

(1978) 05 CAL CK 0009
In the Calcutta High Court

A.K.M. Hossan Uzzaman and Another APPELLANT
Vs
Shri Debabrata Bandopadhyaya and Others RESPONDENT

Date of Decision : 29-05-1978

Acts Referred:

Bengal General Clauses Act, 1899 — Section 24
Constitution of India, 1950 — Article 14, 19, 226, 246, 31
Payment of Bonus Act, 1965 — Section 37
WEST BENGAL PANCHAYAT ACT, 1973 — Section 11, 140, 222, 224, 24

Citation : 82 CWN 806

Hon'ble Judges : Sabyasachi Mukherji, J

Bench : Single Bench

Advocate : Bhola Nath Sen, Bhagabati Banerjee, Tapan Paul and R.M. Kar, for the Appellant; Advocate General, Bhabani Bagchi, Somnath Chatterjee, Kamalesh Banerjee and Nigam Chakravarty, for the Respondent

Final Decision : Dismissed

Judgement

Sabyasachi Mukherji, J.—In this application under Article 226 of the Constitution of India Sree A. K. M. Hassan Uzzaman a member of the Legislative Assembly of West Bengal elected from Deganga Assembly Constituency of the District of 24 Parganas and Dr. Saswati Prasad Bag, member of Legislative Assembly elected from Mahisadal Assembly Constituency in the District of Midnapore challenge the Panchayat Elections due to be held on the 4th of June, 1978 on the basis of election notice dated 23rd of March, 1978. They further challenge the votes lists, division of members to be elected and seats determined under the provisions of the West Bengal Panchayat Act, 1973 and the West Bengal Panchayat (Election) Rules, 1974. They ask that these be set aside and quashed. They ask for a declaration that the provisions of S. 4(2)(3) and Ss. 4(3A), 222 and 224 of the said Act and rules, 8, 9, 11, 17A, 17B, 18A, 18B, 20, 24, 41, 44, 46, 56, 64, 66, 73, 75, 76, 77 be declared ultra vires and invalid. They further seek to set aside Rule 99 of the said rules and ask for declaration that actions taken under S. 3 of the West Bengal Panchayat Act, 1973 be set aside. They have asked also for an

order of injunction restraining the respondents from holding the election of Gram Panchayat, Panchayat Samities and Zila Parishads pursuant to the notification dated 23rd of March, 1978. The respondents to this application are Sree Debabrata Bandopahya, Minister-in-charge, Department of Panchayat, the State of West Bengal and the Director of Panchayat and the State Panchayat Election Officer. The petitioners state that they are members of the West Bengal Legislative Assembly and as such by virtue of S. 140 of the West Bengal Panchayat Act, 1973 are ex officio Member of the Zila Parishad to be constituted under the said Act. The petitioners, further, state that they are included in the electoral rolls of the West Bengal Legislative Assembly for the time being in force and as such voters in the areas comprised in the respective grams as envisaged in S. 4 of the West Bengal Panchayat Act, 1973. The petitioners, further, state that as citizens of India and as members of the Legislative Assembly they have further various statutory rights and they are obliged by their oaths to up-hold the rule of law as envisaged in the Constitution and to discharge the trust reposed upon them.

2. Before the contentions urged in this application are considered it has to be noted that in the petition the petitioners had alleged that they had not inspection and knowledge of certain relevant documents and notifications and records. Accordingly in paragraph 30 of the petition they had referred to several documents, records and notifications which they claimed they should have right to inspect and upon the inspection of which they alleged that the irregularities in the proposed election of which they were complaining would be apparent. When this application was first moved I issue a rule nisi upon the respondents to show cause and further directed the respondents to give inspection of the relevant documents, notifications and other records as mentioned in paragraph 30 of the petition. I further directed that the election to the Panchayat if held should abide by the result of the rule. Pursuant to the direction given by me as aforesaid the Government has allowed inspection of most, if not of all the documents. The petitioner No. 2 in the affidavit in reply has annexed charts showing the results of such inspection. The factual correctness of the statements contained in the said charts annexed to the affidavit-in-reply has not been disputed before me. I shall advert to this aspect later.

