

(2000) 10 DEL CK 0064
In the Delhi High Court
Case No : C.W.P. No. 1599 of 1997

Baljeet Singh

APPELLANT

Vs

Election Commission of India and Others

RESPONDENT

Date of Decision : 16-10-2000

Acts Referred:

Conduct of Elections Rules, 1961 — Rule 2
Constitution of India, 1950 — Article 173, 188, 84, 99
General Clauses Act, 1897 — Section 3(56)
Representation of the People Act, 1951 — Section 2(1), 33

Citation : AIR 2001 Delhi 1

Hon'ble Judges : Dr. Arijit Pasayat, C.J.; S.K. Mahajan, J; Mukul Mudgal, J

Bench : Full Bench

Advocate : Party In Person, K.K. Sood, ASG and Pinki Anand, for the Respondent

Final Decision : Dismissed

Judgement

Arijit Pasavat, C.J.—Considering the importance of questions raised by the petitioner the matter was placed before a Full Bench. Following questions were formulated on hearing learned counsel for parties :

1. Whether the literacy or alleged standard thereof is inherent in the requirement to "make and subscribe" the oath or affirmation postulated in Articles 84 and 99 of the Constitution or in the transaction of "Business of Parliament", for a person to be qualified to be member of either House of Parliament?"
2. If question No. 1 is answered in affirmative, whether there is any person disqualified for being a Member of either house of Parliament and liable to be so declared by the Court?"

As a corollary, is there a requirement as indicated in Question No. 1 for membership of State Legislature in terms of Articles 173 and 188 of the Constitution of India, 1950 (in short, the Constitution).

2. In a nutshell, the petitioner's case is that Articles 84 and 173 of the

Constitution have to be read in a manner that persons who are unable to comprehend their requirement of making and subscribing the oath or affirmation in terms of Articles 84, 99, 173 and 188 of the Constitution are ineligible to become Members of Parliament and Legislature of a State. To put it differently, according to the petitioner, the words "makes and subscribes" under Articles 84(a) and 173(a) not only imply that a person qualified to be a candidate to fill a seat in Parliament should be a citizen of India and not less than 25 years of age in the case of being elected to the House of People and not less than 30 years of age on being elected as member of Council of States but also should have sufficient knowledge of the letter and spirit of the Constitution, in order to make the requirement of making and subscribing the oath or affirmation to the Constitution meaningful and purposeful. It is submitted by the petitioner that the roles of Legislature are very vital for proper governance of the country in formulating policy decisions and making of laws on varied subjects. A person who is not literate and does not have basic knowledge of the Constitution cannot be said to have fulfilled the requirement of making and subscribing to the Constitution. Thus, according to the petitioner, use of the expression "make and subscribe" under Articles 84(a) and 173(a) also makes the legislative intent clear that adequate knowledge of law and spirit of the Constitution is inherent in the provisions. Since he is unaware of what is being legislated, the law making power delegated to him by the Constitution really results in mindless participation and more so when enactment of a statute comes up for consideration of the law making bodies. The Constitution makers were conscious of this position as their deliberations clearly reflect. According to the learned Counsel for the respondents the propositions advanced by the petitioner are incapable of being worked out and the interpretation put to Articles 84(a) and 173(a) of the Constitution would result in absurd results.

3. Articles 84(a), 99, 173(a) and 188 read as follows :

84. Qualification for membership of Parliament-- A person shall not be qualified to be chosen to fill a seat in Parliament unless he--

(a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;

99. Every member of either House of Parliament shall, before taking his seat, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the third schedule.

173. Qualification for membership of the State Legislature.-- A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he--

(a) is a citizen of India, and makes and subscribes before some person authorised in that behalf of the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;"

188. Conduct of Business -- Every member of the legislative assembly or the legislative council of a state shall, before taking his seat, make and subscribe before the governor, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the third schedule."

