

ismail Vs. Rajasthan State and ors.

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Court : Rajasthan

Decided On : Nov-25-1957

Reported in : AIR1958Raj96

Judge : D.S. Dave and; I.N. Modi, JJ.

Acts : [Constitution of India](#) - Articles 13(2), 14, 226 and 326; Rajasthan Town Municipal Election Rules, 1951 - Rule 13(1); Rajasthan Town Municipalities Act, 1951 - Sections 205, 205(2); Representation of the People Act

Appeal No. : Writ Petn. No. 191 of 1956

Appellant : ismail

Respondent : Rajasthan State and ors.

Advocate for Def. : Kan Singh, Deputy Govt. Adv. and; Manak Mal, Adv. for Non-Petitioner No. 5

Advocate for Pet/Ap. : Hastimal, Adv.

Disposition : Application dismissed

Judgement :

D.S. Dave, J.

1. This is an application by one Ismail, resident of Sojat City, under Article 226 of the [Constitution of India](#) and arises under the following circumstances:

2. In connection with the municipal elections for the town of Sojat, the Collector Pall, who is non-petitioner No. 2, appointed the Sub-Divisional Officer, Sojat, non-petitioner No. 3, as a returning officer for the elections. Non-petitioner No. 3 thereupon invited nomination papers to be filed by 25-7-1956. The petitioner submitted his nomination paper to non-petitioner No. 3 for his election as a member of Sojat Municipal Board from Ward No. 10. The only other person who submitted his nomination paper from the same Ward was non-petitioner No. 4, Narain. On 28-7-1956, the returning officer scrutinized the nomination papers and rejected the nomination papers of the petitioner as also of non-petitioner No. 4.

The petitioner's nomination paper was rejected on the ground that he did not fulfil the qualification as provided in Rule 13 of the Rajasthan Town Municipal Election Rules, 1951 (which will hereinafter be referred to as the 'Rules'), because it was found by the returning officer that the petitioner was not capable of reading and writing Hindi, nor was he otherwise literate. To this extent, there is no dispute between the parties on facts.

3. The petitioner has challenged the correctness of the returning officer's order dated 28-7-1956, on the following grounds:

(1) that the petitioner was literate inasmuch as he could read and write Hindi, that he fulfilled the qualification of Rule 13 referred above, that he was eligible for standing as a candidate for the municipal elections and the returning officer was wrong in holding that he could not read or write Hindi.

(2) that the qualification laid down in Rule 13 does not appear in the Rajasthan Town Municipalities Act No. 23 of 1951 (which will hereinafter be referred to as the Act), that if the legislature meant to provide such a qualification for a member, it would have found its place in the Act, that the Government of Rajasthan had no power to lay down such a Rule and hence Rule 13(1) was ultra vires of the Act.

(3) Even if ground No. 2 is not allowed Rule 13(1) should be struck down because it offends against the petitioner's constitutional right of equality before the law. The petitioner's argument on this point is two-fold:

(a) It is contended that Rule 13 is vague, that it does not lay down any definite standard of literacy, that it leaves unfettered discretion with the returning officer to fix his own standard and then test a particular candidate from that standard and reject him. It is urged that the Rule should therefore be struck down on the ground of vagueness.

(b) It is next urged that Rule 13 in fact provides a disqualification inasmuch as all illiterate persons are debarred from standing for the membership of the municipal board, that this Rule puts an unreasonable restriction on the right of illiterate persons to stand for election, that such a restriction does not exist even for those persons who want to stand as candidates for election to the State Legislative Assembly or to the House of People, and therefore, the Rule should be struck down on this ground as well.

4. The arguments raised by the petitioner have been contested by non-petitioners Nos 1, 2 and 3. Non-petitioner No. 4 has not cared to appear in this Court. It may be mentioned here that the petitioner has added one more non-petitioner, namely, Hari Kishan, because after the filing of this writ application a fresh election was held for Ward No. 10 of Sojat Municipality by the returning officer on 17-12-1956, and in that election Hari Kishan has been elected as a member of the said municipal board. He has also contested the petitioner's application. It would be proper to deal with the petitioner's contentions in seriatim.

