TEAM CODE: B

BEFORE THE HON'BLE HIGH COURT OF NIRDHAN

IN THE MATTERS OF:

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

v.

Republic of Gariba, State of Nirdhan and Maxis Bank- Second Side ... RESPONDENTS

WRIT PETITION NO. 999 of 2015

CLUBBED WITH

WRIT PETITION NO. 1021 of 2015

SUBMISSION TO THE HON'BLE HIGH COURT OF NIRDHAN

UNDER ARTICLE 226 OF THE CONSTITUTION OF GARIBA

WRITTEN SUBMISSIONS ON BEHALF OF THE RESPONDENTS

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LIST OF ABBREVIATIONS

AIR	All India Reporter
&	And
Art.	Article
Edn.	Edition
Ed.	Editor
JCi	Jeopardy Contracts Inc.
JGPS	Jodhpur Gaon Panchayat Samiti
Journ.	Journal
p.	Page
pp.	Pages
¶	Paragraph
PULDR	People's Union for Liberties & Democratic Reforms
§	Section
§§	Sections
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reporter
i.e.	that is
UNCITRAL	United Nations Commission on International Trade Law
V	Versus
Vol.	Volume

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5. *Waste Management* v *United Mexican States,* Award, 30 April 2004, 43 *ILM* 203,967.
6. *White Industries* Australia Limited *v.* The Republic of *India,* Award of 30th Nov' 2011.

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4. Swiss Private International Law Act, 1987.
5. Supreme Court Rules, 2013.
6. RBI Guidelines.
7. The Constitution of India.

JURISDICTION

The Petitioner submits this memorandum for two petitions filed before this Honourable Court is clubbed together. The Petitioners has approached the Hon'ble High Court of Gariba under Article 226 of the Constitution of Gariba.

STATEMENT OF FACTS

1. The Republic of Gariba is a sovereign federation of states with several union territories. Nirdhan is the biggest of the States in the Republic. The territory was considered as backward till 2011, when the then Governor of Nirdhan decided to fast pace the development of roads and highways.
2. Jeopardy Contracts Inc. [JCi] entered into an agreement with Jodhpur Gaon Panchayat Samiti [JGPS] for 115 kms of road in a Scheduled area in Nirdhan. At the time of culmination of the project, certain issues cropped up regarding land acquisition, design of the bridges etc. due to which the JGPS terminated the contract.
3. JCi sent a legal notice on for invoking arbitration as per contractual clause and also asked for 'termination payment' for the work already done. JGPS informed that the matter was covered under the Madhyastham Adhukaran Adhiniyam Act, 1983 and therefore the Arbitration and Conciliation Act, 1996 is not applicable. JGPS also invoked the performance bank guarantee.
4. JCi moved the High Court of Nirdhan by filing an urgent civil writ petition being WP (C) No. 99/2014. the High Court took this matter and granted "…an ad-interim ex-parte stay on invocation of bank guarantee. The writ petition was disposed of directing the parties to seek appropriate interim remedies from the ld. Arbitrators. The arbitration culminated into an award dated in favour of JCi, and inter alia held JCi entitled to the money under the performance bank guarantee.
5. JGPS immediately filed a petition under Sec. 34 of the Act of 1996, before the High Court of Nirdhan, on its original side. In response JCi challenged the constitutional validity of Sec. 34, by way of a writ petition, being WP 999/2015. The High Court of Nirdhan admitted the petition and issued notice to the ld. Attorney General.

6. In the meanwhile, the Governor of the State of Nirdhan, promulgated Ordinance on 20th December 2014, which came into effect from 24th of December 2014, which amended the Nirdhan Panchayati Raj Act, 1994. The ordinance laid down the qualification criteria for election as the panch or member of the state panchayati raj.
7. People's Union for Liberties & Democratic Reforms issued a public statement that the Ordinance was replete with malice in law it amounted to promulgating the ordinance for 5 years instead of 6 months, and it is violative of Constitution.
8. People's Union for Liberties & Democratic Reforms moved the High Court of Nirdhan where listing was denied the People's Union for Liberties & Democratic Reforms moved the Hon'ble Apex Court under Art. 32. However, no listing was granted till the issuance of election notification. Upon listing, the Apex Court was pleased to observe that the matter can now be heard by High Court of Nirdhan.
9. The High Court of Nirdhan admitted the petition, and given that important questions pertaining to the interpretation of Constitution were involved, notices were issued to the ld. Attorney General as well as the Republic of Gariba. Given that the ld. Attorney General was to appear in these two matters, (i.e. WP 999/2015 and WP 1021/2015) they have been directed to be listed together for final hearing.