3. Article 40 of the Constitution which is one of the directive principles of State policy enjoins that the State shall take steps to organise village Panchayat and to endow them with such powers and authority as may be necessary to enable them to function as units of self-government. Due to illiteracy and what was considered to be low sense of civic responsibilities in our rural population implementation of the said directive principle was not hastened. Entry 5 in List II of the 7th Schedule of the Constitution permits and empowers the said legislature to make legislation to implement the aforesaid directive principle of the Constitution. Pursuant to the said power West Bengal Panchayat Act, 1957 was enacted. The said Act was amended by West Bengal Act XV of 1959 and again by the West Bengal Act VIII of 1964. The said Act came up for

consideration in a challenge under Article 226 of the Constitution in the case of H.C. Choudhury v. State of West Bengal 69 CWN 347. Mr. Justice D. N. Sinha, as the learned Chief Justice then was, struck down S. 11(2) and (3) of the said Act. I will have occasion to examine the said decision in detail in considering one of the contentions urged in this application before me. But it appears that after the said judgment the said sections were altered and the Act was amended by the West Bengal Act XVII of 1965. Pursuant to the Act it further appears that in 1964 elections were held to the Panchayats. But for the last 14 years no further elections have been held. In the meantime West Bengal Panchayat Act, 1973 was passed. Several contentions about the validity of several sections of the said Act will have to be considered in this application. The said Act was amended by the West Bengal Panchayat Amending Bill which was passed by the legislative assembly on the 17th March, 1978. Pursuant to the powers given under the West Bengal Panchayat Act, 1973 West Bengal Panchayat (Election) Rules, 1974 have been promulgated. The said rules have also been from time to time been amended. The validity of the said amendments would also fall for consideration in this application.

4. It is urged that action taken under S. 3 of the West Bengal Panchayat Act, 1973 is bad as arbitrary and whimsical. It may incidentally be noticed that in the prayers of this petition there is no specific challenge to any action taken under S. 3 of the Act. But in paragraph 33 in the grounds (C) the petitioners have urged that the notifications dividing the grams under S. 3 were bad in law. The challenge to the said action has also been reiterated in the affidavit-in-reply for the reasons to be mentioned hereinafter; in spite of the objections urged on behalf of the respondents by counsel I am inclined in a matter like this to examine the validity of this contention. Section 3 of the Act is as follows:

3. (1) The State Government may, by notification declare for the purposes of this Act any mauza or part of a mauza or group of contiguous mauzas or parts thereof to be a Gram.

(2) The notification under sub-s. (1) shall specify the name of the Gram by which it shall be known and shall specify the local limits of such Gram.

(3) The State Government may, after making such enquiry as it may think fit and after consulting the views of the Gram Panchayats concerned, by notification -

(a) exclude from any Gram any area comprised therein; or

(b) include in any Gram any area contiguous to such Gram; or

(c) divide the area of a Gram so as to constitute two or more Grams; or

(d) unite the areas of two or more Grams so as to constitute a single Gram.

5. The only ground upon which this challenge has been made is to be found in ground (C) of paragraph 33 of petition. It is alleged that there was no consultation with the Panchayat institutions or persons interested including the

petitioners as voters or persons affected. It was stated that no objections were invited before dividing such grams and therefore the notifications under S. 3 are bad. Apart from the above there is no further allegation or statement of facts to sustain the challenge. Counsel for the petitioners contended that the action taken pursuant to S. 3 is whimsical and arbitrary. I do not know when and how such specific actions as contemplated under S. 3 were taken. But it appears and it is the common case of the petitioners as mentioned in paragraph 11 of the petition that notifications were published about the grams in 1976. Gazettes containing some such notifications in respect of certain district were produced before me and these were published in the year 1976. There is no factual basis to hold that the State Government did not make any necessary enquiries. I do not find any obligation to consult members of the legislative assembly as such in issuing the notifications under S. 3. Therefore, non-consultation with the petitioners does not affect the legality of the actions taken on this aspect. There is also no specific statutory obligation to consult any other persons interested or to invite as such any objections. Furthermore, there is no evidence or allegations that after the notifications had been issued in 1976 objections had been filed and such objections had not been considered. It is true that sub-s. (3) of S. 3 enjoins that the State Government might consult the view of the Gram Panchayats or Panchayats concerned. There is no allegation that the State Government did not consult the Gram Panchayats or Panchayats concerned as such. There is, however, no evidence that the State Government did consult any such Gram Panchayats or Panchayats concerned. Even assuming that there was no consultation with the Gram Panchayats for Panchayats concerned, in the facts and circumstances, of the case, when the old Panchayats had been constituted about 12 to 14 years ago non-consultation, if any, with these in the background of the provision of sub-s. (3) of S. 3 of the Act, in my opinion, does not invalidate the actions taken. In view of the language used in sub-s. (3) of S. 3 such consultation was at the highest directory and not mandatory. In this connection reliance may be placed on the observations of the Supreme Court in the case of State of U.P. Vs. Manbodhan Lal Srivastava, and also on the observations of the Supreme Court in the case of Ram Gopal Chaturvedi Vs. State of Madhya Pradesh, . For the reasons aforesaid I am unable to sustain the challenge to the action taken under S. 3 of the Act.

