
(2017) 02 MP CK 0203
In the Madhya Pradesh High Court
Case No : 7680 of 2015

Pt. Naveen Joshi	Vs	APPELLANT
Union of India and others.		RESPONDENT

Date of Decision : 09-02-2017

Acts Referred:

[Constitution of India](#), [Article 243-R](#),
[Article 243-R\(2\)\(a\)\(i\)](#), [Article 243-R\(2\)](#),
[Article 243-R\(2\)\(ii\)](#), [Article 243-R\(2\)\(iii\)](#)

Citation : (2017) 02 MP CK 0203

Hon'ble Judges : P.K. Jaiswal, Virender Singh

Bench : Single Bench

Advocate : Manohar Dalal, Sunil Jain, Yogesh Mittal, Aniket Abhay Naik, A.S. Garg, Aditya Garg

Judgement

1. The petitioner, who is an Engineer by profession, has filed this writ petition in the nature of public interest litigation, seeking declaration of Section 9 (1) (e) and Section 9 (3) of the Madhya Pradesh Municipal Corporation Act, 1956 (herein after referred to as the Act of 1956), as ultra vires, being in contravention of Article 243-R (2) of the Constitution of India.

2. The respondent No.3 is elected Member of Legislative Assembly Indore-4. She being a Member of Legislative Assembly was elected Mayor of the City of Indore and took oath on 19.02.2015.

3. According to the petitioner, under proviso to Article 243-R (2) of the Constitution of India, except the persons referred in Article 243-R (2) (a) (i) of the

Constitution of India, right of voting has been given to person referred in Article 243-R (2) (ii) to (iv) of the Constitution of India. Whereas, under the provisions of Section 9 (3) of the Act of 1956, the persons referred in Section 9 (1) (c), (d) and (e) of the Act of 1956 have been debarred from voting in the meeting of the

Municipal Corporation. The aforesaid provision of Section 9 (3) of the Act of 1956 is ultra vires being violative of Article 243-R (2) (a) (i) of the Constitution of India.

4. It is averred that the respondent No.3, who is an elected Mayor and Councillor by virtue of Member of Legislative Assembly and her continuance on both the post is contrary to the provisions of Article 243-R of the Constitution of India. Under the provisions of Section 16 (4) of the Act of 1956, respondent No.3 should have not been continued on two posts. The petitioner has also averred in the petition that one Digvijay Singh Bhandari has challenged the election of respondent No.3 by filing Writ Petition No.1987/2015 before this Court, which has been dismissed by order dated 28.10.2015, wherein it has been held that the provisions of the Act of 1956 are validly enabling respondent No.3 to continue on the post of Mayor. However, the said order has been challenged by the present petition in Writ Appeal No.534/2015 along with an application for grant of leave to appeal, which is also heard analogously along with this writ petition.

5. It is also contended by the learned counsel for the petitioner that under the provisions of Article 243-R of the Constitution of India, the Members of Parliament, Members

of Legislative Assembly, Members of House of People have not been given power to appoint any representative to represent them in the meeting of the Municipal Corporation. Therefore, the petitioner has prayed for declaring the provisions of Section 9 (1) (e) and Section 9 (3) of the Act of 1956 as ultra vires.

6. A preliminary objection has been raised by respondent No.2 - Indore Municipal Corporation, that the present writ petition has been filed with vindictive motive of defying the continuance of respondent No.3 on the post of Mayor, Indore. The objection of respondent No.3 is that public interest litigation has been filed to blackmail her. Earlier same relief was claimed by filing a writ petition on behalf of one Mr. Digvijay Singh Bhandari, but having become unsuccessful, the present pro-bono-publico has been introduced to challenge the validity of certain provisions of the Act of 1956.

7. The respondent No.3 is not a full fledged Councilor because she has not been given power to vote in the meeting of the Municipal Corporation and she has been elected directly on the post of Mayor by the citizens of Indore.

8. Article 243 (R) of the Constitution has been clearly provided that the person having special knowledge or experience in the Municipal Administration shall be member but shall not have right to vote in the meeting of the Municipality likewise the members of house of people, the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly in the municipal area and the members of Council of States are not given right to vote in the meetings of the Corporation is not beyond competence of the Legislative Assembly.