ISSUES PRESENTED

ISSUE 1:

WHETHER SECTION 34 OF THE ARBITRATION AND CONCILIATION ACT, 1996 IS CONSTITUTIONALLY VALID?

ISSUE2:

WHETHER BANK IS OBLIGED TO RELEASE BANK GUARANTEE?

ISSUE3:

WHETHER WRIT PETITION BEFORE THE HONOURABLE HIGH COURT IS NOT MAINTAINABLE?

ISSUE 4:

WHETHER THE ORDINANCE PROMULGATED BY THE GOVERNOR IS ULTRA VIRES OF PART IX, VIOLATIVE OF ANY CONSTITUTIONAL PROVISION AND RETROACTIVE?

SUMMARY OF ARGUMENTS

ISSUE 1: WHETHER SECTION 34 OF THE ARBITRATION AND CONCILIATION ACT, 1996 IS CONSTITUTIONALLY INVALID?

Section 34 of The Arbitration and Conciliation Act, 1996 is constitutionally valid and stucking it down will lead to violation of Article 14 of the Constitution and principles of natural justice.

ISSUE2:WHETHER BANK IS OBLIGED TO RETAIN BANK GUARANTEE?

The bank is obliged to retain the bank guarantee as it is bound by the Supreme Court and RBI guidelines.

ISSUE 3: WHETHER WRIT PETITION BEFORE THE HONOURABLE HIGH COURT IS NOT MAINTAINABLE?

It is humbly submitted the Writ Petition filed under section 226 of the Constitution is not maintainable as High Court cannot direct Supreme Court in the matter of vacation bench and High court doesn't have jurisdiction to decide vires of ordinance as election notification has already been issued.

ISSUE 4: WHETHERTHE ORDINANCE PROMULGATED BY THE GOVERNOR IS ULTRA VIRES OF PART IX AND VIOLATIVE OF VARIOUS CONSTITUTIONAL PROVISIONS?

The ordinance promulgated is not ultra vires of Part IX of the Constitution as it complies with the provisions under this part, is not violative of any constitutional provisions and does not have any retroactive effect.

ARGUMENTS ADVANCED

ISSUE 1: SECTION 34 OF THE ARBITRATION AND CONCILIATION ACT, 1996 IS CONSTITUTIONALLY VALID.

The submission is *threefold:*

i. Section 34 does not amount to introduction of 'litigation' in the arbitral process and it is not against the basic tenets of arbitration.

Section 5 of the Arbitration Act, 1996 provides, through a non-obstante clause i.e. no judicial authority shall interfere except where so provided for. The said Section gives room for limited intervention of the court in arbitration process. It is based on Article 5 of the UNCITRAL model law, important purpose of which is not to negate court intervention altogether or cut down the proper role of courts but to list out, in the national law, all the situations which permit court intervention and exclude any plea based on a remedy outside the Act or based on a residual power of the national courts.[1]

Section 34 of the Act is covered under purview of limited judicial intervention and an award can be challenged under it only on very limited five grounds such as invalidity of arbitration, excess as to the scope of the arbitration, award in conflict with public policy of India etc. and court has only supervisory role to play[2].

Section 34 of the Act does not violate basic tenets of arbitration. The submission is threefold—

(a) Party's Autonomy

[1] *See* 62 & 63 of the UN Commission's Report (1985) on the Adaptation of Model Law.

[2] *Bharat Aluminium Co. v. Bharat Aluminium Co.,* AIR2005Chh21, ¶ 24.

Principle of party autonomy ensures that arbitration will proceed in accordance with the aspirations of the parties.[3] However, this principle is not always unlimited. It may sometimes subject to mandatory rules of law of place or public policy rules of the law applicable to substance and equal treatment[4]. Provisions provided under Section 34 of the Act falls under those exceptions of fundamental principles of law which are universally accepted. Where the arbitration agreement is itself illegal and its illegality affects the fundamental principle of a state, party autonomy will no longer be protected and Court has to interfere to govern the relationship of parties.

