
RAJBALA V. STATE OF HARYANA: A CRITIQUE

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INTRODUCTION

In a time and age where the rights of the common man are being systematically taken away for unreasonable considerations, the Supreme Court in *Rajbala v. State of Haryana* has gone a step further by restricting the right of people to contest elections by placing educational and property-based bars.

Article 243F(1) of the Constitution of India, 1950 provides for disqualification of membership to the Panchayat. In addition to these disqualifications, the State Legislature under Article 243F(1)(b) has enacted the Haryana Panchayati Raj Act, 1994 [“Act”], which by virtue of Section 175, provides for disqualifications for membership in the Panchayat. In the said Section, by the impugned Amendment Act, 2015, further disqualifications have been added, which were challenged in *Rajbala v. State of Haryana*. By the amendment to the Act, five more categories of persons were made incapable of contesting elections to the Panchayat. These categories are: (i) persons against whom charges are framed in criminal cases for offences punishable with imprisonment for not less than ten years, (ii) persons who fail to pay arrears, if any, owed by them to either a Primary Agricultural Cooperative Society or a District Central Cooperative Bank or a District Primary Agricultural Rural Development Bank, (iii) persons who have arrears of electricity bills, (iv) persons who do not possess the specified educational qualification and lastly (v) persons not having a functional toilet at their place of residence.

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In the author's opinion, the Supreme Court Bench consisting of Justice Chelameshwar and Sapre while dismissing the writ petition challenging these provisions have acted in a manner antithetic to the spirit of the Constitution and against the larger interests of the society. The author shall go on to discuss as to how democracy is one of the most integral parts of our Constitution and that any bar on the right of enfranchisement based on irrelevant considerations defeats Article 14 of the Constitution. The specific provision mandating educational qualifications shall be discussed in detail and the author shall try to point out how the bar of educational qualifications was never intended by the Constitution makers and that its presence in the legislation is discriminatory and liable to be struck down as being violative of Article 14, under various grounds.

ANALYSIS OF THE JUDGMENT

I. Democracy forming the basic structure of the Constitution

One of the major strengths of a vibrant democracy is the participation of the maximum number of people, as voters as well as candidates contesting elections in order to become people's representatives in elected bodies, be it the Parliament or State Legislatures or municipalities or Panchayats, as in the present case. Such participation is the basic right of a citizen (who is an elector) in a democracy constructed on the edifice of rule of law. Neither the Parliament nor the State Legislatures can keep on adding such disqualifications which curb the scope available for participation of the masses since such an effort will be dangerous to the very survival of the democracy. It was for this reason that the power to add disqualifications by the Parliament or State Legislature outside of what was provided in the Constitution was strongly opposed in the Constituent Assembly Debates.¹ However, ultimately it was opined that for elections in State Legislatures, the power to add further

¹ Constituent Assembly Debates, Book No.3, Volume No. VIII, 2nd June 1949: (Art. 152 (old) equivalent to Article 173 in the Constitution).

disqualifications should only vest with the Parliament and not the State Legislatures. Hence, the Constitution *vide* Article 84 and Article 102 provides qualifications and disqualifications respectively for MPs in Lok Sabha and Rajya Sabha. Article 173 and Article 191 provides qualifications and disqualifications for State Legislatures.

II. Importance of the Panchayati Raj and the choice of the voters

Before we go into the analysis of the judgment, it is essential to look at the importance of the role of the Panchayati system. The aims and objects for making the 73rd and 74th amendments² in the Constitution were, *inter alia*, to involve people at the grass root level in the process of development and to ensure that the state policies ultimately result in people having adequate means of livelihood and equality as envisioned in the Constitution. The very purpose of these amendments was, therefore, to focus on issues like poverty, illiteracy, shelter, unemployment at the local level to enable redressal of such issues by the people themselves having a micro-understanding of their issues. Admittedly, the person who is chosen as the representative at the Gram Sabha/Panchayat level should be a person who is aware of these problems so that he can participate in the decision-making powers at the Panchayat level for implementing such schemes and policies which are provided in Schedule XI of the Constitution. But for that purpose, there ought to be complete devolution of powers by the State Legislature by empowering the Gram Sabhas/Panchayat as the units of self-governance. Representation, by contesting elections of Panchayat is, therefore, extremely important at the grass root level and imposing electoral bars based on economic capacity, literacy, living standards, etc. would impair adult suffrage by incapacitating people from contesting elections.