9. Article 243 (R) of the Constitution does not prohibit State Legislative Assembly from framing such a provision nor Section 9 (1) (e) and 9 (3) are contrary to provisions of Article 243-R of the Constitution. There is no question of any discrimination between direct elected council for the wards and ex-officio members of the house of people, members of Legislative Assembly and Council of States.

10. Section 16 (4) of the M.P. Municipal Corporation Act, clearly lays down that, if a person is elected for the office of Mayor and Councillor both, he shall have to resign from one of the office within seven days from the date of which he is declared elected. The respondent No.3 is elected as member of the State Legislature Assembly from Indore - 4 constituency and he has been further elected for the post of Mayor and, therefore, there is no conflict between the two posts and as she has not been elected as Councilor from any ward by direct election, therefore, there is no conflict as provided under Section 16(4) of the Municipal Corporation Act, 1956.

11. The respondent No.3 was elected by direct election from the Municipal area of Indore city for the post of Mayor and she being a member of Legislative Assembly of M.P. State has a choice to nominate her representative, who possess such qualification as may be prescribed in this behalf to attend the meeting of the Corporation as per proviso to section 9 (1) of the M.P. Municipal Corporation Act, 1956. She

also deemed to be a councillor for the purpose of this Act without having right to vote in the meeting of Corporation. As per Section 16 (4) of the M.P. Municipal Corporation Act, 1956, if a person is elected for the Office of Mayor and Councilor both, he/she will have to resign from one of the office within seven days from the date on which he / she is declared elected, whereas the respondent No.3 has been elected for the Office of Mayor only and as per Section 9 (3) of the M.P. Municipal Corporation Act, 1956, the respondent No.3 is deemed to be a councilor and therefore, provision of Section 16 (4) of the M.P. Municipal Corporation Act, 1956 would not attract in the present case, the office of the respondent No.3 has not become vacant and therefore, provisions of Section 21 of the M.P. Municipal Corporation Act, 1956 would also not to be attracted in the present case and the respondent No.3 has been legally appointed as Mayor - in - Council and is working in accordance with the provisions of the M.P. Municipal Corporation Act, 1956. Section 16 (4) of the M.P. Municipal Corporation Act, 1956, which was inserted by amendment dated 28.9.1998 creates an embargo to continue both the office, in case of election for both the posts, therefore, for applicability of Section 16 (4) of the M.P. Municipal Corporation Act, 1956, the terms of election is required to be interpreted in true sense.

12. The terms "election" has not been defined in M.P. Municipal Corporation Act, 1956, but Section 2(1)(d) of Madhya Pradesh Nagar Palika Nirvachan Niya, 1994 define the meaning of election, which reads as under :-

2(d), "Election" means an election to fill a seat or seats in a Municipality and includes the election in relation to recall the Mayor of a Municipal Corporation or the President of the Municipality or the Nagar Panchayat from his office as the case may be.

13. The term "municipality" is defined in section 2(i) of the Madhya Pradesh Nagar Palika Nirvachan Niyam 1994 as under :- 2(i) "Municipality" means a municipal Corporation constituted under section 7 of the Madhya Pradesh Municipal Corporation Act, 1956 for a larger urban area or Municipal Council constituted under Section 5 of the Madhya Pradesh Municipality Act, 1961 for a smaller urban area or Nagar Panchayat Constituted under Section 5 of the Madhya Pradesh Municipality Act, 1961 for a transitional area, that is to say, an area is transition from a rural area to an urban area.

14. Section 2 (d) of Representation of People's Act also define the meaning of election. For the sake of convenience definition of election as provided in the aforesaid statutes are as under :- (d) "election means an election to fill a seat or seats in either House of Parliament or in the house or either House of Legislature of a State other than the State of Jammu & Kashmir"

15. Only Section 17 of the Act speaks about the circumstances under which a Mayor shall be disqualified and none of the condition mentioned therein apply to the respondent No.1.

