

(2015) 01 RAJ CK 0293

In the Rajasthan High Court

Case No : Civil Petition Nos. 375, 1, 88, 121 of 2015

Dulari Devi and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 15-01-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 213, 213(2)(b)
Rajasthan Panchayati Raj Act, 1994 — Section 117, 19, 19(g), 19(gg), 2(kk)

Citation : AIR 2015 Raj 84 : (2015) 4 RLW 3114

Hon'ble Judges : Sunil Ambwani, A.C.J;Prakash Gupta, J

Bench : Division Bench

Advocate : Indira Jai Singh, Senior Counsel assisted by Aditya Shrivastava, Bindu N. Doddahath, Satish Kumar, Rajendra Soni, Mohit Soni, Pradeep Kalwania, Vijay Choudhary, S.S. Hora, T.C. Sharma, Naveen Dhuwan, Arvind Bhardwaj, Dinesh Yadav, Naveen Verma, Hanuman Ch

Final Decision : Dismissed

Judgement

Sunil Ambwani, Acting C.J—We have heard Ms. Indira Jai Singh, Senior Advocate, assisted by Mr. Aditya Shrivastava, Ms. Bindu N. Doddahat & Mr. Satish Kumar for the petitioners in DBCWP No. 375/2015-Dulari Devi & Ors. v. State of Rajasthan & Ors. and DBCWP No. 376/2015-Norati & Anr. v. State of Rajasthan & Ors.; Mr. Rajendra Soni in DBCWP No. 1/2015, Mr. Pradeep Kalwania in DBCWP No. 209/2015; Shri S.S. Hora in DBCWP Nos. 503/2015 & 504/2015; Mr. Vijay Choudhary in DBCWP No. 251/2015, Mr. Hanuman Choudhary in DBCWP No. 250/2015, Mr. Manoj Bhardwaj in DBCWP Nos. 121/2015 & 122/2015, and Mr. Bharat Yadav for the petitioners. Mr. Narpal Mal Lodha, learned Advocate General, assisted by Mr. Vishal Soni, Mr. Sheetanshu Sharma, Mr. Rajendra Prasad, Additional Advocate General, Mr. Anurag Sharma, Additional Advocate General and Mr. R.B. Mathur, appear for the State of Rajasthan and other respondents. By these writ petitions, the petitioners have prayed for an appropriate writ, order or direction, to hold and declare the Ordinance No. 2/2014, promulgated by the Hon'ble Governor of the State of Rajasthan, dated

20.12.2014, amending Section 19 of the Rajasthan Panchayati Raj Act, 1994 (for short, "the Act of 1994"), inserting clauses (r), (s) and (t), and adding Explanation-III for the purposes of newly inserted clauses (s) and (t), providing for educational qualifications for the members of a Zila Parishad or a Panchayat Samiti, Sarpanch of a Panchayat in a Scheduled Area and Sarpanch of a Panchayat other than in a Scheduled Area for contesting the elections for Panchayati Raj Institutions in the State of Rajasthan, for which the State Election Commission has issued an election programme on 24.12.2014. The Ordinance No. 2/2014 has amended Section 19, providing that 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, a member of such Panchayati Raj Institution, unless such person, in case of a member of a Zila Parishad or a Panchayat Samiti, has passed the Secondary School Examination of the Board of Secondary Education Rajasthan, or of any equivalent Board, under newly inserted clause (r), and in case of a Sarpanch of a Panchayat in a Scheduled Area, has passed class V from a school under clause (s), and in case of a Sarpanch of a Panchayat other than in a Scheduled Area, has passed class VIII from a school under clause (t). These qualifications have been added, to be considered as disqualification, if the candidates do not possess such minimum educational qualification, apart from disqualification prescribed in clauses (a) to (p), to contest the elections.

2. The prescription of education qualifications for contesting elections for the Panchayati Raj Institutions have been challenged on the ground that there was no such circumstance existing, which had rendered it necessary for the Governor to take an immediate action to promulgate an Ordinance, amending the Act of 1994, just four days before the election programme was declared. The State of Rajasthan has not acted in a bona fide manner in taking a decision for advising the Hon'ble Governor, to issue the Ordinance. The State of Rajasthan has acted in colourable exercise of powers with an oblique purpose to disqualify and to exclude a large section of population living in rural areas from the election process. The Ordinance is not a product of any debate and discussion.

3. It is submitted that the Ordinance No. 2/2014 is ultra vires the powers of the Governor. It was promulgated only to defeat the constitutional process. There was no urgency to introduce a vital disqualification through an Ordinance, which could have awaited a duly enacted law. The dates of election could have been worked out after the process of duly enacting a law in the State Assembly. The Ordinance is plainly against the objective of the main Act, providing for representative democracy for the weaker sections of the society. The Panchayati Raj Institutions under Article 40 of the Constitution of India in the Directive Principles of the State, have been perceived to endow them with such powers and authority, as may be necessary, to enable them to function as units of self-Government. The 73rd Amendment of the Constitution of India gives the Panchayati Raj Institutions a constitutional status, inserting Part IX in the Constitution of India, defining "Panchayat", to mean an institution of self-

governance constituted under Article 243B, for the rural areas. It is stated that the Panchayati Raj Institutions are the representative institutions, to give equal opportunity to all including those, who do not have formal education in schools to represent in local governance. The impugned Ordinance effectively excludes the direct representation in the posts of Sarpanchas, members of the Panchayat Samiti and Zila Parishadas. It is violative of the core constitutional philosophy of democratic governance in India, which is based upon equality of status and opportunity, featuring in the preamble to the Constitution of India.