Further, one of the objects of the 73rd amendment is to lessen the “insufficient representation of weaker sections like Scheduled Castes, Scheduled Tribes and women”. In line with the

² The Constitution (73rd Amendment) Act, 1992; The Constitution (74th Amendment) Act, 1992.

settled law that there has to be a nexus with the object that is sought to be achieved by the legislation, a statutory amendment has to be consistent with the corresponding object of the constitutional amendment or provision authorising such a statute. If one of the objects of the 73rd Amendment itself would be ignored by setting electoral bars so as to pursue goals that are diametrically opposite to the envisaged object, then the object of the Constitutional Amendment would stand defeated.

It has been settled by judgments that it is the choice of the voters to decide the relevance of educational qualifications of a candidate.³ Therefore, it is the independent choice of the voter that is most important⁴ and it is not for the legislature to impose such qualifications and curtail their right to express as guaranteed under Article 19(1)(a). In other words, the wisdom of the voter reigns supreme for strengthening the democracy.

III. Educational qualifications as a bar to contest elections

The specified educational qualifications as promulgated by the impugned Amendment are that a male candidate should be a graduate of Class XII, a woman candidate or a candidate belonging to Scheduled Caste should be middle-pass (Class VIII) and in case of a woman candidate belonging to a Scheduled Caste, the minimum qualification shall be clearing Class V. While it is an admitted position both by the Bench and the State that the provided statistics about how many individuals will be disenfranchised by this provision is not clear, it can be seen that more than 50% of male and female candidates would not be eligible and nearly 70% of Scheduled Caste women would be ineligible to contest elections by this provision alone. Taking into account the other provisions like the mandate to have a toilet, this percentage of disenfranchised individuals keeps steadily rising.

³ Union of India v. Association of Democratic Reforms, (2002)5 S.C.C. 294.

⁴ Mohinder Singh Gill v. Chief Election Commissioner, (1978)1 S.C.C. 405.

It is most appalling to see that the only 'rational' nexus that Justice Chelameshwar sees to support the State Amendment with regard to educational qualifications in *Rajbala* is his blanket assertion that "It is only education which gives a human being the power to discriminate between right and wrong, good and bad". In the light of this statement, it would be relevant to look at Constituent Assembly Debates and cases that dealt with the necessity of education as a qualification.

There was considerable debate in the Constituent Assembly whether education should be necessary for contesting elections. The following observation outlines the intention of the Constitution makers to not consider education as a relevant criterion:

Alladi Krishnaswamy Iyer: *"Firstly, in spite of the ignorance and illiteracy of the large mass of the Indian people, the Assembly has adopted the principle of adult franchise with an abundant faith in the common man and the ultimate success of democratic rule and in the full belief that the introduction of democratic government on the basis of adult suffrage will bring enlightenment and promote the well-being, the standard of life, the comfort and the decent living of the common man. The principle of adult suffrage was adopted in no lighthearted mood but with the full realisations of its implications. If democracy is to be broad based and the system of governments that is to function is to have the ultimate sanction of the people as a whole, in a country where the large mass of the people are illiterate and the people owning property are so few, the introduction of any property or educational qualifications for the exercise of the franchise would be a negation of the principles of democracy. If any such qualifications were introduced, that would have disfranchised a large number of the labouring classes and a large number of women-folk. It*

cannot after all be assumed that a person with a poor elementary education and with a knowledge of the three Rs is in a better position to exercise the franchise than a labourer, a cultivator or a tenant who may be expected to know what his interests are and to choose his representatives. Possibly a large-scale universal suffrage may also have the effect of rooting out corruption what may turn out incidental to democratic election. This Assembly deserves to be congratulated on adopting the principle of adult suffrage and it may be stated that never before in the history of the world has such an experiment been so boldly undertaken. The only alternative to adult suffrage was some kind of indirect election based upon village community or local bodies and by constituting them into electoral colleges, the electoral colleges being elected on the basis of adult suffrage. That was not found feasible.”⁵

The Supreme Court again in *People’s Union for Civil Liberties v. Union of India*⁶ considered whether education should be a part of the declaration made by a candidate. Rejecting such a proposition, the Hon’ble Court observed as follows:

“Consistent with the principle of adult suffrage, the Constitution has not prescribed any educational qualification for being Member of the House of the People or Legislative Assembly. That apart, I am inclined to think that the information relating to educational qualifications of contesting candidates does not serve any useful purpose in the present context and scenario. It is a well-known fact that barring a few exceptions, most of the candidates elected to Parliament or the State Legislatures are fairly

⁵ Constituent Assembly Debates, Book No.5, Volume No. X-XII, 23rd November 1949.