16. It is well settled that formulation of any enactment is the exclusive domain of either Central Government or the State Government. Furthermore, upon due consideration of the subject matter of the enactment, the respective Government, either the Central or the State, legislate the Act, as per their jurisdiction contained in the schedule of

subject matter appended to the Constitution of India. The present writ petition is in respect of the local civic body, therefore, necessary jurisdiction is conferred upon the State Government to legislate upon the concerned issues of the local civic body. In such manner, the State Government has legislated the Madhya Pradesh Municipal Corporation Act, 1956, which has initially received the assent of His Highness the Rajpramukh on 25.10.1956. Gradually, the Act of 1956 has been amended subsequently by the number of Madhya Pradesh Acts. The validity of Section 9 of the Act of 1956, which has allegedly been challenged in the writ petition, has been substituted by MP Act No.18 of 1997 on 21.04.1997.

17. By virtue of 74th Amendment in the Constitution (74th Amendment Act, 1992) Part-IX-A has been incorporated in the Constitution of India. The said Act has received assent of the Hon'ble President of India on 20.04.1993 and the Amendment Act has been published in Gazette of India (extra ordinary) Part-II-2-Section 1 dated 20.04.1993. Section 1 (2) of the Amendment Act of 1992 provides that the Act shall come into force on such date as the Central Government may by notification in the Office Gazette, appoint. In pursuance, the Amendment Act, 1992 has come into force with effect from 01.06.1993 vide

notification No. SO-346-A dated 01.06.1993 published in Gazette of India (extra ordinary) Part II, Section 3 (ii) dated 01.06.1993.

18. Article 243-R of the Constitution of India, which deals with composition of Municipalities, reads, as under: "243-R. Composition of Municipalities - (1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

(2) The Legislature of a State may, by law, provide-

(a) for the representation in a Municipality of-

(i) persons having special knowledge or experience in Municipal administration;

(ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;

(iii) the members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area;

(iv) the Chairpersons of the Committees constituted under clause (5) of article 243S:

Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;

(b) the manner of election of the Chairperson of a Municipality."

19. The Constitutional Bench of Apex Court in the case of K. Krishna Murthy & Others v. Union Of India & Another reported in 2010 (7) SCC 202 has held that Constitutional that 73rd and 74th Amendments, 1992 contemplated a hierarchical structure of elected municipality, democratic decentralization, greater accountability between citizens and the State apparatus, and the empowerment of weaker sections are the objectives of the State Amendments.

20. Sections 9 and 16 of the Act of 1956 reads as under: - "9. Composition of Municipal Corporation.--

(1) A municipal corporation shall consist of:-

(a) a Mayor that is chairperson elected by direct election from the Municipal area;

(b) Councillors elected by direct election from the wards;

(c) not more than six persons having special knowledge or experience in the municipal administration, nominated by the State Government:

Provided that only a person residing within the municipal area and being otherwise not ineligible for election as a councilor, may be nominated.

(d) Members of the House of the people and the Members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the municipal area;

(e) Members of the Council of State registered as electors within the Municipal area; Madhya Pradesh Municipal Corporation Act, 1956

Provided that a member of the House of the people and a member of the State Legislative Assembly as mentioned in clause (d) or a member of council of States, as mentioned in clause (e) may nominate his representative, who possesses such qualifications as may be prescribed in this behalf to attend the meeting of the Corporation.

(2) The persons nominated under clause (c) of sub-section (1) shall hold office during the pleasure of the State Government.

(3) Persons referred to in sub-section (1) shall be deemed to be councilors for all purposes of this Act but the persons referred to in clause (c), (d) and (e) of sub-section (1) shall not have the right to vote in the meeting of the Corporation.

(4) If any municipal area fails to elect a Mayor or any ward fails to elect a Councillor, fresh election proceedings shall be commenced for such municipal area or ward, as the case may be, within six months to fill the seat, and until the seat is filled it shall be treated as casual vacancy:

Provided that proceedings of election of Speaker, or any of the Committee under the Act shall not be stayed, pending the election of such seat."

16. Qualification for election as Mayor or Councillor-

(1) Subject to the provisions of this Act, a person who is enrolled in the Municipal electoral roll as a voter, shall be qualified to be a candidate-

(a) for the election of Mayor, if he is not less than 25 years of age; and

(b) for the election of Councillor, if he is not less than twentyone years of age.

(2) No person who is a candidate for any one ward shall be a candidate for any other ward.

(3) Any person who ceases to be a Mayor or a Councillor shall, if qualified under sub-section (1), be eligible for re-election as such.

(4) If a person is elected for the Office of Mayor and Councillor both, he shall have to resign from one of the office within seven days from the date on which he is declared elected."