5. To begin with the first contention it has been urged by petitioner's learned counsel that the petitioner was asked by the returning officer to read Hindi at about 10 P. M. The petitioner had no spectacles with him and he was not allowed any time to go to his house and fetch the same. He was not informed earlier that a test of his literacy would be taken. He experienced a little difficulty in reading, since the light of the lantern was faint and he had no spectacles with him. The same difficulty came in his way in writing. It has been vehemently urged that the petitioner could read and write fairly well, that the returning officer has not

mentioned in his order dated 28-7-56 what standard of literacy he expected from the petitioner, that he has simply mentioned that the petitioner could not stand the test and that the petitioner has thus been wrongly rejected even though he fulfilled the qualification laid down by Rule 13.

Non-petitioner No. 5 has challenged the correctness of the facts stated by the petitioner. According to him, the test was held not at 10 P.M., but at about 6 P.M. when there was sufficient day-light. He further says that the petitioner had also used his spectacles and that he had utterly failed in the literacy test.

6. It may be observed that the question whether the petitioner was capable of reading and writing Hindi or whether he was otherwise literate, is one of fact and it is not for this Court to determine such a question of fact in its extraordinary jurisdiction. The returning officer has noted in his order dated 28-7-1956, that the petitioner had told him that he knew no other language except Hindi and therefore his literacy was to be tested only with regard to Hindi language.

He has further written that the petitioner was given a book of Hindi to read it out in the open court, that he was also given dictation in Hindi and he could not stand the test. As pointed out above, non-petitioner No. 5 has also corroborated the returning officer's remark by saying that the petitioner had utterly failed to read or write Hindi and that his plea to the effect that he was not possessed of spectacles at that time or that the light was not sufficient, is also wrong.

It is not the function of this Court to take the test of candidates for municipal elections and determine whether they are capable of reading and writing or they are otherwise literate. I have no reason to disbelieve the returning officer when he says that the petitioner was incapable of reading or writing Hindi. Moreover, the petitioner had to satisfy the provision of Rule 13 on the date he was examined by the returning officer. If he has subsequently learnt how to read and write, it would not qualify him for the election on the date it was held. Under these circumstances, the first argument raised by the petitioner must fail.

7. Then coming to the second ground, it has been urged by petitioner's learned counsel that the Government of Rajasthan, who had made the Rules, had no

authority to lay down the qualification under Rule 13(1). Our attention has been drawn to Section 11(3) of the Act which runs as follows:

'11(3). A person shall not be qualified to be elected as a member unless he is enrolled in the municipal electoral roll and a person who is already a member shall not be qualified to be a candidate at a bye-election held before his term of office as member expires'.

It has been urged on the basis of the above provision that all that was required by the Act was that a person standing for the election of a municipal membership should only be enrolled in the municipal electoral roll and no other qualification was necessary. It is further urged that Section 12 of the Act provides general disqualification for becoming a member and that the framers of the Act did not provide in this section that illiteracy would also be a disqualification for becoming a member.

According to learned counsel for the petitioner, the provision of Rule 13 really disqualifies all those persons who are not literate for standing as a candidate for municipal membership and that this provision is, therefore, ultra vires of the Act. I have given my earnest consideration to this argument and find that it is not tenable. Section 205 of the Act gives rule-making power to the Government. Sub-sections (2)(b)(ii) of Section 205 provides that

'in particular and without prejudice to the generality of the foregoing power, the Government may make rules or orders for prescribing, the qualifications of voters and of candidates.'

It may be pointed out that the Act did not provide for the qualifications of voters or of candidates and this power was left by the framers of the Act with the Government. It was in Rule 5 of the Rules that the Government laid down the qualifications for a voter.

It says that no person who is not on the electoral roll of a Municipality shall be entitled to vote, and that a person shall not be entitled to be qualified as a voter if he is not a citizen of India or has not attained the age of 21 years or has been

adjudged by a competent authority to be of unsound mind or is an undischarged insolvent or has been sentenced to imprisonment for a certain term and in certain circumstances mentioned therein.