⁶ *People’s Union for Civil Liberties v. Union of India*, (2003)4 S.C.C. 399.

educated even if they are not Graduates or Post-Graduates. To think of illiterate candidates is based on a factually incorrect assumption. To say that well-educated persons such as those having graduate and post-graduate qualifications will be able to serve the people better and conduct themselves in a better way inside and outside the House is nothing but overlooking the stark realities. The experience and events in public life and the Legislatures have demonstrated that the dividing line between the well educated and less educated from the point of view of his/her calibre and culture is rather thin. Much depends on the character of the individual, the sense of devotion to duty and the sense of concern to the welfare of the people. These characteristics are not the monopoly of well educated persons.”

A Full Bench of the Supreme Court of Pakistan had an occasion to examine the very same question of whether education (graduate with bachelor degree) should be imposed as a disqualification in contesting elections for the Parliament or a Provincial Assembly. The Pakistan Supreme Court in its judgment dated 21 April 2008, *Muhammad Nasir Mahmood and Another v. Federation of Pakistan*⁷ looked into the legislative provisions of almost thirty developing/developed countries including Argentina, Japan, Australia, Bangladesh, Iran, Italy, etc. where education is not a disqualification. In most of these countries, a person who is qualified to vote is also entitled to contest. The Pakistan Supreme Court noted that the graduation qualification ran afoul since it did not consider the social and economic conditions of Pakistan and the impact on the people while disentitling them from exercising the universal right of suffrage. It also noted that educational qualification as a condition for

⁷ Muhammad Nasir Mahmood and another. v. Federation of Pakistan, P.L.D. 2009 SC 107 (Supreme Court of Pakistan).

contesting elections is not present in other countries and such an inclusion would be against the spirit of democracy as enshrined in the different instruments of the United Nations. It was further held that denial of the right to voters to contest elections is against the spirit of democracy. The Supreme Court also mentioned that the acquisition of a qualification is dependent upon physical conditions and the milieu in which a person may find himself. For instance, the urban population always has an upper hand in the sphere of education. It also noted that the State had failed in fulfilling its obligation of imparting education to all the citizens as required by Article 37 of the Pakistan Constitution. It concluded by holding that rendering a vast majority of population ineligible to contest by imposing a requirement of educational qualification is unjust and unconstitutional; it is neither a reasonable restriction nor a reasonable classification and therefore, void.

A bare reading of the following paragraph in the *Rajbala* judgment is enough for us to understand the gross misunderstanding of the law that has been employed in this judgment:

“If it is constitutionally permissible to debar certain classes of people from seeking to occupy the constitutional offices, numerical dimension of such classes, in our opinion should make no difference for determining whether prescription of such disqualification is constitutionally permissible unless the prescription is of such nature as would frustrate the constitutional scheme by resulting in a situation where holding of elections to these various bodies becomes completely impossible.”

It is the duty of a welfare government to ensure that illiteracy is eliminated and people attain basic education. Article 21A of the Constitution has made education up to the age of 14 a Fundamental Right. It is a fact that due to poverty and inaccessibility, families are not able to provide education to their children and therefore, the illiteracy rates are very high in a number of states. For them, the basic needs are food, clothing and shelter and any effort to make

education as a bar ultimately weakens the democracy which thrives on *en masse* participation. Education as a goal for a welfare state is laudable but the absence of education cannot be imposed as a disqualification to voters as such an imposition applies in a totally different field, that is having a direct nexus with the democratic participation. Therefore, the contention of the State that today maximum MPs and MLAs are educated, despite education not being a criterion, is a self- defeating argument. If the welfare State makes an endeavour to ensure that everybody is educated, the requirement is fulfilled without having to introduce it as a disqualification. Education, thus, should not be made as a coercive factor against people, to deprive them of their basic right in a democracy, either as a voter or as a candidate contesting elections. Accordingly, the entire approach by the State of Haryana is faulty and legally unsustainable.