4. The Ordinance No. 2/2014 has also been challenged being violative of Article 14 of the Constitution of India, which guarantees to every person equality before the law. The right to equality, guaranteed under Article 14, provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The requirement of formal educational qualification is not essential for effectively discharging the duties and functions, vested in the Panchayats and Zila Parishadas.

5. It is submitted that the educational qualification is not prescribed as a qualification for contesting the elections of local bodies in the State of Rajasthan, or for the Member of the Legislative Assembly or a Member of Parliament. The Constitution of India, or the Representation of the People Act, 1951, do not provide for disqualification on the ground of any educational qualifications for contesting the elections for the Members of the Legislative Assemblies and the Members of the Parliament. There is no educational qualification prescribed for the Cabinet Ministers, Prime Minister, or even for the President of India.

6. It is submitted that the percentage of rural population, aged 20 years or more, which is educated up to class V (illiterate plus primary level) in the Census of 2001 in the State of Rajasthan, was only 82.49%, which includes 70.37% male and 94.94% female. In the Census of India, 2011, literacy rates in the State of Rajasthan in rural areas was 62.30% and urban-rural gap was 18.38%, which included 52.70% female and 80.50% male.

7. It is submitted that the impugned Ordinance seeks to eliminate 94.94% people of Rajasthan living in rural areas from representation in the Panchayati Raj Institutions.

8. It is submitted that the disqualification does not make the constitutional test of equality before the law inasmuch as there is no object, to be served in providing for educational qualification for contesting the elections. The Ordinance has been promulgated on the eve of the elections, in colourable exercise of power, both on the ground that there was no urgency to promulgate the Ordinance on an issue which required extensive debate, and further on the ground that it is violative of Article 14 of the Constitution of India. The State Government was conscious of the fact that term of five years of the Panchayati Raj Institutions in the State of Rajasthan was going to come an end in January, 2015. When the elections of local bodies could be held in November, 2014,

without any disqualification on the ground of formal education, introduction of disqualification for the first time, four days before issuing the election programme for Panchayati Raj elections, was with an oblique purpose. It is stated that the Ordinance does not provide for any objects and reasons and that to the best of the knowledge of the petitioners, there was no discussion even in the Cabinet meeting before making recommendations to the Hon''ble Governor, to promulgate the Ordinance. The malice in law is, thus, established on record.

9. It is submitted that it may be desirable for the elected representatives in the Panchayati Raj Institutions, to have formal education, but to provide for eligibility without any rational of having educational qualification, is illegal and violative of Article 14 of the Constitution of India. At present, there are 23 Members in the Assembly of the State of Rajasthan, who are illiterate and thus, mere was no justification for providing educational qualification for the Panchayati Raj Institutions at the grass root level.

10. It is submitted that most of the petitioners in the writ petitions, are seeking reelection. Some of them are seeking re-election for the third and fourth term, and that most of them have worked to the satisfaction of their electorates.

11. In D.B. Civil Writ Petition No. 376/2015, petitioner No. 1 Norati W/o. late Mangi Lal, is a leading woman activist, working for people's rights since 1980 in the State of Rajasthan. She belongs to Raigar caste(those who skin animals and process later), a Scheduled Caste community and has lived in extreme poverty. She is currently serving as Sarpanch of Harmara Gram Panchayat, Ajmer District since 2010. She first became a hand-pump mechanic, learnt cycling and travelled village to village with other hand-pump mechanics, repairing the hand pumps. She has also acquired literacy skills through adult literacy classes, and is presently teaching computer literacy at Barefoot College, Tilonia. Her contributions towards strengthening the democracy, workers' rights, women rights and her participation in public life, has been recognized by national agencies and even by the United Nations. She has won several awards. Many of the petitioners are also equally qualified in serving the people. The women organizations in the State of Rajasthan have protested against promulgation of the Ordinance, which takes away the rights of about 94% of the rural population, especially women and those in the tribal areas, from contesting the elections.

12. Learned counsel appearing for the petitioners have relied upon the observations of the Hon''ble Supreme Court, in introducing the 73rd Amendment in the Constitution of India, providing for inclusive governance at the grass root level, in Bhanumati Vs. State of Uttar Pradesh through its Principal Secretary and Others, AIR 2010 SC 3796 : (2010) 7 SCALE 398 : (2010) 12 SCC 1 : (Bhanumati Vs. State of Uttar Pradesh through its Principal Secretary and Others, AIR 2010 SC 3796 : (2010) 7 SCALE 398 : (2010) 12 SCC 1 , and the powers of the Court for judicial review of an Ordinance, which are not issued in emergent situations in R.K. Garg and Others Vs. Union of India (UOI) and Others, (1981) 25 CTR 406 : (1982) 133 ITR 239 : (1981) 3 SCALE 1743 :