If Section 11 Sub-sections (3) were to be interpreted as learned counsel for the petitioner wants this Court to interpret it, then even Rule 5 would be ultra vires of the Act and all the qualifications, which have been laid down in the Rule for a person in order to be entitled to be enrolled as a voter, would have to be struck down. This would mean that according to the Act, everybody would be entitled to be enrolled as, a voter even though he may not be a citizen of India or may be a child or may be a person of unsound mind or an undischarged insolvent or a convict of any type.

I do not, therefore, think that when the framers of the Act laid down Section 11(3), it was meant by them that no qualifications would be laid down in the Rules for a voter or a candidate. On the other hand, as I have pointed, out above, there was an express provision in Section 205 and it was left to the Government to prescribe the qualifications not only of voters but also of candidates. I find that the only qualification for candidates which has been laid down by the Government in pursuance of its powers given by Section 205, quoted above, is provided in Rule 13 mentioned above.

I shall discuss at length when I come to point No. 3(b) whether this Rule is unreasonable or not. It would suffice here to say that the Government has not exercised any power in laying down Rule 13 (1) which was not given to it by the Act. This Rule cannot, therefore, be said to be ultra vires of the Act.

8. Coming to the third argument, viz. 3(a) petitioner's learned counsel has urged that Rule 13 is vague and is therefore fit to be struck down on that ground. In my opinion, this argument is also not tenable. Rule 13 (1) runs as follows :

'13 (1). Subject to the disqualifications mentioned in Section 12 and Sub-sections (3) and (6) of Section 19 of the Act, every person who is on the roll and is also capable of reading and writing Hindi or is otherwise literate, shall be qualified to be a candidate".

It would appear from the language of the Rule that according to its provision every person, who is on the roll and who does not suffer from the disqualifications mentioned in Section 12 and Sub-sections (3) and (6) of Section 19 of the Act, is qualified to be a candidate for municipal elections provided he is capable of reading and writing Hindi or is otherwise literate.

In my opinion, this Rule provides a simple qualification of reading and writing Hindi or showing that a candidate is otherwise literate, and it is not so vague that it must be struck down. It would be difficult to provide any test of literacy without leaving some discretion in the officer who is to take that test. If it were provided in the Rule that the minimum qualification of literacy would be that the candidate should have passed the first primary class from a school, then it would have excluded all those persons who had studied privately and not joined any school.

That provision would have worked to the detriment of more persons and it would have unreasonably excluded those literate persons who had studied privately or in an unrecognised school and who were otherwise more literate than the persons who had passed the first primary class. Or, if the Rule were to provide that a candidate should be capable of reading and writing Hindi up to the First Standard of the Primary Class, even then, there would have been some vagueness left and there would still be some discretion left with the person taking the test whether the candidate fulfills the qualification or not.

In other words, some discretion would always remain with the examiner. It has not been alleged by the petitioner that he was tested by applying a high standard of literacy. In the Rule, as it has been laid down at present, all that is required of a candidate is that he should be simply able to read and write Hindi. The petitioner has not suffered on account of the vagueness of the Rule, but because of the fact that the returning officer found that he could neither read nor write. Under these circumstances, this ground also cannot prevail and must be dismissed.

9. Now coming to the last point viz., 3(b) it has been vehemently urged by petitioner's learned counsel that the qualification provided in Rule 13 is in fact a disqualification for all those voters who are illiterate and thus it denies equality before law to all those persons who are not literate. It is contended that this is an

unreasonable restriction on their right to stand as a candidate for municipal membership. It is further contended that this standard of literacy is not provided even for those persons who want to stand as candidates for election to the Legislative Assembly or to the House of People, that a member of a Town Municipality does not stand on a higher footing than a member of a Legislative Assembly or the House of People and therefore this restriction is unreasonable and must be struck down.

This point was in fact raised by the petitioner during the course of arguments and it was not taken in this form in his application as originally filed. Nevertheless, we have heard learned counsel for both the sides since the argument involves an important question of law.

10. Now, I have to determine whether Rule 13(1) offends against any of the provisions of the [Constitution of India](#). Since the petitioner's allegation is about illegal discrimination, the only Articles he can possibly invoke are Articles 14 and 15 of the Constitution. So far as Article 15 is concerned, it may be observed at once that it would have no application to the present case, because it prohibits discrimination against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. In the present case, the alleged discrimination, if any, proceeds on the ground of literacy and not of religion, race, caste, sex or place of birth and therefore the provisions of this Article cannot be attracted by any stretch of imagination.

