

**People's Union for Liberties & Democratic Reforms and JCi - First Side**

**Versus**

**Republic of Gariba and Maxis Bank- Second Side**

- a.** 1. The Republic of Gariba is a sovereign federation of states with several union territories. The Republic got independent from imperial rule in the year 1947. By way of a neo-social contract, its people decided to have a referendum to choose members of the Constituent Assembly. The Constituent Assembly drafted an elaborate Constitution, which stood out as the longest ever written Constitution in the world.
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- c.**
- d.** 2. The countryside of the Republic displays a very diverse profile, with hills in the north and the east, seas in the south and the south-west, and desert in the north-west. There are several perennial rivers which flow throughout the territory of Gariba which are the lifeline and sustenance for the people of Gariba.
- e.**
- f.** 3. Most part of the desert is situated in Nirdhan, which is the biggest of the States in the Republic. The territory was considered as backward till 2011, when the then Governor of Nirdhan decided to fast pace the development of roads and highways so that the benefits of infrastructural development can be harvested by its largely rural populace. So as to alleviate the liquidity crunch of the region, a new scheme was devised under which highways and arterial roads were to be constructed by private parties, and the amount invested by them was to be recovered as toll. Powers in this regard were delegated to all the Panchayat Samitis, to issue detailed project reports on the official website, and a single window scheme was provided for sanction of the projects.
- g.**
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- j.** 4. One such company was Jeopardy Contracts Inc. [**JCi**]. It entered into an agreement with Jodhpur Gaon Panchayat Samiti [**JGPS**] on 21.9.2011 for 115 kms of road in a Scheduled area in Nirdhan. At the time of culmination of the project, certain issues cropped up regarding land acquisition, design of the bridges etc. due to which the JGPS terminated the contract on 21.9.2013.
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- m.** 5. As per the contractual mechanism, JCi sent a legal notice on 11.12.2014 for invoking arbitration as per contractual clause and also asked for 'termination payment' for the work already done.
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- o.** 6. A reply was sent through email by JGPS' counsel on 12.12.2014 informing that the matter is covered under the Madhyastham Adhikaran Adhiniyam, 1983, and therefore the Arbitration and Conciliation Act, 1996 is not applicable, and no institutional arbitration can take place. JGPS also invoked the performance bank guarantee on 12.12.2014 by sending an email after business hours to the Maxis bank.
- p.**
7. On 13.12.2014, JCi moved the High Court of Nirdhan by filing an urgent civil writ

- q.* petition being WP (C) No. 99/2014, which was directed to be listed at 10.30 am on 15.12.2014.
- r.* **8.** On 15.12.2014, the High Court took this matter as the first item on board, and granted "...an ad-interim ex-parte stay on invocation of bank guarantee if not already encashed...", and also directed "...all further action in this regard by all parties to remain subject to the outcome of the proceedings...", with directions to immediately furnish copy by all means to the concerned parties. By 11.00 am, the copies of the order were served upon JGPS, and the Maxis Bank. However, in the meantime, at 10.00 am, the branch manager of the Jodhpur Gaon branch of Maxis bank had acted on the email of JGPS and encashed the bank guarantee. At 10.01 am, there was a massive security breach in the systems of the Maxis Bank. This triggered the cyber security systems, which instantly froze all accounts and transactions- -in-progress. Subsequent investigation revealed that it was due to an attack by a group of hackers. Therefore, till the order copy was served on the Maxis Bank, the amount under the Bank guarantee still remained in the account of JCI.
- s.*
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- v.*
- w.*
- x.* **9.** The head of the JGPS immediately convened a press conference and stated that the act of hacking is attributable solely to JCI. The corporate headquarters of JCI issued a statement to the press in response, denying such allegations, and also stating that, "...the head of JGPS is an illiterate villager; his allegations arise out of his ignorance and naivety due to lack of formal education..". The head of JGPS was very angry at such remarks and called another press conference. During the press conference, he stated that though he did not have any formal education, he is not illiterate and can read and write. He further cited from some press clippings of national dailies regarding an incident when in some of the structural designs submitted by highly qualified engineers of JCI, he had pointed flaws, and such flaws were admitted by the engineers of JCI later on. He also reminded the journalists that for this act, which saved lives of hundreds of villagers who would have died due to faulty designs of the bridges to be built, he was given awards by reputed national and international agencies.
- y.*
- z.*
- a.*
- b.*
- c.*
- d.*
- e.* **10.** The JGPS also left no stone unturned to ensure vacation of the stay order, however it was confirmed. Subsequently, the writ petition was disposed of directing the parties to seek appropriate interim remedies from the Id. Arbitrators. Arbitration proceedings took place under the Act of 1996, before the Council for Infrastructure Arbitration (CIA), and objections regarding maintainability filed by JGPS were dismissed by the Id. Arbitrators. The arbitration culminated into an award dated 21.1.2015 in favour of JCI, and inter alia held JCI entitled to the money under the performance bank guarantee.
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- i.* **11.** JGPS immediately filed a petition under Sec. 34 of the Act of 1996, before the High Court of Nirdhan, on its original side on 25.1.2015. In the meanwhile on 24.1.2015, JCI wrote to Maxis Bank with a copy of the award, to return the money pertaining to the performance bank guarantee, retained by it in a Fixed Deposit,