(b) Kompetenz-Kompetenz & Minimising Judicial Control

Section 16 of the Arbitration & Conciliation Act, 1996 embodies the kompetenz kompetenz rule which expressly gives the Arbitral Tribunal the power to rule on its own jurisdiction and including on the validity of the arbitration agreement,[5] but the rule does not mean that the tribunal would be the sole judge of jurisdiction but merely the first judge.[6] Therefore, Courts may review the jurisdictional decision on limited grounds provided, at the setting aside and enforcement stages of the arbitration. This rule can be found in a myriad of institutional rules[7],

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[3] C. Chatterjee, *The Reality of Party Autonomy Rule in International Arbitration*, (2003), 20(6) Journal of International Arbitration 539, 540.

[4] REDFERN & HUNTER, INTERNATIONAL ARBITRATION, (5th ED. 2009), ¶ 6.11.

[5] *See* UNCITRAL Model Law on International Commercial Arbitration, Art.16; Arbitration & Conciliation Act, 1996, § 16.

[6] FOUCHARD GAILLARD GOLDMAN, INTERNATIONAL COMMERCIAL ARBITRATION, SAVAGE AND GAILLARD, (ED. 1999), ¶660.

[7] UNCITRAL Arbitration Rules, 1976, Art. 21; International Chamber Commerce Arbitration Rules, Art. 6.2.

arbitration legislations[8], conventions[9], arbitral awards[10], judicial decisions[11] and in scholarly writing. Further Court doesn't have power to go into the merits of an arbitral award under this Section.[12]

Further the grounds provided under the said Section are so limited and crucial that striking them down will lead to violation of principals of natural justice available to parties under every legal system. And it is now considered that non-compliance with rules of natural justice amounts to arbitrariness violating Art. 14 of the Constitution[13]of Gariba.[14] An arbitral award cannot be impeached on merits. Therefore, consideration of questions on the correctness of the award on law and on facts by the Court is not permitted.[31] Hence it is not against the basic tenets of arbitration.

ii. ***Pendency of Sec. 34 petitions doesn't amounts to expropriation, and doesn't leads to violation of country's bilateral and multilateral commitments under various conventions and investment treaties.***

The argument is *threefold:*

(a) JCi lacks locus to challenge violation of treaties and Conventions

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[8] *See* Swiss Private International Law Act, 1987, Art. 186.

[9] *See* "European Convention on International Commercial Arbitration", Geneva, 1961, Art. 5(3).

[10] *Belgian parties v. African State, ICC* Award No. 1526 (1968); *Swiss company v. Italian company, ICC* Award No. 2476 (1976).

[11] *Flood and Concklin Manufacturing v. Prima Paint*, 388 U.S. 395 (1967).

[12] *ONGC v. SAW Pipes Ltd*., AIR 2003 SC 2629.

[13] Constitution of Gariba is *Pari materia* with Constitution of India.

[14] *Rajasthan State Road Transport Corp. v. Bal Mukund Bairwa (2),* (2009) 4 SCC 299.

It is humbly submitted that JCi lacks locus to challenge that Section 34 leads to violation of bilateral and multilateral commitments under various conventions and investment treaties as the fact sheet nowhere mentions that JCi is foreign investment company who has made investment in Gariba pursuant to bilateral and multilateral treaties and conventions therefore it has no interest to challenge its validity.

(b) Not violative of bilateral and multilateral commitments

Moreover even if JCi has an interest, it cannot be said that Section 34 leads to violation of bilateral and multilateral commitments under various treaties and conventions. A host State's obligation towards foreign investors derives from the terms of the applicable investment treaty and not from a set of expectations investors may have or claim to have.

Further there is no such violation of principle of *minimum standard treatment* under any treaty, Convention or multilateral commitments. As it has been observed in *Waste Management II* that:

" *... the minimum standard of treatment of fair and equitable treatment is infringed by conduct attributable to the State and harmful to the claimant if the conduct is arbitrary, grossly unfair, unjust or idiosyncratic, is discriminatory and exposes the claimant to sectional or racial prejudice or involves the lack of due process leading to an outcome which offends judicial propriety - as might be the case with manifest failure of natural justice in judicial proceedings.*[15]

In the instant case there is as such no gross unfair, unjust treatment of failure of natural justice on part of the courts by accepting petitions under Section 34 of the Act. Further there is no evidence to show that Gariba turned out to be an unsafe or insecure place to invest or fair treatment before the law is lacking.