21. This section makes the provision for composition of Municipal Corporation, as under: - (a) A Mayor, to be elected directly by the voters of the municipal area;

(b) Elected councillors; they will be as many as there are wards in the municipal area of the corporation;

(c) The State Government shall nominate persons not exceeding six having special knowledge or experience in the Municipal Administration, but the persons nominated should be those who reside in the Municipal Area and are not disqualified for election as Councillor;

(d) Members of the House of People representing either the wholly or part of the constituencies comprised within that municipal area;

(e) Members of the Legislative Assembly elected from the municipal areas comprised in the Corporation. The constituency of such members may be wholly or part in such Municipal Area;

(f) Members of the Rajya Sabha, who are registered as electors in such Municipal Area. Such persons may be more than one even.

22. The petitioner is a voter of the municipal area over which the corporation exercises jurisdiction. He is,

therefore, within his legitimate right to see that Councillor of the Municipal Area is as per the legal requirement. He has sufficient interest. He can challenge the validity of the provisions of Section 9 (1) (e) and Section 9 (3) of the Act of 1956.

23. A preliminary ground agitated in the present writ petition, which is attempting to hit the constitutional validity of Section 9 (3) and Section 9 (1) (e) of the Act of 1956 is that Article 243-R of the Constitution nowhere curtails the voting right of the persons who have become deemed Councillor in the representative capacity. Whereas, Section 9 (3) of the Act of 1956 abridges the voting right of persons mentioned therein, which is alleged to be in contravention to Article 243-R of the Constitution of India.

24. The stand of respondent No.2 is that the petitioner has misconstrued the provision entailed under Article 243-R of the Constitution. It does not where provide for voting rights to the persons mentioned therein. However, it certainly lays a prohibition of right to vote in the meetings of the municipality upon the persons having special knowledge or experience in Municipal Administration. But, by no stretch of imagination, it could be inferred that Article 243-R of the Constitution provides for voting rights to the persons referred therein. More so, the intention of Article 243-R of the Constitution is to enable the State Legislature to formulate the law in respect of representation in a municipality etc. Thus, the grounds raised by the petitioner are misconceived having no connection with the niceties of interpretation of statutes.

25. It is also pointed out that the State Legislature has derived its competence and jurisdiction to legislate on the subject matter vide Article 243-R of the Constitution. Mere curtailment of voting rights under Section 9 (3) of the Act of 1956 does not make it ipso facto ultra vires specially in light of the fact that Article 243-R of the Constitution nowhere provides for voting rights to the persons mentioned simultaneously under Section 9 of the Act of 1956.

26. The golden rule of interpretation as narrated by the Hon"ble Justice G.P. Singh in Principle of Statutory Interpretation is the rule of "literal construction". The primary rule of "literal construction" always finds place by giving the provision a natural and grammatical meaning. The words of a statute are understood in their natural, ordinary or popular sense and phrases and sentences are construed, according to grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context, or in the object of the statute to suggest the contrary.

27. The Apex Court in the case of M.T. Khan v. State of Andhra Pradesh reported in 2004 (2) STC 267 has held in paragraphs No.13 and 14, as under: - "13. It is a well-settled principle of law that the provisions of the Constitution shall be construed having regard to the expressions used therein. The question of interpretation of a constitution would arise only in the event the expressions contained therein are vague, indefinite and ambiguous as well capable of being given more than one meaning. Literal interpretation of the Constitution must be resorted to. If by applying the golden rule of literal interpretation, no difficulty arises in giving effect to the constitutional scheme, the question of application of the principles of interpretation of a statute would not arise only.

14. In Gurudevdatla VKSSS Maryadit and others v. State of Maharashtra and others [(2001) 4 SCC 534] , this Court held :

"26. Further we wish to clarify that it is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver. The courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute..."