11. Similarly, Article 13(1) would not apply to the present case, since the Rajasthan Town Municipal Election Rules were made in 1951 after the commencement of the Constitution. As regards Article 13(2), it provides that the State shall not make any law which takes away or abridges the rights conferred by Part III of the Constitution and that if any law is made in contravention of this clause, it would be void to the extent of the contravention. Learned counsel for the petitioner has not been able to point out to us any provision in the Constitution whereby it may be said that he had a fundamental right to stand for election for membership of the municipal board.

It would suffice to say that a right to stand for election for membership of a certain body is not a fundamental right of every citizen of India. He gets that right only if it is provided in a certain statute and he is eligible to stand for election according to that statute. Learned counsel for the petitioner has urged before us that Article 326 of the Constitution provides that elections to the House of People and to the Legislative Assembly of every State shall be on the basis of adult suffrage, that this Article does not prescribe any qualification of literacy and thus the provision of literacy in Rule 13(1) offends against this Constitutional provision. In my opinion, this argument is not tenable because, in the first place, Article 326 relates only to the elections to the House of People and to the Legislative Assemblies of the Various States in India, and it does not provide for other elected bodies.

Moreover, it only says that the elections to the House of People and to the Legislative Assemblies shall be on the basis of adult suffrage. It is explained in this very Article that every person, who is a citizen of India and who is not less than 21 years of age on such date as may be fixed in that behalf by or under any law made by the appropriate legislature and who is not otherwise disqualified under the Constitution or any law made by the appropriate legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice shall be entitled to be registered as a voter at any such election. It is thus clear that this Article only says that every person who comes within its ambit would have a right to be registered as a voter at elections to the House of People and to the Legislative Assembly.

In other words, it is not meant by adult suffrage that every adult, as envisaged by this Article, would also have a right to stand at the election. To be more explicit, it only gives a right to vote but not a right to stand for election to a particular body.

12. Learned counsel has next turned his argument to Article 14 of the Constitution. It is urged that Rule 13(1) denies equality before the law to all illiterate persons and therefore the petitioner has a right to get redress from this Court. It is true that 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. But it is now well settled by a string of decisions of the Supreme Court that the principle of equality

enacted in this Article does not absolutely prevent the State from discriminating.

In other words, the State has the power of what is known as classification on the basis of rational distinctions if they are relevant to the particular subject which is dealt with in a particular piece of legislation. In *Lachmandas Kewalram v. State of Bombay* AIR 1952 SC 235 (A) it was observed by their Lordships as follows:

'It is now well established that while Article 4 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others who are left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the Act'.

It is true that the Rules referred above do make a differentiation between literate and illiterate electors, but we have to see whether that classification is reasonable and whether it can stand the tests of a permissible classification as laid down by their Lordships in the above case.

13. Learned counsel for the petitioner has urged that even the Representation of People Act does not lay down the classification of literacy for membership of the House of People or for the State Legislatures, that a member of a municipal board does not stand on a higher footing than a member of the House of People or the State Legislature and when the classification of literacy has not been provided for membership of such Houses, it is very unreasonable that such a classification should be provided for election for membership of a municipal board. It may be conceded without any disrespect to the members of a municipal board that they do not stand on a higher footing than the members of the House of People or the members of a State Legislature.

But this is not a correct criterion for judging the reasonableness of a classification appearing in a certain place of legislation. In the first instance, it may be pointed out that it is not permissible for us to determine the question of reasonableness by comparing the law made by one legislature with a law made by another legislature

or by comparing a law prevailing in one state with a law prevailing in another State. In the case of the State of Madhya Pradesh v. G. C. Mandawar AIR 1954 SC 493 (B) it was observed by their Lordships of the Supreme Court as follows:

'.....the position is that when a law is impugned under Article 13, what the Court has to decide is whether 'that' law contravenes any of the provisions of Part III. If it decides that it does, it has to declare it void, if it decides that it does not, it has to uphold it. The power of the Court to declare a law void under Article 13 has to be exercised with reference to the specific legislation which is impugned. It is conceivable that when the same legislature enacts two different laws but in substance they form one legislation, it might be open to the Court to disregard the form and treat them as one law and strike it down, if in their conjunction they result in discrimination. But such a course is not open where, as here, the two laws sought to be read in conjunction are by different Governments and by different legislatures. Article 14 does not authorise the striking down of a law of one State on the ground that in contrast with a law of another State on the same subject its provisions are discriminatory. Nor does it contemplate a law of the Centre or of the State dealing with similar subjects being held to be unconstitutional by a process of comparative study of the provisions of the two enactments. The sources of authority for the two statutes being different, Article 14 can have no application'.