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[15] *Waste Management* v *United Mexican States,* Award, 30 April 2004, 43 *ILM* 203,967, ¶98.

(c) Pendency doesn't amount to expropriation and denial of justice

It is submitted that petition under Section 34 doesn't amount to expropriation as expropriation means complete denial of claim over a property right which in turn leads to denial of justice. In *Chevron Corporation and Texaco Petroleum Company v Ecuador*[16] agreed that:

"the test for establishing a denial of justice sets ... a high threshold. While the standard is objective and does not require an overt showing of bad faith, it nevertheless requires the demonstration of a particularly serious shortcoming and egregious conduct that shocks, or at least surprises, a sense of judicial propriety.

Secondly, and more importantly, the expropriation claim is unfounded because Republic of Gariba's courts had yet to rule on application to set aside the arbitral award, therefore, the award has not been taken and dispute between JCi India & JGPS as to entitlement of bank guarantee is pending before the court. Further there in no substantial delay in cases under Section 34 of the Act as Court's duty under the said Section is supervisor in nature i.e. to see whether case falls under mentioned ground and it wouldn't go into the merits of the case.[17]

Lastly, for speedy disposal of Arbitration related cases Nirdhan High Court[18] has created separate and dedicated benches for arbitration related cases which resulted not only in better and quicker decisions, but has also increased the confidence of the parties in choosing the jurisdiction of the Nirdhan High Court for dealing with arbitration related cases.[19]

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[16] *Chevron COI poration and Texaco Petroleum Company* v. *Ecuador* UNCITRAL, PCA Case No. 34877, ¶244.

[17] *ONGC v. SAW Pipes Ltd*., AIR 2003 SC 2629.

[18] High Court of Nirdhan works as Delhi High Court.

[19] Law Commission Report 246 ¶23.

Therefore it is humbly submitted that Sec. 34 petitions doesn't amounts to expropriation, and doesn't leads to violation of country's bilateral and multilateral commitments.

iii. Grant of an automatic stay, without adjudication on prima-facie case, balance of convenience and irreparable injury is per se bad in law

The Court has stayed the enforcement of arbitral award without going into the merits of the case. The Court is not bound to look into the merits of the case that include; a) prima facie case, balance of convenience and c) irreparable injury. All of these come into court's consideration only when it has to issue an injunction and that also is a prohibitory order; which can be issued according to Order 39, Rule 1[20] only when the property in dispute is in danger of being wasted, damaged, alienated or sold or when the defendant threatens to dispose or remove the property or if the defendant threatens to dispossess the plaintiff or otherwise cause any injury.

In the instant case there is no threat or danger to the arbitral award; hence the court will not look into the merits of the case and can issue an automatic stay to protect the rights of the parties.

In the case of *National Aluminium Co. Ltd. Vs. Pressteel & Fabrications (P) Ltd. and Anr,*[21] the court observed that by virtue of the mandatory language of section 34 the arbitral award becomes inexecutable. The court would then not have any discretion other than to put a stay on the award and any other direction by the court would be impermissible.

Further, the challenging of the constitutional validity of section 34 on this ground would not stand as no fundamental right of JCI has been violated as a result of the automatic stay on the enforcement of the arbitral award. Hence, this petition should be dismissed.

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[20] Civil Procedure Code, 1908.

[21] (2004) 1 SCC 540.

ISSUE 2: BANK IS NOT OBLIGED TO RELEASE BANK GUARANTEE.

According to RBI guidelines[22], with regards the purpose of the guarantee the banks should exercise due caution with regard to performance guarantee business.