Another reason why the impugned provision is arbitrary, unreasonable and violative of Article 14 of the Constitution is that the State has not conducted any study or shown any material to the Hon'ble Court in support of its legislative action that the educated members of the Panchayat are better equipped to discharge their obligations. The only argument which has been advanced by the State is that elected members of the Panchayat have to discharge certain obligations for which it is required that they are educated, but there is no justification advanced as to why there is no educational requirement either for President, Vice-President, MPs and MLAs who have to discharge sensitive functions of national importance as per the Constitution. The fact is that all these important constitutional functionaries have been discharging their functions properly without imposition of educational criteria as a disqualification. If today, education is put as a necessary requirement for all these constitutional functionaries, it is doubtful whether it will be acceptable in the democratic set up and will be constitutionally tenable.

The making of laws and discharging of obligations under Lists I, II and III cannot be less demanding than what is listed in Schedule IX of the Constitution. So, the idea that a person contesting elections in the Panchayat level, who has to deal with things at a smaller scale, has to be more educated than a person who is contesting to be an MLA or an MP, legislating for the entire country, is wholly unreasonable.

Yet another reason for striking down this provision is that though the state government is trying to justify the imposition of education by taking support of the argument that the Panchayat members have to discharge important functions, it has failed to produce any material before the Hon'ble Court as to what level of minimum education is required for discharging those functions. A bare look at the impugned provision shows that matriculation qualification is required for a general male candidate, whereas for a general woman candidate and for a Scheduled Caste male candidate, middle pass is required. It is further provided that for Scheduled Caste woman candidate, only fifth standard pass is required. Even among the educated, various classes have been created which have no nexus with the object sought to be achieved. As the provision cannot be read down to mean that for all the candidates, the requirement will only be fifth pass, the entire provision is liable to be struck down, because the court cannot substitute the legislative intention in reading down a provision. Thus, the provision besides being arbitrary and unreasonable is also discriminatory and therefore, violates Article 14 of the Constitution.

IV. Challenge under Article 14

(i) 'Arbitrariness' - a facet of Article 14

One of the grounds on which the impugned Amendment was challenged was that it was arbitrary and hence, violative of Article 14. It was contended that the new provisions are vague and that they have no nexus with the object that was sought to be achieved by the Act,

discriminating against a class of people without any substantial reason, especially rights that are necessary for the proper and effective functioning of a democracy.⁸

While choosing not to rely on the precedents submitted by the Petitioners, the Hon'ble Court relied on *State of Andhra Pradesh & Others v. McDowell & Co*⁹ to hold that “*it is not permissible for this Court to declare a statute unconstitutional on the ground that it is 'arbitrary'*”. In the opinion of the author, the Hon'ble Court has misconstrued the judgment in *McDowell* to reject the ground of ‘arbitrariness’; *McDowell* only seems to imply that arbitrariness alone cannot be the reason why a challenge should hold, but that there must be another ‘constitutional infirmity’ on the basis of which the legislation is challenged. *McDowell* also goes on to assert that one cannot simply claim that a legislation or executive action is arbitrary, but that the claim must be on a constitutional basis. Following exactly that, the claim that has been made by the Petitioners in the case, has been that the amendments strike at the root of Article 14 while relying on factual and legal grounds and not just solely arbitrariness. At best, what the two-judge bench in *Rajbala* could have done is to have referred this rather muddy area of ‘arbitrariness’ to a larger bench to decide whether a new method ought to be evolved for checking the validity of a statute or to prescribe guidelines for using arbitrariness as a ground of challenge. In fact, by wrongly deciding that the ground of arbitrariness itself is not a valid ground of challenge, the Court has basically denied a proper right of hearing to the Petitioners as most of the arguments advanced hinged on the idea that the amendments made to the legislation were arbitrary.

Moreover, the Supreme Court while writing the judgment seems to have overlooked many previous seven-judge bench decisions that categorically state that arbitrariness is against the idea of Article 14 and that if a statute is found to be arbitrary in nature, it must be struck

⁸ *Minerva Mills Limited v Union of India*, (1980)3 S.C.C. 625.