4. In the Constitution while referring to the Parliament, Article 99 prescribes that every member of either House of Parliament or some person appointed on behalf by him, should take an oath or affirmation according to the form set out for the purpose in the Third Schedule that he shall bear true faith and allegiance to the Constitution of India as established by law. The form prescribed in is Schedule III as Form No. 1II-B. Similarly, in respect of legislature of the State, Article 188 also imposes an obligation on the member of legislative Assembly or the Legislative Council as the case may be to make and subscribe an oath or affirmation in the manner prescribed in Third Schedule and Form No. VIII-B, Both these articles refer to obligation to take oath or affirmation after the member is elected and before he takes the seat to the effect that he will bear true faith and allegiance to the Constitution of India as by law established. Such provisions were there from the inception of the Constitution. There was no such compulsion for a nominated candidate to make such oath, before the 1963 Amendment. Failure to comply with the above requirements entails penal consequences of Articles 104 and 193 respectively.

5. It may be necessary to make a journey down the Constitution framing body's deliberations together what was in the mind of the framers of the Constitution. We shall deal with its relevance infra. In the draft Constitution as was originally framed, Article 84 did not find a place. An amendment of the draft Constitution was made as Article 68A. This Article 68A as moved for amendment resulted in Article 84 being made a part of the Constitution. Two qualifications are prescribed for a person to be eligible to fill a seat in the Parliament. These are : (a) he should be a citizen of India and (b) he should not be less than twenty five years of age if he was a candidate for the House of People and not less than 30 years of age if he was a candidate for Council of States. No further qualifications were prescribed in the Article. When Article 68A by way of amendment to the draft Constitution was moved. Dr. B. R. Ambedkar stated as follows :

"Sir, the object of the article is to prescribe qualifications for a person who wants to be a candidate at an election. Generally the rule is that a person who is a voter, merely by reason of the fact that he is a voter, becomes entitled to stand as a candidate for election. In this article, it is proposed that while becoming a voter is an essential qualification for being a candidate, a voter who wishes to be a candidate must also satisfy some additional qualifications. These additional qualifications are laid down in this new Article 68-A.

I think the House will agree that it is desirable that a candidate who actually wishes to serve in the Legislature should have some higher qualifications than merely being a voter. The functions that he is required to discharge in the House require experience, certain amount of knowledge and practical experience in the

affairs of the world, and I think if these additional qualifications are accepted, we shall be able to secure the proper sort of candidates who would be able to serve the House better than a mere ordinary voter might do."

It is significant to note that no additional qualifications were proposed and expression "makes and subscribes" formed part of Article 84 and the matter was discussed in the Constituent Assembly by Dr. Rajendra Prasad, who as President of the Constituent Assembly, expressed his views about desirability of high qualifications for a person to be elected as a Member of Legislature. His views are embodied in the following words :

"I will now put the amendment to vote, and also the article if the amendment is accepted as amended. Before doing so, I desire to make an observation but not with a view to influencing the vote of the House. In this country we require very high qualifications for anyone who is appointed as a Judge to interpret the law which is passed by the legislature. We know also that those who are expected to assist Judges are required to possess very high qualifications, for helping the judge in interpreting the law. But it seems that members are of opinion that a man who has to make the law needs no qualifications at all, and a legislature, if we take the extreme case, consisting of persons with no qualifications at all may pass something which is non-sensual and the wisdom of all the lawyers and all the Judges will be required to interpret that law. That is an anomaly but it seems to me that in this age we have to put up with that kind of anomaly and I for one, although I do not like it, would have to put up with it."

Though Dr. B. R. Ambedkar and Dr. Rajendra Prasad who were the Law Minister and the President of the Constituent Assembly, highlighted the desirability of having high qualifications, the same was not found acceptable. Only by Clause (c) of Article 84, Parliament was authorised to make any law prescribing any qualification in that behalf. In the line of Article 68-A, Article 152 was also added in the draft Constitution. Article 152 of the draft Constitution was incorporated as Article 173 of the Constitution. The said provision was similar to Article 68A of the draft Constitution. Prof. K. T. Shah moved an application for amendment of this Article by which word "literacy" was sought to be added for a person to be elected as a member of Legislature. The proposed amendment was as under :--

"That in article 152, after the word "age" where it occurs for the first time the words is literate, and is not otherwise disqualified from being elected": and after the word "age" where it occurs for the second time, the words "is qualified to vote in the constituency from which he seeks election, and is not otherwise disqualified from being elected" be added."