Also, according to paragraph 2.2.3 banks have to be cautious while issuing bank guarantee. In the case of performance guarantee, banks should exercise due caution and have sufficient experience with the customer to satisfy themselves that the customer has the necessary experience, capacity and means to perform the obligations under the contract, and is not likely to commit any default.[23]

The Supreme Court has also made certain principles that have to be kept in mind while releasing bank guarantee but all of those pertain to an unconditional bank guarantee wherein the bank can be restrained from releasing bank guarantee only in cases where a prima facie fraud can be established and an irretrievable injury as a result is likely to be caused due to the release.[24] A performance guarantee is wherein a bank agrees that its customer shall duly perform and fulfill the obligations and conditions that may arise from the contract and if the party makes a default in the fulfillment of the same, it will make the payment as agreed in the guarantee.[25]

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[22] RBI Master Circular, Guarantees and Co-acceptances, Dt. 1st July' 2014.

[23] *ibid.*

[24] *Himadri Chemicals Industries Ltd vs Coal Tar Refining Company*, (2007) 139 Comp. Cas. 706 (SC).

[25] DUTTA'S, BANKING LAW (PRINCIPLES PRACTICE AND PROCEDURE), VOL.1, (ED. 2010), P 736.

The court cannot restrain the banks from releasing the bank guarantee in cases where the bank guarantee is unconditional.[26] In this case however as the bank guarantee is dependent on the performance of the contract it cannot be termed as an unconditional bank guarantee. The enforcement of the bank guarantee is dependent on the fulfilment of the obligations and conditions that have been laid down in the principle contract. Hence, Maxis bank is not liable to release bank guarantee.

ISSUE 3: WRIT PETITION BEFORE THE HONOURABLE HIGH COURT IS NOT MAINTAINABLE.

i. High court has no jurisdiction to decide on the issue of non-availability notified vacation bench and notified procedure in Supreme Court when it is not in session.

It is humbly submitted that the honorable High Court has no jurisdiction to decide upon the matter that non-availability of a notified vacation bench and non-availability of a notified procedure for listing when the Supreme Court is not in session is unconstitutional. In case of *Rupa Ashok Hurra v. Ashok Hurra,*[27] it has been observed by the honorable Supreme Court that the High Court cannot issue a writ to another High Court nor can one bench of a High court issue writ to different Bench of High Court much less can the writ jurisdiction of the High court be invoked to seek issuance of writ of certiorari to the Supreme Court and High Court are not constituted as inferior courts in our constitutional scheme.[28] Further in *P. Venkata Somaraju v.*

[26] *U.P Cooperative Federation Ltd v. Singh Consultants and Engineers P. Ltd*., (1988) 1 SCC 174.

[27] AIR 2002 SC 1771.

[28] DURGA DAS BASU, COMMENTARY ON CONSTITUTION OF INDIA, VOL. 6, (8TH ED. 2008), P. 6914 ¶3.

Principle Musif Magistrate, Bhimavaram,[29] it has been observed by the Court that writ of certiorari cannot be issued against a court of equal status.

In the instant case it is pertinent to note that administrative function of the Supreme Court is challenged before the High Court and as per the settled principle no effective order can be by High Court directing the Supreme Court.

Further there is notified procedure for vacation bench as Order VI, Rule VI of Supreme Court rules 2013 categorically provides for sitting of vacation bench during vacation for the matters to be filed under article 32 of the constitution and also for other matters.[30] Supreme Court notification dated 23th Sep' 2014 categorically provides for procedure for advocates seeking relief in urgent matter either on Court holidays or after Court hours.[31]

ii. ***Writ Petition under Article 226 is not maintainable after the issuance of election notification***.

It is submitted that writ petition under Article 226 of the Constitution is not maintainable as election notification has already been issued. It has been decided in three judge bench of Supreme Court that dispute relating to election cannot be decided under Article 226 of the Constitution of India while the process of election is on.[32] Further in case of *Anugrah Narain Singh v. State of U.P.,*[33] and there is hardly any scope for the High Court to intervene and correct

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[29] AIR 1968 AP 22, ¶ 20.

[30] Supreme Court Rules, 2013.

[31] Supreme Court notification dated 23rd Sep' 2014.

[32] *Election Commission of India v. Ashok Kumar,* AIR2000SC2979, ¶32.

[33] (1996)6 SCC 303.

the electoral roll under Article 226 of the Constitution. Therefore it is humbly submitted that the writ petition under Article226 is not maintainable.