(1981) 4 SCC 675 : (1981) 1 SCR 947 : (1982) 14 UJ 12 ; A.K. Roy and Others Vs. Union of India (UOI) and Others, AIR 1982 SC 710 : (1982) CriLJ 340 : (1981) 4 SCALE 1904 : (1982) 1 SCC 271 : (1982) 2 SCR 272 ; K. Nagaraj and Others Vs. State of Andhra Pradesh and Another, AIR 1985 SC 551 : (1985) 51 FLR 166 : (1985) 1 LLJ 444 : (1985) 1 SCALE 31 : (1985) 1 SCC 523 : (1985) 2 SCR 579 : (1985) 1 SLJ 277 : (K. Nagaraj and Others Vs. State of Andhra Pradesh and Another, AIR 1985 SC 551 : (1985) 51 FLR 166 : (1985) 1 LLJ 444 : (1985) 1 SCALE 31 : (1985) 1 SCC 523 : (1985) 2 SCR 579 : (1985) 1 SLJ 277 , and the explanation of the classification rule under Article 14 of the Constitution of India in Centre for Public Interest Litigation Vs. Union of India (UOI), AIR 2014 SC 2140 : (2014) AIRSCW 2930 : (2014) 7 JT 474 : (2014) 2 RCR(Criminal) 822 : (2014) 6 SCALE 146 : (2014) 8 SCC 682 : (2014) 4 SCJ 468 .

13. Learned counsel appearing for the petitioners have also relied upon the judgments of the Supreme Court, explaining the power of Governor under Article 213 of the Constitution of India to promulgate Ordinances during recess of Legislature, in Rustom Cavasjee Cooper Vs. Union of India (UOI), AIR 1970 SC 564 : (1970) 40 CompCas 325 : (1970) 1 SCC 248 : (1970) 3 SCR 530 , and Dr D.C. Wadhwa and Others Vs. State of Bihar and Others, AIR 1987 SC 579 : (1987) 1 JT 70 : (1986) 2 SCALE 1174 : (1987) 1 SCC 378 : (1987) 1 SCR 798 .

14. It is submitted that the petitioners approached this Court at the earliest opportunity. The writ petition was filed with a request for its hearing in the winter break in the Rajasthan High Court, which was not accepted. The petitioners thereafter filed a writ petition under Article 32 of the Constitution of India in the Supreme Court, which was heard and was dismissed as withdrawn on 05.01.2015, with liberty to approach the High Court. A request to stay the effect of the Ordinance was made on 05.01.2015 and thereafter on 08.01.2015, but was not accepted on the ground that other matters are coming up before the Court on 12.01.2015.

15. It is stated that the election programme of the Panchayati Raj Institutions have been notified on 24.12.2014 by the State Election Commission, to be conducted in three phases except for Doongarpur, Banswara and Jaisalmer Districts, in which the voting will take place in two phases. In every phase ballots will be casted for Zila Parishad and Panchayat Samiti on one day and for Sarpanch and Panch on the next day. For the first phase, the dates have been fixed for issuance of the Notification and filing of nomination forms from 3rd to 6th January, 2015, for Panchayat Samiti Sadasya (Block) and Zila Parishad Sadasya (District). The casting of votes in the first phase is on 16th January, in the second phase is on 22nd January, and in the third phase is on 30th January, 2015. The counting of votes is on 5th February, 2015. For the election process for Panch, Sarpanch and Up-Sarpanch elections, issuance of first phase of the Notification and filing of nomination is on 17th January, 2015; casting and counting of votes on 18th January, 2015; the issuance of second phase of the Notification and filing of nomination is on 23rd January, 2015, and casting and

counting of ballots is on 24th January, 2015. For the third phase, the dates for issuance of the Notification and filing of nomination is fixed for 31st January, 2015, for which casting and counting of ballots is on 1st February, 2015. It is submitted that since the impugned Ordinance No. 2/2014, is wholly illegal, arbitrary and violative of Articles 14, 19, 21, 40, and de hors Part IX of the Constitution of India, and thus the Court may stay the effect of the Ordinance by making appropriate orders for re-scheduling the first phase of the elections, which will be perfectly justified in law.

16. Ms. Indira Jai Singh, learned Senior Counsel, submits that as on date she is not praying for stay of elections. Her prayer is only to extend the dates for filing the nominations without disturbing the dates for casting of votes and counting of ballots. She submits that by extending the dates for nominations, the Court will not interfere in the elections and will, thus, not violate the mandate of Article 243-O of the Constitution of India. By staying the effect of disqualification of those persons, who have been excluded from the elections on the basis of the educational qualification, they will be able to take part in the elections. She has relied upon the observations of the Supreme Court in *Election Commission of India Through Secretary Vs. Ashok Kumar and Others*, AIR 2000 SC 2979 : (2000) 9 JT 529 : (2000) 6 SCALE 182 : (2000) 8 SCC 216 : (2000) 3 SCR 34 Supp : (2001) 1 UJ 1 : (2000) AIRSCW 3274 : (2000) 6 Supreme 76 , in which the object of enacting Article 329(b) of the Constitution of India was explained, and the principles for considering the applications for staying the elections were explained as follows:

"32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:

1) If an election, (the term election 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 completing of proceedings in elections.

2) Any decision sought and rendered will not amount to "calling in question an election" if it sub-serves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court.

5) The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the courts' indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the till (sic) the Court would act with reluctance and shall not act except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material."

17. It is pleaded by all the Counsels appearing for the petitioners that this Court may grant an interim protection to save the rights of thousands of persons, who did not have an opportunity of formal education. The large scale illiteracy had prevailed in the State of Rajasthan due to absence of primary schools in the rural areas. It is pleaded that in order to protect the rights of about 94% women living in the villages, who have been provided 50% reservation in the elections, the Court must grant an interim order. The State Government has tried to take away the reservation from the women of the State of Rajasthan living in the rural areas, by introducing the impugned Ordinance, which has no parallel in any part of the country. A similar attempt proposed in the State of Maharashtra, was defeated on the floor of the Legislative Assembly.