While discussing the matter. Dr. B. R. Ambedkar said with reference of the amendment moved by Prof. K. T. Shah, that literacy is a matter which is well to be left to legislators. If the legislators at the time of prescribing qualifications feel that literacy qualification is necessary they will do it. Amendment moved by Prof. K. T. Shah was negated by the Constituent Assembly. Our purpose of referring

to the debates in the Constituent Assembly is to show that Constituent Assembly had consciously not kept literacy as a qualification for a candidate to be chosen as a Member of Legislature and it was left to the Parliament or the State Legislature at a later date to prescribe qualification if they felt that it was a necessary one for the person to be elected as a Member of the Parliament or the State Legislature.

6. By the 16th Amendment of the Constitution ,which was done in 1963, the words "makes and subscribes before the President or some person authorised on that behalf an oath or affirmation according to the form set out for the purpose in the third schedule" were added. Such addition in under Article 84 did not imply that a person who was required to take the new oath must not only be literate but must also have adequate knowledge of the Constitution. By 1963 Amendment to the Constitution (Sixteenth Amendment), the requirement of making oath or affirmation and subscribing thereto an elected member, was also made obligatory on the candidates nominated for election. The relevant provisions as far as Parliament is concerned is Article 84(a), and as far as Legislature of the State is concerned is 173(a).

By said Amendment following changes were introduced :

(a) making obligatory on the nominated candidate to make oath or affirmation same as elected member.

(b) the oath or affirmation should also be in upholding of sovereignty and integrity of India.

(c) Correspondingly all the forms of Third Schedule were amended.

(d) In addition, the same wording "sovereignty and integrity of India" was introduced in Article 19(2)(3) of the Constitution of India.

7. At the outset it is necessary to note the purpose for which requirements of taking oath have been laid out. The purpose of Article 173(a) is to see that any person who wants to be a member of a legislature must bear true faith and allegiance to the Constitution of India as by law established, and he undertakes to uphold the sovereignty and integrity of India and to ensure this he must make oath or affirmation. (See *Khaji Khanavar Khadir Khan Hussain Khan and Others Vs. Siddavanballi Nijalingappa and Another*,). The essential requirement of Article 173 read with Form VII-A is that person taking the oath or making the affirmation would bear true faith and allegiance to the Constitution and uphold the sovereignty and integrity of India (See : *Virjiram Sutaria Vs. Nathalal Premji Bhavadia and Others*,). The object of introducing the amendment in Clause (a) of Article 173 of the Constitution was to provide that not only before taking his ,seat shall a member of the Legislature take the oath prescribed by the Third Schedule as required by Article 188 of the Constitution, but also that even before standing for election, a candidate must take the same oath. This is to ensure that only a person having allegiance to India shall be eligible for membership of the

Legislature.

8. In early 60's, a tendency on the part of the sizable sections of the Indian people to veer over to the idea of secession from the mother country was noticed by the Government. To check these tendencies, the National Integration Council recommended certain amendments to be made in the Constitution so that adequate powers become available for the preservation and maintenance of the integrity and sovereignty of the Union. It was also recommended that every candidate for the membership of a State Legislature or Parliament and every aspirant too, for incumbency of public office should pledge himself to uphold the Constitution and preserve the integrity and sovereignty of the Union and for that purpose the forms of oath in the III Schedule to the Constitution were to be suitably amended. Articles 84 and 173 were also recommended to be amended and new oath prescribed in the III Schedule to the Constitution so as to provide every candidate to take an oath to "uphold the sovereignty and integrity of India" was to be added. It was, with this purpose to prevent all activities, designed to have disintegration of the country that not only the members who are elected to the Parliament but even the candidates, who intend to contest for being elected for members of Parliament or State Legislature, were required to take an oath to preserve the sovereignty and integrity of the country. Shri A. K. Sen, the then Minister of Law, while moving the Sixteenth Amendment to the Constitution said as under :--

"Sir, this Bill was introduced on the recommendation of the National Integration Committee which was set up with Shri C. P. Ramaswami Aiyar as the Chairman, who in the report recommended that Article 19 of the Constitution should be amended so as to make it possible for the State to impose restrictions for the purpose of preventing all activities designed to have further disintegration of the country and to make it impossible for parties to make secession from India or disintegration of India election Programmes or issues. For this purpose, Sir, the Bill seeks to give power to the Government to impose restrictions by amending suitably Article 19.