It is clear from the above observation that it would not be correct on our part to judge the reasonableness of the classification made in Rule 13(1) by comparing it with the provisions made in the Representation of the People Act. Moreover, it may be pointed out that the central legislature which enacted the Representation of the People Act might not have considered it worthwhile to provide for classification of literacy for membership of the House of People or the State Legislature in the hope that illiterates would hardly be able to contest the election for membership of those bodies successfully and even if some illiterate persons happened to achieve success, they would be in such a minority that the efficiency of the legislature would not be seriously affected.

If it were visualised by the framers of that Act that the Houses of Legislature would be full of too many illiterate persons or that the majority of the members would be

those of illiterate persons, I have no doubt that such a provision would have been made there. At any rate, if such a provision were to appear in the Representation of the People Act, it could hardly be urged with any justifications that it was unreasonable and fit to be struck down. Simply because, such a provision was not made in that Act, we cannot hold that the provision made in Rule 13(1) is unreasonable without taking into consideration other circumstances which would be pointed hereinafter.

14. Learned counsel for the petitioner has next urged that the classification of literacy does not appear even for candidates who want to stand for membership of a gram Panchayat. It is contended that the Rajasthan Panchayat Act has been enacted by the State Legislature and it would not be improper for this Court to compare the provisions of the Rajasthan Town Municipalities Act and Rules made thereunder with the provisions of the Rajasthan Panchayat Act and Rules made thereunder. I have given my consideration to this argument and it may be pointed out that this contention is also not tenable.

It is true that the classification of literacy has not been provided for ordinary Panchas but Section 13 of the Rajasthan Panchayat Act, 1953 (Act No. 21 of 1953) does provide that a person qualified to be elected as a Surpanch or Upsarpanch must be able to read and write Hindi. It is thus quite clear that the State legislature thought it necessary that a Surpanch and a Upsarpanch, who have more responsible duties to perform, were required at least to be able to read and write Hindi.

In the case of ordinary Panchas the State legislature may not have considered it proper to provide for the qualification of literacy, because it is common knowledge that the number of literate persons in villages is very small and it might have been thought that if a qualification of literacy would be provided for Panchas, then it may not be possible in the case of every gram panchayat to get the requisite number of literate Panchas. As pointed out above, the State Legislature did not dispense with the qualification of literacy in the case of Surpanch and Upsarpanch, since they are expected to be more responsible and incharge of the Panchayat administration.

15. In the case of towns, the number of literate persons is much greater as compared to those found in villages and therefore it appears that the State Legislature considered it proper to lay down a qualification of literacy for every member of a municipal board. It may be further observed that the qualification provided in Rule 13 is not per se unreasonable because a member of a municipality has to discharge very responsible functions. For instance, the members of a municipal board have to make rules and bye-laws in the manner provided in Chapter IV of the Act and if they are not even able to read and write, it would be difficult for them even to copy out such rules and bye-laws from other similar enactments. They have thus to perform a legislative function to a certain extent and it cannot be denied that such a function can be better performed by literate persons.

If the members are unable even to read Hindi or any other language, how can it be expected from them to understand much less to frame rules and bye-laws. Similarly, Chapter V requires the members of a municipal board to deal with the municipal properties and funds. Chapter VI lays down primary and secondary functions of a municipal board. It is hardly necessary to refer to all the provisions of the Rajasthan Town Municipalities Act. It would suffice to say that the members of a municipal board have to perform both legislative and executive functions. They are entrusted with the administration of the municipality which is a very responsible job and we think that it would be unreasonable for us to hold that the classification provided in Rule 13(1) comes within the ambit of unreasonable classification.