with the interest accumulated thereon, which was thrice the principal.

- j.**
- 12.** On 27.1.2015, Maxis Bank informed that admission of Petition under Sec. 34 amounts to a stay on the award, and therefore until the final outcome of Sec. 34, it is not obliged to pay anything to JCI. It also highlighted its difficulty to JCI regarding the strict compliance mandated by the Apex Court as well as the Reserve Bank with bank guarantee norms, since the invocation of bank guarantee was prior to the stay order of the High Court.
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- 13.** In response, on 28.1.2015, JCI cited its concern about immediate requirement of liquidity due to erosion of net worth, expenses for litigation, and pressure of the Amerasian Development Bank regarding the repayment of loan etc. However, Maxis Bank did not release any payment to JCI.
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- 14.** Realizing the difficulty, JCI challenged the constitutional validity of Sec. 34, by way of a writ petition, being WP 999/2015 on the grounds that:
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- 15.** The High Court of Nirdhan admitted the petition, and considering the nature of issues raised, issued notice to the Id. Attorney General.
- v.**
- 16.** In the meanwhile, the Governor of the State of Nirdhan, on 20<sup>th</sup> December 2014, promulgated an Ordinance which came into effect from 24<sup>th</sup> of December 2014, which amended the Nirdhan Panchayati Raj Act, 1994 as under:
- w.**
- x.**
- y.**
- z.**
- a.**
- b.**
- “19. Qualification for election as a Panch or a member- Every person registered as a voter in the list of voters of a Panchayati Raj Institution shall be qualified for election as a Panch or, as the case may be, a member of such Panchayati Raj Institution unless such person-**
- XXX**
- (r) in case of a member of a Zila Parishad or a Panchyat Samiti, has not passed school examination of the Board of Secondary Education, Nirdhan or of an equivalent Board;*
- (s) in case of Sarpanch of a Panchayat in a Scheduled Area, has not passed class V from a School in Nirdhan; and*
- (t) in case of a Sarpanch of a Panchayat other than in a Scheduled Area, has not*