Article 19(2) and 19(4) do not give power to the Parliament to impose restrictions for the purpose of securing the sovereignty and integrity of India, and we seek to add these words in Article 19 Clauses (2), (3) and (4) of the Constitution. This is absolutely necessary because the existing words do not cover a power designed to curb activities which seek to challenge the sovereignty and integrity of India as some parties have recently sought to do -- not only they sought to do but to make them election issues on which elections have been fought and the most narrow and parochial sentiments and emotions have been roused and people have been called upon to vote on these issues.

Hereafter, Sir, it is designed to bring into operation strict laws which will penalise all such activities. Further than that, in deference to the recommendations of the same Committee, we are making it absolutely obligatory for all candidates who seek election either to the local legislatures or to Parliament to subscribe to oaths

before elections pledging themselves to uphold the sovereignty and integrity of India. The form of the oath, as amended after the Bill becomes law, is shown in Clause 5 of the Bill and this will also have a salutary effect on a candidate, who has pledged himself to uphold the sovereignty and integrity of India not to make disintegration and secession an election issue.

As I said, Sir, when it was referred to the Joint Committee, it should be passed without any division whatsoever because I cannot conceive of any reasonable objection to a candidate can do, the least that a member to local legislature or to the Parliament subscribing to an oath pledging himself to uphold the sovereignty and integrity of India. This is an elementary duty, the least that a candidate can do, the least that a member of either the local legislature or Parliament can do, and this is the least duty that he owes to this country to which he belongs :

It is unfortunate that, at a time when we are facing the most major threat in our history since independence, we should have to contend with such activities and have to ask for powers to deal with such activities. Yet, it becomes all the more necessary that these powers should be taken to see that the integrity and security of the country are not capable of being threatened by anyone, who chooses to make these narrow issues either election issues or issues of a local or regional character. I should, Therefore, humbly appeal that at least for the purpose of showing the united will of the country and the united will of this House the entire country must stand pledged permanently to the sacred duty of upholding the integrity and sovereignty of India and pledging itself ruthlessly to deal with all activities, which seek to threaten the very foundation of our freedom, integrity and unity. It is only by such united voice that we are capable of expressing that in my submission we shall be able to carry the entire country with us. Therefore, I humbly submit that this motion be accepted and the Bill be passed without any dissenting vote."

9. It is, Therefore, clear that the only purpose for amendment to the Constitution in 1963 was to put restrictions upon the rights guaranteed by Article 19 of the Constitution of India in the interest of sovereignty and integrity of the State and to provide that every candidate for membership of Parliament or State Legislature, Union and State Ministers, Members of Parliament and State Legislature, Judges of Supreme Court and High Courts and the Comptroller and Auditor General of India, should take an oath to uphold the sovereignty and integrity of India. It was never the intention of the Legislature that by these amendments in the Constitution, an additional qualification of a candidate being literate and having knowledge of the Constitution of India was added.

10. Moreover, Rule 2(ii) of the Conduct of Election Rules clearly mention that the oath will be read over to the person who is not in a position to read the same and such person may put his mark in the form prescribed for the purpose. This clearly implies that there can be a candidate who cannot read and write and in such a case oath as prescribed by the Act was to be read over to him and he was required to put the mark in the form prescribed for the same. These Conduct of

Election Rules were framed in 1961. In 1963, when the Constitution was amended, the Parliament was aware of the existence of Conduct of Election Rules. In spite of the existence of said rules, the Parliament did not find any reason to amend the same, which clearly goes to show that it was not the intention of Parliament to make literacy implicit in Article 84(a) or 173(a) as a qualification for a person to be elected to Parliament.