18. Learned counsel appearing for the parties submit that in case the interim orders are not passed, a large number of seats of Sarpanchas will remain vacant, especially in the tribal areas where sufficient number of candidates including women candidates with educational qualifications prescribed are not available.

19. Mr. S.S. Hora, learned counsel appearing for the petitioners in DBCWP No. 503/2015, submits that in the elections, disqualification cannot be prescribed by an Ordinance. The State Government did not collect any empirical data of the availability of educational facilities and the sufficiency of the number of candidates in providing disqualification on the ground of education. Article 14 of the Constitution of India strikes at arbitrariness in any form. The impugned Ordinance cannot be sustained on the ground of object-nexus test. He has relied upon the judgments of the Supreme Court in *People's Union for civil Liberties (PUCL) and Others Vs. Union of India (UOI)* and *Another*, AIR 2003 SC 2363 : (2003) 2 JT 528 : (2003) 6 SCALE 692 : (2003) 3 SCALE 263 : (2003) 4 SCC

399 : (2003) 6 SCR 860 Supp : (2003) 2 SCR 1136 ; Union of India (UOI) etc. Vs. Rakesh Kumar and Others etc., AIR 2010 SC 3244 : (2010) 1 JT 396 : (2010) 1 SCALE 281 : (2010) 4 SCC 50 : (2010) 1 SCC(L&S) 961 : (2010) 2 SCR 483 : (2010) AIRSCW 657 : (2011) AIRSCW 959 : (2010) 7 Supreme 1006 : (2010) 1 Supreme 334 and in Anokh Singh Vs. Punjab State Election Commission, AIR 2011 SC 230 : (2010) 12 JT 1 : (2010) 11 SCALE 531 : (2010) 10 UJ 5319 : (2010) AIRSCW 6649 , in which the disqualification in elections was struck down by the Hon"ble Supreme Court. He has also relied upon a judgment of the Supreme Court in Siddhu Matriculation Hr. Secondary School Vs. K. Shyam Sunder and Others, (2011) 8 SCALE 505 : (2011) 8 SCC 737 , in support of his submissions that the Courts can, while exercising powers of judicial review, declare any legislation as violative of Article 14 of the Constitution of India on the ground that it is arbitrary and unreasonable.

20. Learned Advocate General, appearing for the State of Rajasthan, has defended the Ordinance on the ground that the Legislative powers of the Governor, exercised by him under Article 213 of the Constitution of India, cannot be challenged on the ground that no such circumstances existed, which rendered it necessary to promulgate the Ordinance. The satisfaction of the Governor in such matters, in issuing an Ordinance is not subject to judicial review. A disqualification can be prescribed under Article 243F(1)(b) of the Constitution by the Legislature of the State. The powers of the Governor to promulgate an Ordinance during the recess of Legislature under Article 213, is a legislative power. Any doubt on the proposition, has been cleared by clause (2) of Article 213 of the Constitution, which provides that an Ordinance promulgated under the Article, shall have the same force and effect as an Act of Legislature of the State assented to by the Governor.

21. Learned Advocate General has relied upon a Division Bench judgment of this Court in Shiv Ram etc. Vs. The State of Rajasthan and Others, AIR 2000 Raj 416 : (2000) 4 WLC 412 , in which a challenge to the Rajasthan Panchayati Raj (Third Amendment) Ordinance, 1999, inserting Section 19(g), 19(gg) and Proviso (ii) of Section 19 as disqualification, was turned down. By an amendment of Section 19, the Ordinance substituted clause (g), providing that a person who has been convicted of any offence by a competent court and sentenced to imprisonment for six months or more, such sentence not having been subsequently reversed or remitted or the offender pardoned, will be disqualified from contesting elections. Clause (gg), provides that if a person is under trial in the competent court which has taken cognizance of the offence and framed the charges against him of any offence punishable with imprisonment for five years or more, will be disqualified. The Ordinance was challenged on the same grounds, namely that there existed no emergency which called for the Governor to promulgate the Ordinance, 1999, and that the impugned amendment is hit by Articles 14 and 21 of the Constitution of India, as it provides an unreasonable restriction on a person to contest the elections for the post of Panch and Sarpanch. The Division Bench held that the satisfaction of the Governor

regarding emergency was not justiciable, in view of the judgment of the Supreme Court in *State of Punjab Vs. Satya Pal Dang and Others* and *Baldev Parkash and Others*, AIR 1969 SC 903 : (1969) 1 SCR 478 , and that the disqualification of a person who has been convicted of any offence by a competent court and sentenced to imprisonment for six months or more, and a person who is under trial in the competent court, in which charges have been framed against him of any offence punishable with imprisonment for five years or more, was in public interest. The fact that similar disqualification has not been provided for the MLA's and MP's, cannot be held to be discriminatory. The Ordinance was not violative of either Article 14 or Article 21 of the Constitution of India. The Ordinance in the year 1999 was also promulgated, on the eve of elections.

22. Learned Advocate General states that the right to contest the election is not a fundamental right. It is a statutory right, for which qualifications and disqualifications can be prescribed by the Legislature. He submits that deliberation was made over the subject and since there was not much time left, and the Legislative Assembly was not in session, it was decided to advise the Governor to promulgate the Ordinance, failing which the State Government could not have prescribed the qualifications for a period of 5 years, for which the elections are held.