ISSUE 4: THE ORDINANCE PROMULGATED BY THE GOVERNOR IS NOT ULTRA VIRES OF PART IX, DOES NOT VIOLATE ANY CONSTITUTIONAL PROVISION AND IS NOT RETROACTIVE.

Article 213 of the Constitution of Gariba[34] empowers the Governor to promulgate Ordinance during recess of legislature and the scope is confined to the subjects in List II and List III of Schedule VII. Under Article 243-G of the Constitution the Legislature of a State has been vested with the power to make law endowing the Panchayats with such powers and authority that 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.[35]

The state legislature may, further endow the Panchayats with such powers and responsibilities so as to formulate laws and schemes with respect to economic development and social justice.[36]

In the instant case the ``Governor of Nirdhan has promulgated an ordinance by virtue of the power entrusted to him under Article 213 read with Article 243-G and Entry 5, List II of Schedule VII of the Constitution. Therefore it is not *ultra vires* to the Constitution.

Moreover, the Ordinance is not violative of any Constitutional provision. The submission is *fourfold*:

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[34] Constitution of Gariba is *pari materia* with Constitution of India.

[35] Article 243G.

[36] Eleventh Schedule.

i. Preamble & Basic structure of Constitution

Article 14 of the Constitution does not forbid reasonable classification of persons, objects and transactions by the legislature or any other law making body for the purpose of achieving specific ends. Classification to be reasonable should fulfill following two tests:

- It should be based on an *intelligible differentia*, some real and substantial distinction, which distinguishes person or thing grouped together from the class others left out of it.[37]
- The differentia adopted as the basis of classification must have a rational or a reasonable *nexus* with the object sought to be achieved by the statute in question.[38]

To attract article 14, it is necessary to show that the selection or differentiation is unreasonable or arbitrary;[39] that it does not rest on any rational basis having regard to the object which the legislature or any other law making body has in view in making the law in question.[40] And by the process of classification the State has the power to make the law for a particular set of persons and make reasonable classification.[41] Further Supreme Court has observed that:[42]

> *It is settled law that differentiation is not always discriminatory. If there is a rational nexus on the basis of which differentiation has been made with the object sought to be achieved by particular provision, then such differentiation is not discriminatory and does not violate the principles of Article 14 of the Constitution.*

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[37] *Lakshmi Khandsari v. State of UP*, AIR 1981 SC 873; *State of Haryana v. Jai Singh*, AIR 2003 SC 1696.

[38] *Ibid.*

[39] *Khachu Jagannath And Ors. vs The State Of Madhya Pradesh*, AIR 1964 MP 239.

[40] *K. Thimmapa v. Chairman Central Board of Directors*, AIR 2003 SC 296, ¶ 11.

[41] *Mukesh Kumar Ajmera v. State of Rajasthan*, AIR 1997 Raj 250, ¶ 26.

[42] *UOI v. M.V. Valliappan*, AIR 1999 SC 2526, ¶ 14.

In *Javed v State of Haryana,*[43] the Court rejected a challenge to a statutory provision disqualifying potential Panchayat election candidates with more than two children. The Court first rejected contention based on Article 14 by reasoning that it satisfies the tests of intelligible differentia and rational nexus to the Statute's object.[44] Similarly a five-judge bench in *Sakhawat Ali v State of Orissa,*[45] considered a statute disqualifying legal practitioners who had against the Municipality and once again admitted the Article 14 challenge but rejected it on the basis of constitutional tests. Moreover, Supreme Court has held that right to elect i.e., the right to vote and the right to be elected i.e. the right to contest are both "pure and simple" statutory rights and not fundamental rights.[46]

Therefore, it is submitted that the classification made on the basis of educational qualification by this ordinance is not violative of article 14 of the constitution since it is based on the principle of intelligible differentia as it seeks to achieve efficiency in the governance at the grass root level in the form of village Panchayat. The ordinance in question is based on *legislative wisdom* which justifies the rationale behind promulgation of the ordinance.[47] Since education is an indispensible tool to the achievement of good governance classification based on it cannot be in any case rendered arbitrary.

ii. Single Citizenship

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[43] ((2003) 8 SCC 369).

[44] *Javed v State of Haryana*, ((2003) 8 SCC 369), ¶ 60.

[45] ((1955) 1 SCR 1004.)