28. Article 243-R of the Constitution firstly empowers the Legislature of the State to formulate the law on the subject matter as mentioned in Article 243-R (2) of the Constitution; and secondly, proviso has been inserted in Article 243-R of the Constitution, whereby voting right to a specific person has not been granted. However, two situations emerge out of Articles 243-R, one is that, Article 243-R nowhere provides for grant of voting right to other person mentioned therein; and secondly, the spirit of Article 243-R of the Constitution is composition of municipalities and not granting restriction on voting right to a person mentioned

therein. That being so, when Rule of "Literal Construction" is applied while reading Article 243-R of the Constitution of India, then it cannot be averred that since proviso to Article 243-R prohibits the voting right of some person, therefore, by implication voting rights are conferred upon rest of the persons mentioned therein. At this juncture, it is very important to derive the intention of the legislation by applying the rules of Interpretation in their correct perspective. Thus, only the validity / vires of Section 9 (1) (e) and Section 9 (3) of the Act of 1956 can be scrutinized on the touch stone of constitutional validity of impugned provisions of the Act of 1956.

29. It is worth to take note of that proviso contained in Article 243-R of the Constitution of India has a limited role and function to play which carves out an exception from the provision predominantly a disqualification. The Apex Court in the case of *State of Haryana v. Cooperative Land Development Bank Limited Employees Union* and another reported in (2004) 1 STC 574 has in paragraph No.9 held, as under:- "9. The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As was stated in *Mullins v. Treasurer of Survey* [1880 (5) QBD 170, (referred to in *Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograaj Sinha* (AIR 1961 SC 1596) and *Calcutta Tramways Co. Limited v. Corporation of Calcutta* (AIR 1965 SC 1728)]; when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject matter of the proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding

enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. "If the language of the enacting part of the statute does not contain the provisions which are said to occur in it you cannot derive these provisions by implication from a proviso." Said Lord Watson in *West Derby Union v. Metropolitan Life Assurance Co.* (1897 AC 647)(HL). Normally, a proviso does not travel beyond the provision to which it is a proviso. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. [See *A.N. Sehgal & others v. Raje Ram Sheoram & others* (AIR 1991 SC 1406), *Tribhovandas Haribhaj Tamboli v. Gujarat Revenue Tribunal and others* (AIR 1991 SC 1538) and *Kerala State Housing Board and others v. Ramapriya Hotels (P) Limited & others* (1994 (5) SCC 672).

"This word (proviso) hath divers operations. Sometime it worketh a qualification or limitation; sometime a condition; and sometime a covenant" (Coke upon Littleton 18th Edition, 146) "If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause, the

later clause is to be rejected as repugnant, and the earlier clause prevails....But if the later clause does not destroy but only qualifies the earlier, then the two are to be read together and effect is to be given to the intention of the parties as disclosed by the deed as a whole" (per Lord Wrenbury in *Forbes v. Git* [1922] 1 A.C. 256).

A statutory proviso "is something engrafted on a preceding enactment" (*R. v. Taunton, St James*, 9 B. & C. 836).

"The ordinary and proper function of a proviso coming after a general enactment is to limit that general enactment in certain instances" (per Lord Esher in *Re Barker*, 25 Q.B.D. 285)."

30. From the above, it is crystal clear that the proviso inserted in the provision contained in Article 243-R of the Constitution is merely disqualifying the voting right of specific person contained therein and the said proviso does

not have a functionary to provide voting right to the other persons mentioned other than in the proviso.

31. The Apex Court has held in catena of decisions that right to vote is central to the right to participation in the democratic process. It has been fundamental gravity of the Constitution of India to have a democratic set up by observing fair and effective representation and the cardinal principle for representation in democracy is right to vote. Although, it is not a statutory mandate but an examination of the constitutional scheme would indicate that a concept of "one person one vote" is thoroughly followed on the anvil of democratic set up.

32. The State Legislature after due consideration of the constitutional scheme and the jurisdiction conferred upon it by virtue of Article 243-R of the Constitution for enacting the law in respect of the local civic body. The State has enacted / substituted the impugned provision contained in Section 9 (1) (e) and Section 9 (3) of the Act of 1956, which is just, valid, legal and proper. The provisions contained in Section 9 (1) (e) are in no manner contravening Article 243-R of the Constitution of India.

33. Serial No.5 of List-II of Seventh Schedule of the Constitution of India, which deals with the local government, reads, as under: - "List II?State List

5. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, districts boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration. 6. Public health and sanitation; hospitals and dispensaries."