⁹ *State of Andhra Pradesh & Ors. v. McDowell & Co*, (1996) 3 S.C.C. 709.

down. Courts have time and again commented on the multi-faceted nature of Article 14 and that it cannot be constrained within traditional limits. For instance, the dynamic content of Article 14 with its many aspects and dimensions was explained in *EP Royappa v. State of Tamil Nadu*¹⁰ as follows:

“The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose J., “a way of life”, and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be “cribbed cabined and confined” within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on relevant principles applicable alike to all similarly situated and it must not be guided by any extraneous or irrelevant

¹⁰ *EP Royappa v. State of Tamil Nadu*, (1974)4 S.C.C. 3.

considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of Power and arbitrariness are different lethal radiations emanating from the same vice; in fact the matter comprehends the former. Both are inhibited by Articles 14 and 16.”

In *Maneka Gandhi v. Union of India*,¹¹ the principle of reasonableness being an essential element of equality and non-arbitrariness was highlighted by reiterating that equality is a dynamic concept with multiple dimensions and cannot be imprisoned within traditional and doctrinal limits.

It is interesting to note that Justice Chelameshwar in *Rajbala* takes note that according to *Royappa* and *Maneka Gandhi*, arbitrariness is antithetical to the concept of equality, but chooses not to rely on their constitutionally celebrated jurisprudence because these were only pointed out by the Petitioners by way of a dissenting opinion in the case of *RK Garg & Ors. v. Union of India*.¹²

In the case of *Bachan Singh v. State of Punjab*,¹³ Justice Bhagwati, though speaking on the question of death sentence, made pertinent observations in relation to Article 14. It was pointed out that Article 14 was liberated in *Maneka Gandhi's* case from the confines of classification theory and it was held that Article 14 primarily ensures guarantee against

¹¹ *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248.

¹² *RK Garg & Ors. v. Union of India*, (1981) 4 S.C.C. 675.

¹³ *Bachan Singh v. State of Punjab*, (1982) 3 S.C.C. 24.

arbitrariness. Besides holding that if a law is arbitrary and unreasonable and violates Article 14, it was decided that if unguided power is conferred on an authority, the law will be violative of article 14 because it would enable the authority to exercise such discretion arbitrarily and thus discriminate without reason. It was further held that any law which is arbitrary and irrational would be invalid, under Articles 14, 19 or 21, whichever be applicable.

(ii) Prevailing circumstances

The most important aspect of the entire case that the Court has ignored is the situation of the affected person at the ground level. While the State has not effectively acted to improve the conditions of poverty, illiteracy and sanitation, it is unjust to shift the onus to the downtrodden and punish them by taking away their democratic right of contesting elections. Ironically, what the Court has done is to take away the chance of empowerment people in the lower classes of society have had in the garb of empowering them with role models who can in turn give future generations a possibility of being educated and sanitary-positive. By this, lower classes and castes get more suppressed as they have no representation and their voices are never heard. If their participation is blocked by legislation at the grass root level, the changes that could have been brought about will be stunted and lead to an endless cycle of despair.

It has been held by the Hon'ble Supreme Court that a law which is uncertain, vague and unintelligible and capable of wanton abuse can be struck down as being violative of Article 14.¹⁴ This enunciation of Article 14 has to be applied in the context of the legislation which is

¹⁴ State of MP v. Baldev Prasad, (1961)1 S.C.R. 970; KA Abbas v. Union of India, (1970)2 S.C.C. 780; Harakchand Ratanchand Banthia v. Union of India, (1969)2 S.C.C. 166 at 183; Kartar Singh v. State of Punjab, (1994) 3 S.C.C. 569; Shreya Singhal v. UOI, (2015) 1 S.C.C. 1.

under consideration. The relevant considerations when a legislation is challenged has been highlighted in the decision of *State of Madras v VG Row*:¹⁵

“.....the Court should consider not only factors such as the duration and the extent of the restrictions, but also the circumstances under which and the manner in which their imposition has been authorised. It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case.”

The above view was reiterated by another Constitutional bench of the Hon’ble Court in *Hamdard Dawakhana Wakf v. Union of India*¹⁶ and in *MRF Ltd. v. Inspector Kerala Govt. & Others*.¹⁷

(iii) Onus of providing supporting evidence

In *Lily Thomas v. Union of India*,¹⁸ the Hon’ble Court held that the other facet of Article 14 is that the reasonableness of a statute is to be judged on the basis of whether the State has

¹⁵ *State of Madras v VG Row*, A.I.R. 1952 S.C. 196.

¹⁶ *Hamdard Dawakhana Wakf v. Union of India*, A.I.R. 1965 S.C. 1167.