23. The Advocate General submits that in the State of Rajasthan, total allocation to Rural Development and Panchayati Raj Department for 9900 Gram Panchayats (approximately), is about rupees ten thousand crores, most of which is utilized by the Gram Panchayats under different heads and for expenditure of such amount, cheques are issued by the concerned Sarpanch. The disbursement of the amount for the Panchayat Samitis and Zila Parishads, is made by its Pradhan or Zila Pramukh respectively. The Sarpanch or the Pradhan/Zila Pramukh, is thus required to be an educated person, who, before putting his signatures on the cheque and relevant files, must know and understand the purpose of disbursement of such amount. The Gram Panchayat, Panchayat Samiti and the Zila Parishads are required to prepare the annual budget and the Annual Action Plan, as mandated under Rule 147 of the Rajasthan Panchayati Raj Rules, 1996, through a Committee headed by Sarpanch, Pradhan and Zila Pramukh respectively. In the past, many a times when uneducated persons were elected, they had to face criminal trial on account of financial irregularities. As per the order dated 15.05.2009, issued by the Government of Rajasthan, the Annual Performance Appraisal Report are prepared. Under the Right to Information Act, 2005, the State Government has appointed the Sarpanch for the entire Gram Panchayat as an Appellate Authority. Similarly, for the Zila Parishad and Panchayat Samiti, Zila Pramukh and Pradhan have been appointed as an Appellate Authority. Under the Rajasthan Guaranteed Delivery of Public Service Act, 2011, the Sarpanch in each Gram Panchayat has been appointed as a Designated Officer and thus, in order to achieve the aim and object of the Act, the Sarpanch of the Gram Panchayat is required to be an educated person. The

Government, in order to deal with such situation and also for promoting the education amongst rural masses, and for ensuring that those who have to lead, must lead by example and for ensuring that any further delay in making educational qualification mandatory at the grass root level of the democracy, would postpone the implementation of such provision for at least 5 years, took a decision for enacting the law by advising the Governor to promulgate the Ordinance.

24. The Advocate General states that a large number of persons in the State of Rajasthan in the last elections held in the year 2010, were holding the qualification as prescribed by the impugned Ordinance. Out of 7027 Sarpanchs, 1205 were class V pass, 1162 were VIE pass, 1059 were matriculate, and 658 were graduates. Similarly in Panchayat Samities, out of 4257 Pradhans, 589 were VIII pass, 671 were matriculate and 516 were graduates. In Zila Parishad, out of 844 members, 187 were class VIII pass, 175 were matriculate and 180 were graduates. These figures do not include Jaipur, Sikar, Udaipur and Bhilwara, which are known to be the Districts in which better educational facilities are provided, and thus about 42.50% held qualifications now prescribed by the impugned Ordinance. In the last five years, many more persons may have attained the qualifications. He submits that literacy rate is different than the formal education. A number of persons are formally educated in the State of Rajasthan. The ratio of literacy in Rajasthan has improved from 2001 to 2011. In the year 2001, literacy rate of female was 43.85% and 75.70% for male, which improved in the year 2011 to 52.66% for female and 80.51% for male. He further submits that more than sufficient number of nominations have been received in the first phase of the candidates for the Zila Parishads, who are qualified. It is further expected that a large number of nominations will be received, which will not leave any seat vacant.

25. Learned Advocate General submits that 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. He has relied upon a judgment of the Supreme Court in *Javed and Others Vs. State of Haryana and Others*, AIR 2003 SC 3057 : (2003) 3 CTC 620 : (2003) 6 JT 283 : (2003) 135 PLR 531 : (2003) 5 SCALE 602 : (2003) 8 SCC 369 : (2004) SCC(L&S) 561 : (2003) 1 SCR 947 Supp : (2003) AIRSCW 3892 : (2003) 5 Supreme 371 , upholding the disqualification for those, who have more than two children in the State of Haryana, to contest the elections for Panchayati Raj Institutions. In *Javed and others v. State of Haryana and others* (supra), the Supreme Court did not sustain the argument that the two children norm is discriminatory, and is violative of Article 14 of the Constitution of India. The disqualification was not found to be violative of the Articles 14 and 21 of the Constitution. He has also relied on *K. Nagaraj and Others Vs. State of Andhra Pradesh and Another*, AIR 1985 SC 551 : (1985) 51 FLR 166 : (1985) 1 LLJ 444 : (1985) 1 SCALE 31 : (1985) 1 SCC 523 : (1985) 2 SCR 579 : (1985) 1 SLJ 277 , and the Constitution Bench judgment of Supreme Court in *T. Venkata Reddy and Others Vs. State of*

Andhra Pradesh, AIR 1985 SC 724 : (1986) LabIC 357 : (1985) 1 SCALE 613 : (1985) 3 SCC 198 : (1985) 3 SCR 509 : (1985) 1 SLJ 561 : (1985) 17 UJ 991 , for defending the powers of the Governor to promulgate an Ordinance, which cannot be challenged on the ground of non-application of mind or mala fides.

