right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by statute. There is nothing wrong in the same statute which confers the right to contest election also to provide for the necessary qualifications…or disqualifications which would disable a person from contesting for or holding an elective statutory office".*[18] Also in another case where certain provisions of Representation of the People Act, 1951 were challenged as violative of freedom of speech, the Court observed," *These laws do not stop a man from speaking. They merely provide conditions which must be observed if he wants to enter into Parliament. The right to stand as a candidate and contest an election is not a common law right; it is a special right created by statute and can only be exercised on the conditions laid*

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[16] Gurudevdatta VKSSS Maryadit v. State of Maharashtra (2007) 4 SCC 534, 544-546 (para 12 and 13)

[17] Nagaraj K. v. State of A. P. (1985) 1 SCC 523 (para 31, 36)

[18] Javed and Others v. State of Haryana and Others, (2003) 8 SCC 369

down in the statute. The Fundamental Rights chapter has no bearing on a right like this created by statute"[19]

Thus, it is submitted that in view of the above cited authorities that the fundamental rights chapter should not be read into the Statute and that the right emanating from the Statute can very well be regulated by it. Thus, the right to contest elections is not a fundamental right but is a statutory right for which qualifications and disqualifications can be prescribed by the state.

The freedom under Article 19 (1) (a) can, to that extent, be regulated by the Constitution.

(iii) No violation of Article 14 of the Constitution of Gariba

It is prayed before this Court that it is a well settled proposition of law that Article 14 prohibits class legislation; it does not forbid reasonable classification for the purpose of legislation.

In order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that such differentia has a rational relation to the object sought to be achieved by the Statute in question.[20]

Now the classification is based on an intelligible differentia since people who are educated up to the level prescribed are easily separable from people who have not obtained formal education. Also there exists a strong nexus between such a differentiation and the object sought to be achieved i.e., promotion of literacy at the grass root level. The prescription of

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[19] Jumuna Prasad Mukhariya and Others v. Lachhi Ram and Ors (1955) 1 SCR 608

[20] Dharam Dutt v. Union of India, (2004) 1 SCC 712, 747 (para 56)

qualification serves as an incentive for those who wish to contest in the elections. This serves as one of many steps that the Government takes to promote literacy.

It is pertinent to note the provisions of Article 243 G (b) of the Constitution in this regard. The same reads as:

"*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 Panchayat at the appropriate level, subject to such conditions as may be specified therein, with respect to-*

(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

Now the following entry in the Eleventh Schedule is important:

17. Education, including primary and secondary schools.

It is prayed before this Court that the imposition of the qualifications was in view of promoting education by incentivising it and making it more lucrative thereby, taking a step in the direction of attainment of the object of entry 17.

It is also prayed before the hon'ble Court that the classification doesn't suffer from arbitrariness since the prescription of grades up to which a person is required to be educated is a matter of policy decision. Policy decisions are not subject to judicial scrutiny.[21]

As per Article 243 F, the State Legislature is empowered to prescribe grounds for disqualification for being chosen as, and for being, a member of a Panchayat. Now in the *provisio* to the same it is stated:

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[21] Javed and Others v. State of Haryana and Others, (2003) 8 SCC 369

"*provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years*".

Now, the Act prescribes explicitly a ground on which no person can be disqualified. It doesn't, however, mention education as a ground on which disqualification cannot be sought. Thus, the intent of the Legislature in enacting the same is clear and including any extraneous ground in the said provisio will amount to encroachment on the power of the Legislature.

It is pertinent to note in this regard that the Court in a prominent case observed that: "*Ordinarily, any restriction so imposed, which has the effect of promoting or effectuating a directive principle, can be presumed to be a reasonable restriction*"[22]

The promulgation of the Ordinance was in pursuance of the duty imposed on the State Government under Article 40 of the Constitution of Gariba, 1949, which reads as follows: "*The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government*"

Now the object of introducing educational requirements as eligibility criteria is to promote awareness regarding education attainment. The State recognises the importance of education in carrying out the functions of office. It is a bona fide belief of the Government that formal education is a necessary requisite to carrying out the functions of not just the office in which a person is posted but also to coordinate with the other statutory and constitutional bodies.