¹⁷ *MRF Ltd. v. Inspector Kerala Govt. & Others*, (1998)8 S.C.C. 227.

sufficient material to support the rationale of the impugned legislation.¹⁹ If the reason given for the impugned legislation is not supported by any material, such legislation can be struck down as arbitrary and violative of Article 14 of the Constitution.

It is against the background of these settled precedents mandating presence of clear material on record that we must look at the remarks made by the Court in this case. In many a place where the State has provided data regarding education and the number of toilets, the Court acknowledges the fact that the data is not clear or that it has not been made available. In a serious situation such as this where individuals are disenfranchised, the State must be made to bear the burden of proving without any doubt that the legislation not only has a reasonable nexus with the object sought to be achieved but also sufficient material must be placed on record so that the rationale may be judged. In this case, the Court acted lackadaisically while treating the available data. In the author's opinion, it was of utmost importance that the Court analysed the exact percentage of people getting excluded from practicing their right to contest due to the legislation before deciding that educational criteria constitute a valid disqualification.

V. Right to vote and contest: Constitutional Rights

After relying on the case of *People's Union for Civil Liberties (PUCL) & Another v. Union of India & Another*²⁰ and the dissenting opinion of Justice Chelameshwar in *Desiya Murpokku Dravida Kazhagam & Another v. Election Commission of India*,²¹ the Hon'ble Court reached the conclusion that the right to vote and right to contest are both constitutional rights and not

¹⁸ Lily Thomas v. Union of India, (2007) 7 S.C.C. 653.

¹⁹ Indian Council of Legal Aid and Advice v. Bar Council of India, (1995)1 S.C.C. 732.

²⁰ People's Union for Civil Liberties (PUCL) & another v. Union of India & another (2003) 4 S.C.C. 399.

²¹ Desiya Murpokku Dravida Kazhagam & another v. Election Commission of India (2012) 7 S.C.C. 340.

simple statutory rights. This exercise was necessary because the level of restriction of a right is integrally related to its nature. After deciding that the right to contest is a constitutional right, the level of scrutiny that had to be employed by the Court would naturally have to be much higher as the State cannot be allowed to take away rights guaranteed by the Constitution without a compelling interest. Though this compelling interest or a rational nexus was not shown by the State, the Court went on to validate the legislation.

While it is a great step forward that the right to vote and contest have been declared as constitutional rights, what the two-judge bench in *Rajbala* seems to have ignored is a five-judge bench in *Kuldip Nayyar v. Union of India*²² which categorically stated that the right to vote in an election and the right to contest an election are both simple statutory rights and not constitutional rights. *Stare decisis* and judicial propriety demanded that the two-judge bench followed the decision made by a bench of a higher strength or in case of a disagreement, referred this important question to a larger bench so that the question may be answered. It has been settled in the matter of *Central Board of Dawoodi Bohra Community v. State of Maharashtra*²³ that the law laid by the Supreme Court in a decision delivered by a bench of larger strength is binding on any subsequent bench of lesser or co-equal strength and that a bench of lesser quorum cannot doubt the correctness of the view of law taken by a bench of larger quorum. It is therefore unfortunate that the two-judge Bench in *Rajbala* was unaware of the judgment in *Kuldip Nayyar*.

CONCLUSION

When a law is arbitrary and is based on extraneous or irrelevant considerations which are outside the scope of permissible considerations, it ought to be struck down on the basis of

²² *Kuldip Nayyar v. Union of India*, (2006) 7 S.C.C. 1.

²³ *Central Board of Dawoodi Bohra Community v. State of Maharashtra* A.I.R. 2005 S.C. 752.

violation of constitutional provisions and in the interest of the society. The entire scheme of reasoning, or the lack of it, followed in the *Rajbala* judgment only points to a very superficial and idealistic interpretation of the social milieu of the villages in India. As a witness to the oral arguments, it was very saddening to experience at first hand the kind of apathy meted out by the Union and Judiciary, almost mocking the rural poor by asserting that if they lack an alleged necessity, it is not because of their poverty but because of a lack of their requisite will to gain it. The social circumstances that are present in the rural areas of the country were greatly ignored. While claiming to be for the betterment of these areas, what this piece of upheld legislation has done is to work with other forces of the society in ensuring that India's future does not lie in its villages.