11. Not only that the amendment proposed to the draft Constitution in 1949 regarding literacy to be an essential qualification of a candidate for being elected to the Parliament or State Legislature was rejected by the Constituent Assembly, the Parliament while enacting the Representation of People Act, 1951 (in short, R. P. Act, 1951) was also conscious of the fact that there can be some candidates for election to the Parliament or State Legislature who were not in a position to read and write. The Parliament in Section 2(1)(i) of the said Act while giving the meaning of the word "sign" has indicated that "sign" in relation to a person who is unable to write his name, must authenticate in such manner as may be prescribed. Again Rule 2(2) of the Representation of People (Conduct of Elections and Election Petitions) Rules, 1951 also contemplates a situation where a candidate is not in a position to read and write and requires such a candidate to sign an instrument or other paper by placing a mark thereon. Rule 2(2) of the said Rules reads as under :

"For the purpose of the Act or these Rules, a person who is unable to write his name shall, unless otherwise expressly provided in these Rules, be deemed to have signed an instrument or other paper if he has placed a mark on such instrument or other paper in the presence of the Returning Officer or the presiding officer or such other officer as may be specified in this behalf by the Election Commission and such officer "on being satisfied as to his identity has "attested" the mark as being mark of such person".

12. While amending the Constitution in 1963, the Parliament was aware of the stipulations in R. P. Act, 1951 as well as the Rules framed thereunder about a candidate not being in a position to write his name and the said Act and the Rules have not been amended till date. It shows that it was never the intention of the Parliament to read "literacy" in the words "makes and subscribes" in Articles 84(a) and 173(a) of the Constitution. The definition of the word "sign" in the General Clauses Act, includes the making of a mark. In Section 2(1)(i) of R. P. Act, 1951 the word "sign" in relation to a person who is unable to write his name means authenticated in such manner as may be prescribed. In Section 33(1), (2) (before amendment of 1956), the word "subscribe" means signing according to the requirements of the Act. In case of thumb marks attestation is necessary. Failure to comply with the provisions of the Sections entails the penalty of rejection of the nomination paper. The word "subscribe" in the modern sense means to sign one's name; to signify assent or adhesion to by signing one's name; to attest by signing. The meaning of the word "sign" is also similar, i.e., attest or confirm by adding one's signature to affix one's names to a

document etc, Stroud's Judicial Dictionary gives the meaning of "subscribe" as to write under something in accordance with the prescribed regulations, where any such exit (see Rattan Anmol Singh and Another Vs. Atma Ram and Others,).

13. The Constitution does not prescribe any specific manner as to how the oath is to be made or subscribed. The only prescription is that it should be according to the Form set out for the purpose in the Third Schedule which means as far as possible as per the Form. The word "subscribe" has not been defined in the Constitution. But it has been used in Section 33 of the R. P. Act, 1951. Unlike other provisions of the Representation of the said Act Section 33 dealing with the nomination of candidate uses the expression "subscribed" as noted by the Apex Court in Rattan Anmol Singh and Another Vs. Atma Ram and Others, .

14. To put the position differently, if there is no requirement that there should be element of literacy at the time of filing the nomination of the candidate, it will be difficult to accept the stand that there should be requirement of literacy at the time of making of the oath after the filing of the nomination.

15. It would be relevant to take note of Article 171 of the Constitution at this stage. "The term electorate", used in Article 171(3)(a)(b) and (c) has neither been defined by the "Constitution nor in any enactment by Parliament. Section 2(1)(e) of the R. P. Act, 1951, however, says :

"elector", in relation to a constituency means a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in Section 16 of the R. P. Act. 1950."

16. The plain and ordinary meaning of the term "electorate" is confined to the body of person who elect. It does not contain within its ambit, the extended notion of a body of persons electing representatives" from amongst themselves. Thus, the use of the term "electorate", in Article 171(3) of our Constitution, could not by itself, impose a limit upon the field of choice of members of the electorate by requiring that the person to be chosen must also be a member of the electorate. The qualifications of the electors Constituting the "electorate" and of those who can represent each "electorate", contemplated by the Constitution and then supplemented by Parliament, are separately set out for each house. We may glance at the provisions relating to Legislative Assemblies first. Section 16 of the Representation of the People Act 43 of 1950 (R. P. Act, 1950} lays down the qualifications of an elector negatively by prescribing who shall be disqualified for registration in an electoral roll. A disqualified person is one who;

a : is not a citizen of India; or

b : is of unsound mind and stands so declared by a competent Court; or

c : is for the time being disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections."