26. On the question of stay, learned Advocate General has relied upon a Division Bench judgment of this Court at Principal Seat at Jodhpur in Jodhpur Chartered Accountants Society and Another Vs. State of Rajasthan and Another, (2001) 107 CompCas 42 : (2001) 2 WLC 17 : (2001) 4 WLN 170 , in which it was held in para 36, that the Courts do not have powers to stay the operation of the law, and a judgment of the Supreme Court in Bhavesh D. Parish and Others Vs. Union of India and Another, AIR 2000 SC 2047 : (2000) 101 CompCas 459 : (2000) 3 CTC 178 : (2000) 6 JT 604 : (2000) 4 SCALE 616 : (2000) 5 SCC 471 : (2000) 1 SCR 291 Supp : (2001) 1 UJ 54 : (2000) AIRSCW 1965 : (2000) 4 Supreme 726 , in which in para 30, the Supreme Court advocated judicial restraint, unless the law/provision is manifestly unjust or glaringly unconstitutional.

27. Shri R.B. Mathur, appearing for the Rajasthan State Election Commission, states that the term of Panchayati Raj Institutions in the State of Rajasthan is going to end in January, 2015 when these Institutions will complete five years. Part DC of the Constitution of India, does not provide for extension of the term. The elections, therefore, are imperative. He states that the Rajasthan State Election Commission, having supervisory powers under Article 243K of the Constitution, is not concerned with the validity of the Ordinance, but that it has an objection to the prayer for stay, or any interference with the election process. He submits that the principles that the Courts should not interfere with the process of elections, has been laid down beginning from N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, AIR 1952 SC 64 : (1952) 1 SCR 218 . The restriction reflected under Article 329(b), has also been incorporated in Part IX of the Constitution, inserted vide 73rd Amendment in Article 243-O of the Constitution, which reads as follows:

"243-O. Bar to interference by courts in electoral matters. -- Notwithstanding anything in this Constitution--

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243K, shall not be called in question in any court;

(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."

28. It is submitted that nominations of the first phase are over, for which voting is to take place on 17th January, 2015. In the first phase, 10 candidates have been elected unopposed for elections of Zila Parishads and 45 for Panchayat Samities. Any interference in the elections will cause difficulty in holding elections, for which all preparations have been made, Officers trained and

deputed and programme finalised, for which any delay is not permissible at this stage, nor is advisable. He has relied upon the judgments of Hon'ble Supreme Court in S.T. Muthusami Vs. K. Natarajan and Others, AIR 1988 SC 616 : (1988) 1 JT 159 : (1988) 1 SCALE 149 : (1988) 1 SCC 572 : (1988) 2 SCR 759 : (1988) 1 UJ 531 , and in Election Commission of India Through Secretary Vs. Ashok Kumar and Others, AIR 2000 SC 2979 : (2000) 9 JT 529 : (2000) 6 SCALE 182 : (2000) 8 SCC 216 : (2000) 3 SCR 34 Supp : (2001) 1 UJ 1 : (2000) AIRSCW 3274 : (2000) 6 Supreme 76 , in which the Supreme Court has cautioned the Courts against interference in the elections. He has also relied upon a latest judgment of the Division Bench of this Court in Bhupendra Pratap Singh v. State of Rajasthan (DBCWP No. 12960/2014, decided on 18.12.2014), in which relying upon the judgments of Meghraj Kothari Vs. Delimitation Commission and Others, AIR 1967 SC 669 : (1967) 1 SCR 400 , and State of U.P. and others etc. Vs. Pradhan Sangh Kshettra Samiti and others etc., AIR 1995 SC 1512 : (1995) 3 JT 252 : (1995) 2 SCALE 453 : (1995) 2 SCC 305 Supp , it was held that power of delimitation is legislative in character and refused to interfere with the elections for the local bodies on the ground that mandatory procedure for delimitation was not followed. In the principles laid down by the Supreme Court, it was held that Article 243-C, 243-K and 243O, in place of Article 327 and Sections 2(kk), 11F and 120BB of the Act in place of Sections 8 and 9 of the Delimitation Act, 1950, makes it obvious that neither the delimitation of the panchayat area nor of the constituencies and the allotments of seats to the constituencies could have been challenged, or the Court could have entertained such challenge, except on the ground that before delimitation, no objections were invited and no hearing was given.

29. We are, prima facie, satisfied that in the State of Rajasthan in which the rate of literacy and the opportunity of formal education was limited, the prescription of any disqualification on the ground of qualification for contesting elections in the Panchayati Raj Institutions, excluding the masses, who did not have an opportunity of formal education, is violative of the right of equality under Article 14 of the Constitution of India. The Panchayati Raj Institutions foster democratic principles of governance at the grass root level. Article 40 in Part IV (Directive Principles of State Policy), provided for an organization of village panchayats. The State was under an obligation to take steps to organize village panchayats and endow them with such powers and authority as may be necessary, to enable them to function as units of self-government. The 73rd Amendment (Rajiv Gandhi Amendment), introducing Part IX-The Panchayats, in the Constitution of India, containing Article 243, 243A and 243O, gave the Panchayats a constitutional status. A Gram Sabha consists of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level under Article 243(b). The "Panchayat", defined under Article 243(d), is provided as an institution of self-governance constituted under Article 243B, for the rural areas. The entire body of villagers are given rights to participate in the meetings of the Panchayat for inclusive self governance, self rule and self

determination for social upliftment, which is not dependent on any educational qualification. The disqualification for membership, under Article 243F of the Constitution, to be prescribed by the Legislature of the State, could not have provided for any such condition attached, which may have taken away the rights of the self governance, except for disqualifications, which have material object to achieve, such as the character, integrity or morality of the person to represent. The persons who are engaged in unlawful activities or are defaulters, or acquired any disqualification which may have any nexus with the object, sought to be achieved, namely for representation, may be excluded participation in Panchayats. Any other disqualification will negate the object of self-governance at grass root level, peoples participation, and social justice.