It may also be pertinent to highlight the importance of formal education in the present times. The statement of objects of the 73rd amendment highlights the reasons that necessitated recognising Panchayats as institutions of self-government. Now it a well settled proposition that a Statement of objects and reasons can be referred to for limited purpose of ascertaining the circumstances which actuated the sponsor of the Bill to introduce it and the purpose for

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[22] Papnasam Labour Union v. Madura Coats Limited and another (1995) 1 SCC 511

doing so.[23] However, more than 3 decades after the amendment the circumstances have changed materially. In the age of financial inclusion and science and technology, it is considered imperative to have formal education to be able to understand the various benefits and schemes that are to be introduced in villages. If however, formal education is ignored then in the fast moving age it will be illusory to expect the panchayats to remain institutions of self-government.

The ordinance does not exclude but operates to include qualified persons. It is merely an election reform with the object to improve the working of the Panchayati Raj Institutions.

In yet another case the Court highlighted the importance of exercising judicial restraint in the following words: *"When considering an application for staying the operation of a piece of legislation, and that too pertaining to economic reform or change then the courts must bear in mind that unless the provision is manifestly unjust or glaringly unconstitutional, the courts must show judicial restraint in staying the application of the same. Merely because a statute comes up for examination and some arguable point is raised, which persuades the courts to consider the controversy, the legislative will should not normally be put under suspension pending such consideration. It is now well settled that there is always a presumption in favour of the constitutional validity of any legislation, unless the same is set aside after final hearing and, therefore, the tendency to grant stay of legislation, at the interim stage, cannot be understood. The systems of check and balances has to be utilised in a balanced manner with the primary objective of accelerating economic growth rather than suspending its growth by doubting its constitutional efficacy at the threshold itself".*[24]

[23] A. C. Sharma vs Delhi Administration AIR (1973) S.C. 913

[24] Bhavesh D. Parish and Others v. Union of India and Another (2000) 5 SCC 471 (para 30)

It is therefore, prayed before this Court, that it should refrain from staying the operation of the ordinance as the object of the same is growth of Panchayats as institutions of self-government in the long run.

(iv) Policy decisions cannot be adjudged Arbitrary:

It is humbly prayed before the hon'ble Court that the decision to implement the said qualifications at the grass root level is a policy decision. In *Javed and Others v. State of Haryana (Supra),* it was observed that, *"there is no constitutional requirement that policies must be implemented in one go. Policies are capable of being implemented in a phased manner. More so, when the policies have far-reaching implications and are dynamic in nature, their implementation in a phased manner is welcome for it receives gradual willing acceptance and invites lesser resistance. The implementation of policy decision in a phased manner is suggestive neither of arbitrariness nor of discrimination"*.

In yet another case, in which the policy of nationalising educational institutions was sought to be implemented, it was observed that, *"all institutions cannot be taken over at a time and merely because the beginning was made with one institute, it could not complain that it was singled out and therefore, Article 14 was violated"*.[25]

Thus, merely because the reform has been introduce at the grass root level and it causes some hardship cannot be a ground to adjudge and declare that the law is violative of fundamental rights.

(v) Bar to interference in election process

[25] Lalit Narayan Mishra Institute of Economic Development and Social Change, Patna etc., v. State of Bihar and Ors (1988) 2 SCC 433

It is humbly prayed before this hon'ble Court that as a matter of settled proposition of law and in view of constitutional and statutory provisions, the Court must refrain from interfering in the election process once the election process is put in motion.

The Supreme Court has in a landmark case laid down the guidelines for the Court to observe while deciding on an application to interfere with the election process. It held as follows:

"If an election (the term being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completion of proceedings in elections".[26]

It is prayed before this Court the bar of interference by the Court in electoral matters under Article 329 of the Constitution has also been incorporated in Part IX of the Constitution as Article 243 – O, clause (b) of which reads as follows:

"*Notwithstanding anything in this Constitution –*

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State".

It is thus, prayed that the election process has already commenced and thus, interference by the Court now will amount to violation of Article 141 of the Constitution, as it will be against the settled proposition of law elaborated in the above mentioned case.

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[26] Election Commission of India Through Secretary v. Ashok Kumar & Others, AIR 2000 SC 729

PRAYER

In the light of the foregoing arguments, the Respondent respectfully requests this Honourable Court to adjudicate and declare that the contention of the Petitioner regarding unconstitutionality is invalid.

Any other order as it deems fit in the interest of equity, justice and good conscience.

For this act of kindness, the Respondent shall duty bound forever pray.

Sd/-

(Counsel for the Respondent)