34. In the case of *Suresh Seth v. Commissioner, Indore Municipal Corporation & others* reported in AIR 2006 SC 767 a prayer was made that the Apex Court should issue directions for appropriate amendment in the Act of 1956, so that a person may be debarred from simultaneously holding two elected offices, namely that of a Member of the Legislative Assembly and also of Mayor of a Municipal

Corporation. The Apex Court opined that this is a matter of policy for the elected representatives of people to decide and no direction in this regard can be issued by the Court. That apart, it has been held that Apex Court cannot issue any direction to the Legislature to make any particular kind of enactment. Under our constitutional scheme, Parliament and Legislative Assemblies exercise sovereign power to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation.

35. The Apex Court in the case of *Suresh Seth v. Commissioner, Indore Municipal Corporation & others* (supra) has observed in paragraph No.5, as under: - "5. Learned counsel for the appellant has also submitted that this Court should issue directions for an appropriate amendment in the M.P. Municipal Corporation Act, 1956 so that a person may be debarred from simultaneously holding two elected offices, namely that of a member of the Legislative Assembly and also of Mayor of a Municipal Corporation. In our opinion, this is a matter of policy for the elected representatives of people to decide and no direction in this regard can be issued by the court. That apart this Court cannot issue any direction to the Legislature to make any particular kind of enactment. Under our constitutional scheme Parliament and Legislative Assemblies exercise sovereign power to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation. In *Supreme Court Employees Welfare Association v. Union of*

India [(1989) 4 SCC 187 (para 51)] it has been held that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of a subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated legislative authority. This view has been reiterated in *State of J & K v. A.R. Zakki* 1992 Supp. (1) SCC 548. In *A.K. Roy v. Union of India* [(1982) 1 SCC 271], it was held that no mandamus can be issued to enforce an Act which has been passed by the legislature. Therefore, the submission made by the learned counsel for the appellant cannot be accepted."

36. Recently, the Apex Court in the case of *Rajbala & others v. State of Haryana and others* reported in AIR 2016 SC 33 has held declaring a piece of legislation as arbitrary and thereby unconstitutional is not permissible; in paragraph No.68 the Apex Court has held, as under: - "68. From the above extract it is clear that courts in this country do not undertake the task of declaring a piece of legislation unconstitutional on the ground that the legislation is "arbitrary" since such an exercise implies a value judgment and courts do not examine the wisdom of legislative choices unless the legislation is otherwise violative of some specific provision of the Constitution. To undertake such an examination would amount to virtually importing the doctrine of "substantive due process" employed by the American Supreme Court at an earlier point of time while examining the constitutionality of Indian legislation. As pointed out in the above extract, even in United States the doctrine is currently of doubtful legitimacy. This court long

back in *A.S. Krishna & Others v. State of Madras*, AIR 1957 SC 297 declared that the doctrine of due process has no application under the Indian Constitution 41. As pointed out by Frankfurter, J., arbitrariness became a mantra."

41. In *Municipal Committee Amritsar v. State of Punjab*, (1969) 1 SCC 475, at para 7, this Court clearly ruled out the application of the doctrine of "due process" employed by the Court adjudicating the constitutionality of the legislation. But the rule enunciated by the American Courts has no application under our Constitutional set up. The rule is regarded as an essential of the "due process clauses" incorporated in the American Constitution by the 5th & the 14th Amendments. The Courts in India have no authority to declare a statute invalid on the ground that it violates the "due process of law". Under our Constitution, the test of due process of law cannot be applied to statutes enacted by the Parliament or the State legislatures. This Court has definitely ruled that the doctrine of "due process of law" has no place in our Constitutional system: *A. K. Gopalan v. State of Madras*, 1950 SCR. 88. Kania, C.J., observed (at p. 120):- "There is considerable authority for the statement that the Courts are not at liberty to declare an Act void because in their opinion it is opposed to a spirit supposed to pervade the Constitution but not expressed in words. . . . it is only in express constitutional provisions limiting legislative power and controlling the temporary will of a majority by a permanent and paramount law settled by the deliberate wisdom of the nation that one can join a safe and solid ground for the authority of Courts of Justice to declare void any legislative enactment."

37. For the above mentioned reasons, we are of the opinion that the writ petition of the petitioner is devoid of substance and hold that Sections 9 (1) (e) and 9 (3) of the Act of 1956 is intra vires the Constitution and is thus constitutionally valid. The writ petition deserves to be dismissed is accordingly dismissed, but without any order as to costs.