30. In *Bhanumati Vs. State of Uttar Pradesh through its Principal Secretary and Others*, AIR 2010 SC 3796 : (2010) 7 SCALE 398 : (2010) 12 SCC 1 , the Supreme Court, referring to the debates in the Constituent Assembly, which led to the enactment of the Constitution of India, referred to the 73rd Amendment as a powerful tool of social engineering. Paras 13, 22, 23, 24 and 26 of the judgment are quoted as below:

"13. The Constitution's quest for an inclusive governance voiced in the Preamble is not consistent with panchayat being treated merely as a unit of self-government and only as part of directive principle. If the relevant Constituent Assembly Debates are perused one finds that even that constitutional provision about panchayat was inducted after strenuous efforts by some of the members. From the debates we do not fail to discern a substantial difference of opinion between one set of members who wanted to finalise the Constitution solely on the parliamentary model by totally ignoring the importance of panchayat principles and another group of members who wanted to mould our Constitution on Gandhian principles of Village Panchayat.

22. Under the Seventy-third Amendment of the Constitution, panchayat became an "institution of self-governance" which was previously a mere unit, under Article 40. The Seventy-third Amendment heralded a new era but it took nearly more than four decades for our Parliament to pass this epoch-making Seventy-third Constitution Amendment - a turning point in the history of local self-governance with sweeping consequences in view of decentralisation, grass-root democracy, people's participation, gender equality and social justice.

23. Decentralisation is perceived as a precondition for preservation of the basic values of a free society. Republicanism which is the "sine qua non" of this amendment is compatible both with democratic socialism and radical liberalism. Republicanism presupposes that laws should be made by active citizens working in concert. Price of freedom is not merely eternal vigilance but perpetual and creative citizen's activity.

24. This Seventy-third Amendment is a very powerful "tool of social engineering" and has unleashed tremendous potential of social transformation to bring about a

sea change in the age-old, oppressive, anti-human and status quo traditions of Indian society. It may be true that this amendment will not see a quantum jump but it will certainly initiate a thaw and pioneer a major change, may be in a painfully slow process.

26. What was in a nebulous state, as one of the directive principles under Article 40, through the Seventy-third Constitutional Amendment metamorphosed to a distinct part of constitutional dispensation with detailed provision for functioning of panchayat. The main purpose behind this is to ensure democratic decentralisation on the Gandhian principle of participatory democracy so that the panchayat may become viable and responsive people's bodies as an institution of governance and thus it may acquire the necessary status and function with dignity by inspiring respect of common man. In our judgment, this Seventy-third Amendment of the Constitution was introduced for strengthening the Preambular vision of democratic republicanism which is inherent in the constitutional framework."

31. We do not find that the State Government has placed before us any empirical data, which may suggest that there are sufficient number of qualified persons available in the rural areas, which will not amount to exclusion of the large number of people in the village, especially women, to be represented, to lead the Panchayati Raj Institutions. We are also satisfied that even if such empirical data was collected, the exclusion of those who did not have an opportunity of formal education, could not have been denied participation in the democratic institutions and for this reason, no educational qualifications have been prescribed for elections in any of the institutions including the Panchayati Raj Institutions, or in the Legislative Assembly, or even Parliament in India. One such attempt failed in the State of Maharashtra. In fact, prescription of educational qualification for inclusion for contesting elections in any democratic institution, unless there is strong nexus with the object, to be achieved, is an anti thesis to the democratic governance of the institution in a republic. It is a negation of the very object of purpose of enacting the Constitution of India, described in its preamble. The poor, underprivileged and downtrodden, cannot be denied participation in a democracy merely on the ground that she does not have educational qualification for such inclusion.

32. In order to lead in a democratic governance, a person is required to understand the needs of social development and require the mental attribute of being wise in the estimation of the people, who elect her for representation. Any law which disqualifies a large section of rural population on the ground of non attaining the educational qualifications, is thus, prima facie, arbitrary, irrational and unreasonable.

33. We are also not prima facie satisfied with the contention that large amount of money placed in the hands of the Sarpanchas, issuance of cheques by them, preparation of accounts and their official capacity as an Appellate Authority under the RTI Act, 2005, or any Government Order, which may make them

accountable, would require a minimum educational qualification inasmuch as every Panchayat is provided with Secretariat, which includes a Panchayat Assistant, an Accountant and a Junior Engineer. It is, therefore, not necessary for a Sarpanch to have minimum educational qualifications for representation of her people in the Panchayat, or Zila Parishad. She has sufficient assistance of persons with minimum qualification to advise her for proper discharge of her duties and functions. The formal education may have relevance in the future when the goal of universal primary education is achieved, with the enactment of Right of Children to Free and Compulsory Education Act, 2009, enforced on 01.04.2010, but a person who is to be more than 21 years of age in rural areas with no opportunity of primary or secondary level of education in the absence of schools, may not be disqualified to take part for representation in the Panchayati Raj Institutions. The republicanism in the country has allowed many persons, who did not even have any formal education, to rise and lead. Some of them had also rises to the position of Chief Ministers of the States.