It would not be out of place to mention here that numerous writ applications are received in this Court to correct the errors committed by the members of the municipalities or the Panchayats, because they are unable to understand the rules and bye-laws properly on account of! lack of sufficient education, The position would be far worse if we were to strike down Rule 13(1) and open the gate for all illiterate persons. In spite of this we would have had no hesitation in striking down that Rule if we were to find that it violates any constitutional provision, but I am firmly of opinion that this Rule does not infringe any constitutional Provision and under the circumstances, we cannot strike it down.

16. Learned counsel for the petitioner urged in the end that the Constitution does not provide a qualification of literacy even in the case of election of the President of India and we would be going against the spirit of the Constitution in holding that Rule 13 is based on reasonable classification. In my opinion, there is no substance in this argument.

If the Constitution did not lay down any qualification of literacy for the highest office of the President of India, it was because the framers of the Constitution felt themselves safe in the belief that no illiterate person can ever hope to hold that office and not because they thought that even an illiterate person should be able to occupy that position. On the other hand, the directive principle as embodied in Article 45 of the Constitution, is to the effect that the State shall endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education of all children until they complete the age of fourteen years.

This means that it is expected by the Constitution that every child of this country should be educated within a particular period but so long as the State is not sufficiently advanced in the field of literacy, it cannot be said that the classification between literates and illiterates as laid down in Rule 13(1) is unreasonable. It would appear from the petitioner's own application that there were only two candidates for election as members of the Sojat. Municipal Board from Ward No. 10 and that unfortunately both of them were found by the returning officer to be illiterate. It shows that the number of literate persons even in a place like Sojat is much smaller than, what is desired and under such circumstances, the classification envisaged in the said Rule becomes all the more reasonable.

17. I thus find no good reason to allow this application and am of opinion that it should be dismissed.

I. N. MODI J.

18. I have carefully perused the judgment of my learned brother Dave J. and as the main question involved in this writ application is of considerable interest and importance, I wish, to enter a few observations of my own. The principal question

for determination in this case is whether Rule 13 of the Rajasthan Town Municipal Election Rules which inter alia provides literacy in Hindi or some other language to be an essential qualification for a candidate for the membership of a town municipality in this State is ultra vires of the Rajasthan Town Municipalities Act (No. XXIII) of 1951 or of the Constitution.

I agree that the Government has not transgressed its statutory authority in enacting such a rule in view of the rule making authority vouchsafed to it under Section 205 of the Act. The next question is whether the State in denying the right to those who do not fulfil this qualification to stand for the office of municipal membership lays itself open to the charge of an unreasonable discrimination. The question, in my opinion is not free from a certain amount of difficulty.

While I agree that literacy, generally speaking, may be a desirable qualification for any elective office, I am unable to appreciate why it should be prescribed as a sine qua non for the office of a municipal member alone. Such a qualification does not appear to have been laid down for any other elective office (except in the case of a Sarpanch or an Upsarpanch of a village Panchayat) in this State, nor, if I may say so without any disrespect, for any other elective office in the rest of India.

It is no use saying that in the case of the other elective offices the State feels assured that either that illiterate persons will not be elected at all or, that, if elected, their number will not be unduly large on a particular body. These considerations do, in my opinion, apply equally to municipal bodies, and the electors living within their areas or the candidates standing up for such bodies. This extra qualification therefore does seem, in my respectful opinion, to be out of joint with the general pattern of electoral qualifications in our country as a whole, and makes a somewhat visible inroad on the principle of adult suffrage which has been generally accepted without any educational qualification being enacted as a prerequisite for membership to local bodies or to legislative assemblies or even to the Central Parliament.

My brother Dave J. is of opinion, however, that such a qualification has nothing inherently wrong about it and the classification cannot be said to be essentially unreasonable, and with all respect, I am not prepared to go so far as to hold that

the qualification prescribed in this connection is bad for unreasonable discrimination. I do feel, however, that the result is somewhat incongruous. But that perhaps is eminently a matter for the State Legislature to consider and not for this Court. With these observations, I agree with the final order proposed to be delivered.

19. BY THE COURT: In view of what has been observed above, we dismiss this application, but leave the parties to bear their own costs.

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