17. Section 19 of R. P. Act, 1950 lays down the two conditions for registration on the electoral roll of a constituency. The person to be registered must not be less than 21 years of age on the qualifying date and must be ordinarily resident in the constituency. The persons so registered, whose names appear on the electoral roll, constitute the electorate for the Legislative Assembly of each State. Section 5 of the R. P. Act, 1951 enacts :

"5. Qualifications for membership of a Legislative Assembly :

A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless --

(a) In the case of a seat reserved for the Scheduled Castes or for the Scheduled Tribes of that State, he is a member of any of those castes or of those tribes, as the case may be, and is an elector for any Assembly Constituency in that State;

(b) In the case of a seat reserved for an autonomous district of Assam, other than a seat the constituency for which comprises the cantonment and municipality of Shilong, he is a member of a Scheduled Tribe of any, autonomous district and is an elector for the Assembly constituency in which such seat or any other seat is reserved for that district" and

(c) In the case of any other seat, he is an elector for any Assembly constituency in that State."

18. An important and very noticeable difference between qualifications prescribed by Parliament for the membership of a Legislative Assembly by Section 5 of the R. P. Act, 1951 and those for the membership of a Legislative Council by Section 6 of that Act is that, so far as a member of the Legislative Assembly is concerned, he or she has to be an Elector in the constituency from which he or she stands, but a member of a Legislative Council in a State is not similarly required to be a member of the electorate. All that Parliament says, in Section 6 of the R. P. Act, 1951 are to be found laid down anywhere. Article 173 has been quoted above.

19. It may be possible to look for legislative intention in materials outside the four; corners of a statute where its language is really ambiguous or conflicting. But, where no such difficulty arises, the mere fact that the intentions of the law makers, sought to be demonstrated by what was said by some of them or by those advising them when the Constitution was on the anvil were really different from the result which clearly follows from the language used in the Legislative provisions under consideration, could not authorise the use of such an exceptional mode of construction. "It is well accepted", said Lord Morris (see : *Davies Jankins and Co. v. Davies* (1967) 2 WLR 1139, "that the beliefs and assumptions of those who frame Acts of Parliament cannot make the law." As indicated above, the opinion of political thinkers and statesman on the wisdom of providing educational qualification was not unanimous.

20. A test laid down in *Blackburn, J. in R. v. Cleworth*, (1864) 4 B & S 927 (to

determine what the correct presumption arising from an omission in a statute should be), was whether what was omitted but sought to be brought within the legislative intention was "known" to the law makers, and could, Therefore, be "supposed to have been omitted intentionally". "It makes no difference", says Craies in "Statute Law" (Craies on Statute Law) -- "that the omission on the part of the legislature was a mere oversight, and that without doubt the Act would have been drawn otherwise had the attention of the legislature been directed to the oversight at the time the Act was under discussion". In the case before us, it could not possibly be said that the question to be dealt with, was not "known" to the legislators. It could not even be said that qualifications of the electors as well as of those to be elected were not matters to which the attention of the law makers, both in the Constituent assembly and in Parliament, was not specially directed at all or that the omission must be by mere oversight. The provisions discussed above demonstrate amply how legislative attention was paid to the qualifications of the electors as well as of the elected in every case. Hence the correct presumption, in such a case would be that the omission was deliberate.

21. Sections 60 and 61 of the Government of India Act, 1935, deal with composition of provincial legislatures and of the two Chambers of such legislatures. The Upper Chambers in the Provincial Legislatures were to be composed of members retiring every third years in accordance with provisions of the Fifth Schedule to the Act. Rule 10 of this Schedule lays down :

"In a Province in which nay sets are to be filled by representatives of backward areas or backward tribes, representatives of commerce, industry, mining and planting, representatives of landholders, representatives of universities or representatives of labour, persons to fill those seats.... shall be chosen in such manner as may be prescribed."