34. We cannot, but agree with the argument of the Advocate General that the motives for promulgating the Ordinance and the existence of circumstances, which rendered it necessary for the Governor to take immediate action, are not subject to judicial review. An Ordinance promulgated in the Legislative powers of the Governor, has all the attributes of Legislation, which is required to be ratified by the Legislature under Article 213, 213(2)(b) of the Constitution of India. The Ordinance, however, is the law which can be tested on the touchstone of Article 14 of the Constitution of India. If the disqualification prescribed by the Ordinance deprives a large section of the society to participate in the democratic institution of Panchayati Raj and runs counter to the object of the 73rd Amendment, it may be declared as unconstitutional by the Court of law. We, however, find that neither the petitioners, nor the respondents have placed sufficient data before us, to form any final opinion as to whether the Ordinance is discriminatory as it will exclude a large section of the population from taking part in the elections of the Panchayati Raj Institutions. Both, the petitioners and the respondents, have produced a large number of papers without sufficient opportunity of collection of the datas and the other side to reply. The State Government also does not appear to have sufficient opportunity to collect the datas, to defend the object of the Ordinance.

35. We are, therefore, of the opinion that the matter will require full fledged hearing after the parties are allowed opportunity to prepare and collect the data and material and to file replies.

36. We are also of the view that we should not commit the same mistake, for which the petitioners have accused the State Government and the Hon'ble Governor of the Rajasthan for promulgating the Ordinance in the haste, in bringing a change, for which there is no precedent in any State in India. A challenge to any law which affects a large number of people, especially the law which introduces a policy for the first time, must be tested with sufficient

material, after deliberations. We are in no hurry, even if learned counsels appearing for the petitioners do not want to argue any further, at this stage, to reach to any final conclusion, for taking any view on the Constitutionality of the impugned Ordinance.

37. We further find substance in the objection raised by learned counsel appearing for the Rajasthan State Election Commission that even if the petitioners cannot be accused of any delay in approaching the Court, as there was little time at their disposal in which the Ordinance could be challenged, the Constitutional bar of Article 243-O, which has also been inserted as Section 117 in the Act of 1994, and on the principles laid down by Hon''ble Supreme Court, the Courts should not ordinarily interfere with the election process, once it has started.

38. In the present case, the impugned Ordinance was promulgated on 20.12.2014 and the election programme was announced by the Rajasthan State Election Commission on 24.12.2014, which provides for the elections in three phases for the Panchayati Raj Institutions in the State of Rajasthan, and for which, first notification was issued on 03.01.2015. Article 243-O prohibits any interference in the elections, once elections have been notified. The principles laid down in Election Commission of India Through Secretary Vs. Ashok Kumar and Others, AIR 2000 SC 2979 : (2000) 9 JT 529 : (2000) 6 SCALE 182 : (2000) 8 SCC 216 : (2000) 3 SCR 34 Supp : (2001) 1 UJ 1 : (2000) AIRSCW 3274 : (2000) 6 Supreme 76 , reiterating the principles laid down by a Six Judge Bench of the Hon''ble Supreme Court in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, AIR 1952 SC 64 : (1952) 1 SCR 218 ; Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, AIR 1978 SC 851 : (1978) 1 SCC 405 : (1978) 2 SCR 272 , and in S.T. Muthusami Vs. K. Natarajan and Others, AIR 1988 SC 616 : (1988) 1 JT 159 : (1988) 1 SCALE 149 : (1988) 1 SCC 572 : (1988) 2 SCR 759 : (1988) 1 UJ 531 , clearly prohibit the Court from interfering in the election process, once it has started. In para 13 of the judgment in S.T. Muthusami v. K. Natarajan and Ors. (supra), the Supreme Court, following the aforesaid judgments, accepted the opinion expressed by the Full Bench of the Madras High Court that though no legislature can impose limitations on the constitutional powers of the Courts, it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights, and to resolve election disputes after the elections are over. The writ petitions should not be lightly entertained in such class of cases.

39. On 18.12.2014, a Division Bench of this Court, reiterating the same principles, refrained to interfere in the matters of elections of local bodies.

40. In view of the constitutional bar imposed by Article 243-O(b) of the Constitution of India in Part-IX-The Panchayats, which has reiterated the principles of non-interference in the election matters once the election process has started, under Article 329 of the Constitution of India, and the principles

established by the Hon''ble Supreme Court in such matters, we do not propose to pass any interim order in these matters. We also do not find any merit in the submission that the petitioners are not seeking interference in the electoral process, but are only praying for extending the dates of filing nominations. An extension of the dates of nomination would, in our opinion, amount to interference in the election process. We are also of the view that since Part IX of the Constitution of India, does not provide for any extension of the term of Panchayats, and that the term of the Panchayats in the State of Rajasthan is going to end in January, 2015, any interim order at this stage causing interference in the process of elections for constituting Panchayats under the Act of 1994, will lead to chaos and confusion, and will create a crisis for the Rajasthan State Election Commission in holding elections.

41. Thus, keeping in view the constraint placed by the Constitution of India, and the advise to exercise restraint in such matters by the Hon''ble Supreme Court in its various decisions, to be exercised by the Courts, cited as above, all the stay applications are rejected.

42. As directed above, all the parties will file their necessary documents along with affidavits, to either amend or supplement facts and grounds taken in the writ petitions. They may file their additional paper books, and written arguments within six weeks.

43. List all the writ petitions for hearing on 02.03.2015. A copy of this order be placed in all the connected files.