*passed class VIII from a School in Nirdhan;”*

- c.**
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- 17.** This was the very first time such a provision had been brought into vogue in the entire Republic. People’s Union for Liberties & Democratic Reforms issued a public statement that the Ordinance was replete with malice in law, it amounted to promulgating the ordinance for 5 years instead of 6 months, and it is violative of Constitution since “We the people” does not, and cannot mean “we the literate people”.
- 18.** People’s Union for Liberties & Democratic Reforms moved the High Court of Nirdhan through its counsel on 29<sup>th</sup> of December 2014 (during the annual winter holidays) for an urgent listing and hearing, since the election notification was to be issued on 3<sup>rd</sup> of January, 2015. The PPS to the Hon’ble Chief Justice informed the counsel that listing has been denied.
- 19.** With its counsel’s affidavit, the People’s Union for Liberties & Democratic Reforms moved the Hon’ble Apex Court under Art. 32 on 31.12.2014 through the “Vacation Officer” as notified on the website. The Vacation Officer accepted the papers and informed the counsels assembled in the premises of the Apex Court that instructions from the Hon’ble Chief Justice are awaited. After a wait for 48 hours, when no clear response was forthcoming, the counsels for People’s Union for Liberties & Democratic Reforms sought to escalate the matter. It was informed by the Id. Vacation Officer that he can only speak to the Id. Registrar (Judicial), and none else. On being approach, the Id. Registrar (Judicial) informed that he has put in a message with the PPS to the Hon’ble the Chief Justice. However, despite several reminders, no listing was granted till the issuance of election notification. Upon listing, the Apex Court was pleased to observe that the matter can now be heard by High Court of Nirdhan.
- 20.** Therefore, left with no time, People’s Union for Liberties & Democratic Reforms immediately moved the Hon’ble High Court of Nirdhan. It filed a pro-bono petition WP (C) No. 1021/2015 in the High Court of Nirdhan seeking, to challenge the vires of the Ordinance, and certain other reliefs on the grounds of:
- i. Non availability of a notified vacation bench during any holidays is unconstitutional;
  - ii. Non-availability of a notified procedure for listing when the Court is not in session is unconstitutional;
  - iii. Non-grant of listing before the issuance of election notification cannot affect the merits of the case since the Court was moved well in time and *actus curaie neminem gravabit*,
  - iv. the Ordinance being ultra vires Part IX, and retroactive;
  - v. the Ordinance further marginalizes women and weaker sections due to the prevailing skewed literacy standards, and it is in violation of aspects

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of basic structure like the preamble, single citizenship, and free and equal participation in democratic government, and it also abridges valuable fundamental and constitutional rights.

21. The High Court of Nirdhan admitted the petition, and given that important questions pertaining to the interpretation of Constitution were involved, notices were issued to the Id. Attorney General as well as the Republic of Gariba. Given that the Id. Attorney General was to appear in these two matters, (i.e. WP 999/2015 and WP 1021/2015) they have been directed to be listed together for final hearing.

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**Nota Bene:**

- a. All references, actual, deeming or fictional; are fictional. The legal system applicable to India, applies *as it is* to the Republic of Gariba, with all its laws (including subordinate legislation), and judgments. The High Court of Nirdhan functions in the same manner like the Delhi High Court.
- b. Participants stand advised to devise a “litigation strategy”. The issues can be argued in alternative/without prejudice, be divided into sub-issues, **and can be added to or amended upon**. It is permissible to concede issue(s) at the time of oral arguments subject, however, to appropriate explanation readily available on the query of the bench. However, the written submissions must address all the issues. After the submission of the memorials is complete, a list of issues that can be argued by either side will be published on the competition web-page.
- c. Any citations, without actual para/page references, will invite negative marking. Unnecessary citations and *passim* references are to be avoided. In case of oral arguments, primary references for all case-laws being referred **is mandatory** and no participant will be allowed to cite a case-law from a secondary source like text-books or commentaries. Primary reference may be made to select treatises which are treated as authorities in their own right.
- d. The moot problem is the way it is, with full application of the principle of “**as is, there is...whatever where is**”. No queries or requests for clarifications will be entertained.
- e. Please avoid use of any plastic materials or binding for the Memorials. Use simple color-paper sheets for identification of respective sides. Use of any plastic, or binding material will invite negative marking.

**-Drafted by  
RISHABH SANCHETI,  
ADVOCATE, SUPREME COURT OF INDIA**