On 30th April, 1936, the Government of India (Provincial Legislative Assemblies] Order of 1936 was issued by His Majesty in Council. It prescribed the qualifications of persons to be chosen from the "special constituencies" set up for representation in the Legislative Councils. A glance at the provisions relating to these qualifications, including those for the University seats, indicates that it was invariably expressly provided, where it was so intended that a necessary qualification of a candidate for a seat was that he or she should be "entitled to vote for the choice of a member to fill it". Hence, legislative history on the subject would also indicate that, whenever any qualification of the candidate was intended to be imposed, this was expressly done and not left to mere implications.

22. What the petitioner wants this Court to do is to add to or infer educational qualification from certain Articles. It would be against the rule of "plain meaning" or "literal" construction which must ordinarily prevail. A logical corollary of that rule is that "a statute may not be extended to meet a case for which provision has clarify and undoubtedly not been made" (See Craies on Statute Law). An application of the rule necessarily involves that addition to or modification of

words used in statutory provisions is not generally permissible. (See *Sri Ram Ram Narain Medhi Vs. The State of Bombay*, , *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, , *R.G. Jacob Vs. Union of India (UOI)*, . The intention of Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. (See: *Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. Vs. Custodian of Vested Forests, Palghat and another*, , *Mohammad Alikhan v. Commissioner of Wealth Tax*, AIR 1997 SC 1165 and *Institute of Chartered Accountants of India v. Price Waterhouse*, AIR 1998 SC 74. In *The Jumma Masjid, Mercara Vs. Kodimaniandra Deviah*, , Apex Court quoted with approval observations of Lord Lorebern L.C. : "We are not entitled to read words into an Act of Parliament unless clear reason for it to be found within the four corners of the Act itself (In *Vickers Sons and Maxim Ltd. v. Evans* (1910) AC 444.

23. *Casus omissus* in an Act may not be readily assumed, especially where the legislature has made an attempt to ward it off. Court should endeavor to avoid it by construction, if reasonably possible. (See *M. Pentiah and Others Vs. Muddala Veeramallappa and Others*, ; *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, . It is not permissible to a Court to insert by implication any matter though to be erroneously left out by the legislature as that would not be construing an act but altering or amending it. *Tinkham v. Perry*, (1951) 1 All ER 249 : 1951 (1) KB 547. *Casus Omissus* is an application of the same principle that a matter which should have been, but has not been provided for in a statute cannot be supplied by Courts, as to do so will be legislation and not construction. (See *Lord Howard de Walden v. ITC* (1948) 2 All ER 825, *Johnson v. Moreton* (1978) 3 All ER 37, *Dr Baliram Waman Hiray Vs. Justice B. Lentin and Others*, . But there is no presumption that a *casus omissus* exists and language permitting Court should avoid creating a *casus omissus* where there is none. Application of the mischief rule or purposive construction may not enable readings of words by implication when there is no doubt about the purpose which Parliament intended to achieve. (See *Pick stone v. Freemans Pic.* (1988) 2 All ER 803. But before any words are read to repair an alleged omission in the Act, it should be possible to state with certainty that these words would have been inserted by the draftsman and approved by Parliament had their attention been drawn to the omission before Bill passed into law. (See : *Jones v. Wortham Park Settled Estates.* 1979 (1) All ER 286. In the case at hand, background facts and deliberations in the Constituent Assembly do not show it that way.

24. Hardship or inconvenience cannot alter the meaning of the language employed by the legislature, if such meaning is clear on the face of the statute or the rules. *Commissioner of Agricultural Income Tax, Bengal Vs. Sri Keshab Chandra Mandal*, . The argument from inconvenience and hardship is a dangerous one and is only admissible where the meaning of the statute is obscure. Where the meaning of a statute is clear and explicit, if hardship and inconvenience is felt, it is for the Parliament to take appropriate steps to amend

the law and not for the Courts to legislate under the guise of interpretation (See *The Morvi Mercantile Bank Ltd. and Another Vs. Union of India (UOI)*,).

Court may depart from this rule only to avoid a patent absurdity (See *State of Madhya Pradesh Vs. Azad Bharat Finance Co. and Another*,). In *Shrimati Hira Devi and Others Vs. District Board, Shahjahanpur*, , the Apex Court observed (Para 14) :

"No doubt it is the duty of the Court to try and harmonise the various provisions of an Act passed by the Legislature. But it is certainly not the duty of the Court to stretch the words used by the Legislature to fill in gaps or omission in the provisions of an Act."