[46] *NP Ponnuswami v Returning Officer* ((1952) 1 SCR 218) ,*Jyoti Basu v Debi Ghoshal* ((1982) 3 SCR 318).

[47] *Javed v State of Haryana*, ((2003) 8 SCC 369.

Republic of Gariba has dual polity but has only single citizenship.[48] The legislation or Ordinance would be violative if it discriminates in favor of its own citizens in the matter of public employment, to hold public office or to secure licenses for practicing profession.[49] But merely giving preference to people domiciled in particular state is not violative of Article 14 of the Constitution.[50] In *D. P. Joshi v. State of Madhya Bharat*,[51] it has been observed by the Supreme Court held that the preference shown by a State to students domiciled in that State in regard to capitation fee for admission to the Government Medical College, was not violative of Article 14 of the Constitution. Further in *Vasundhara's case,*[52] the requirement of domicile and residence for 10 years in the State of Mysore as a condition of eligibility for admission to Medical Colleges, was held by the Supreme Court as not offending Article 14.

Therefore, in the instant case the Ordinance doesn't violate Single Citizenship concept as it is not debarring any person form other states to contest election and it recognizes the educational qualification from School of Nirdhan or of any equivalent board from other states.[53]

iii. Marginalizes women and weaker sections due to the prevailing

It is humbly submitted that the ordinance promulgated by the Governor is not marginalizing women and weaker section of the society as its phraseology nowhere intends to affect the delicate balance of reservation envisaged under Article 243D of the Constitution. It is only

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[48] M.P. JAIN, INDIAN CONSTITUTIONAL LAW, (6TH ED. 2010).

[49] *Ibid.*

[50] *Dr. Pradeep Jain Etc v. Union Of India*, AIR 1984 SC 1420.

[51] [1955]1SCR1215.

[52] AIR1971SC1439.

[53] Fact sheet.

creating classification on the basis of education which is nowhere prohibited under the intent of the 73rd Amendment.

The Parliament and the State Legislatures have the power to legislate prospectively and retrospectively.[54].It is a cardinal principle of construction that every statute is prima facie prospective unless its retrospective effect be expressly implied. If the words of the statute are of such a nature and sufficient to show the intention of the legislature to affect the existing right it cannot be deemed to have a retrospective effect.

iv. Ordinance is not retroactive

Also, *nova constitute of uturis formanimponeredebet non praeteritis*[55]; which means a new law ought to regulate what is to follow, not the past and as Lord Blanesburg said, " provisions which touch a right in existence at the passing of a statute are not to be applied retrospectively in the absence of express enactment or necessary intendment."[56] Also, the retrospective effect is not taken into consideration; until and unless such an intention can be manifested by express words or necessary implication.[57]A close attention has to be paid to the language of the law to determine if it will have a retroactive effect or not.[58]

In the instant case the intention of legislature can be implied to not affect the existing members of the Panchayat. This ordinance by its express words and necessary implication is meant to be applicable to the future elections. Hence it does not have a retroactive effect.

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[54] G.P SINGH, PRINCIPLES OF STATUTORY INTERPRETATION, (12TH ED. 2010).

[55] OSBORN: Concise Law dictionary, p. 224.

[56] *Delhi Cloth Mills & General Co. Ltd. v. CIT, Delhi*, AIR 1927 PC 242.

[57] *Co-operative Company Ltd. v. Commissioner of Trade Tax U.P.*, (2007) 4 SCC 480, ¶29.

[58] *Union of India v. Raghubir Singh*, AIR 1989 SC 1933.

PRAYER FOR RELIEF

In the light of the facts stated, issues raised, arguments advanced and authorities cited it is most humbly prayed that this Honorable Court may be pleased to adjudge and declare that—

1. *Section 34 of Arbitration & Conciliation Act, 1996 is constitutionally valid.*
2. *that the bank is not liable to release the bank guarantee.*
3. *that writ petition no. 1021of 2015 is not maintainable before this hon'ble court.*
4. *that the ordinance is not ultra vires of Part IX of the Constitution, not violative of any constitutional provision and does not have a retroactive effect.*

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

For This Act of Kindness, the Respondents Shall Duty Bound Forever Pray.

Sd/-

(Counsel *for* the Respondents)