25. Cases in which defects in statutory provisions may or may not be supplied by Court have been indicated in well known works such as Sutherland's "Statutory Construction" (3rd Edn. Vol. 2) (Paragraph 4924 at pages 455-458) and in Crawford's "Construction of Statutes" (1940 Edn.), Only one passage from the last mentioned work need be cited here :

"Where the Statute's meaning is clear and explicit, words cannot be interpolated. In the first place, in such a case, they are not needed. If they should be interpolated, the statute would more than likely failed to express the legislative intent, as the thought intended to be conveyed, might be altered by the addition of new words. They should not be interpolated even though the remedy of the statute would thereby be advanced, or a more desirable or just result would occur. Even where the meaning of the statute is clear and sensible, either with or without the omitted words, interpolation is improper, since the primary source of the legislative intent is in the language of the statute."

26. Almost similar plea as raised in this petition was considered by the Apex Court in *G. Narayanaswami Vs. G. Pannerseivam and Others*, . In that case the question which was framed was as follows (Para 1) :

"Whether the first respondent was not qualified to stand for election to the Graduates constituency on all or any of the grounds set out by the petitioner in paragraphs 7 to 9 of the election petition?"

In answering this issue the Constitution Bench of the Apex Court referred to the factual position. The dispute related to requirement of a candidate being a graduate to represent the Graduates Constituency. In the background of Article 171 of the Constitution it was pleaded in the same case that since the elected candidate had only passed High School Leaving Certificate and was not a graduate he could not be elected at all to the Legislative Council from Graduates' constituency. The Apex Court turned down the plea. It took note of the stand of the appellant in the said case that it would be absurd and destructive of the very concept of representation of especially qualified persons and that an individual who does not possess the essential or basic qualification of the electors should be a representative of those who are to be represented because of this special

qualification of theirs and thirdly, the Constitution being an organic instrument for the governance of the land must be interpreted in a particularly broad and liberal manner so as to give effect to the underlying principles and purposes of the system of representation sought to be set up by it and not in such a way as to defeat them. It was also pleaded in the said case that the educational qualification of the electors should be read into the system of representation set up by the Constitution for legislative Council as a necessary qualification of candidates in such constituencies. The plea did not find acceptance by the Apex Court as noted above. The position is no different in the present case.

27. The position can be looked at from another angle. What is that qualification that is to be implied. Is it mere literacy or any fixed educational qualification. What would be the rational for fixing any particular qualification? If these questions are unanswered it would be utterly fallacious to say that such qualifications are interest in the provisions. There is an element of "comprehension" about Constitution sought to be introduced hypothetically. Who would judge or test the "comprehension". Mere possession of educational qualification is no guarantee of so-called "comprehension". These are too indefinite premises which do not brook of any positive or fool proof answer. These clearly rule out any possibility of omission, designed or otherwise as contended by petitioner.

28. Democracy is a concept, a political philosophy, an ideal practiced by resorting to governance by representatives of the people elected directly or indirectly. But election of representatives to govern is neither a "fundamental right" nor a "common law right", but a special right created by the statutes or a "political right" or "privilege" and not a "natural", "absolute" or "vested right". For democracy to survive rule of law must prevail. As observed by the Apex Court in *Gadakh Yashwantrao Kankarrao Vs. E.V. alias Balasaheb Vikhe Patil and Others*, , it is necessary that the best available men should be chosen as people's representative for proper governance of the country. This can be best achieved through men of high moral and ethical values. As provided in Article 326 of the Constitution election to the House of People and to the Legislative Assembly of every State shall be on the basis of adult franchise. It cannot be ever disputed | that those who get elected to the Parliament or to the State Legislatures should be equipped to do the job they are expected and required to do. They symbolize people's mandate. But it is not for the Courts to decide how they can be said to be equipped. Role of Courts is limited to questions of qualification or disqualification of candidates, elected representatives as clearly laid down in the relevant statute. Qualification or otherwise in the background of educational qualification is not a field where Courts have any role to play. The formulated questions and the corollary one have to be answered in the negative.

29. We find no merit in the petition which is accordingly dismissed.