6. The next contention urged in support of this application was that S. 4(2) and S. 4(3), both before and after amendment S. 4(3A), S. 222 and S. 224 (2), (3) & (4) of the West Bengal Panchayat Act, 1973 are ultra vires and invalid. It is urged that the said sections are invalid, by the said sections, the legislature has abdicated essential legislative functions, and further that some of the said sections are violative of Articles 14, 19 and 31 of the Constitution. It is necessary to examine the aforesaid contentions in detail. Before I do so it would be necessary to set out the said sections. The relevant portion of S. 4 before the amendment was as follows:

4. (1) For every Gram the State Government shall constitute a Gram Panchayat

bearing the name of the Gram.

(2) Persons whose names are included in the electoral roll of the West Bengal Legislative Assembly for the time being in force pertaining to the area comprised in the Gram shall elect by secret ballot as such time and in such manner as may be prescribed, from among themselves such number of members not being less than seven or more than twenty-five as may be determined by the prescribed authority in accordance with such rules as may be made in this behalf by the State Government, and the members so elected shall be the members of the Gram Panchayat.

(3) For the convenience of the election prescribed authority shall, in accordance with such rule as may be made in this behalf by the State Government.

(a) divide the area of a Gram into constituencies, not being less than three or more than fourteen, on the basis of number of members of Gram Panchayat determined under sub-section (2);

(b) allocate to each such constituency seats, not exceeding three, on the basis of electorate of the Gram.

The said section was amended by the West Bengal Panchayat Amending Act, 1978 which as mentioned hereinbefore, was passed by the legislative assembly on the 17th of March, 1978. By the amendment sub-s. (4) was amended as follows:

3. In section 4 of the said Act, -

(a) in sub-section (2), for the words "as may be determined by the prescribed authority in accordance with such rules as may be made in this behalf by the State Government," the words "as the prescribed authority may, having regard to the number of voters in hill areas and other areas and in accordance with such rules as may be made in this behalf by the State Government determine" shall be substituted;

After sub-s. (3), sub-s. (3A) was inserted as follows:

(3A) Notwithstanding anything contained in the foregoing provisions of this section, for the purpose of this section, for the purpose of first election under this Act the local limits of jurisdiction of a Gram Sabha constituted under the West Bengal Panchayat Act, 1957, shall form a constituency:

Provided that the prescribed authority may, if it thinks it necessary so to do for the purpose of allocation of seats to a constituency, divide the local limits jurisdiction of a Gram Sabha constituted under the Act into such number of the constituencies as the prescribed authority may think fit.

(c) in sub-section (4) after the words "this section shall," the words, "notwithstanding anything contained in section 210", shall be inserted.

7. It may in this connection be noted that before the introduction of the West

Bengal Panchayat Amending Act, 1978 an ordinance had been issued on the 28th November, 1977 called the West Bengal Panchayat Amending Ordinance, 1977. The said ordinance was replaced by the West Bengal Panchayat Act, 1978. But the said Amending Act of 1978 was given retrospective effect with effect from 28th of November, 1977 being the date of the issue of the said ordinance. Section 222 being the another section under challenge is as follows;

222. If any difficulty arises in giving effect to the provisions of this Act, the State Government may take such steps or issue such orders not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for the purpose of removing such difficulty.

Section 224 another section under challenge is as follows:

224. (1) The State Government may, after previous publication, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the matters which under any provision of this Act, are required to be prescribed or to be provided for by rules.

(3) All rules made under this Act shall be published in the Official Gazette, and shall, unless some later date is appointed by the State Government, come into force on the date of such publication.

(4) All rules made under this Act shall be laid for not less than fourteen days before the State Legislature as soon as possible after they are made and shall be subject to such modification as the State Legislature may make during the session in which they are so laid. Any modification of the said rules made by the State Legislature shall be published in the Official Gazette, and shall, unless some later date is appointed by the State Government, come into force on the date of such publication.

8. As mentioned hereinbefore the challenge to sub-s. (2) and sub-s (3) of S. 4 is mainly on the ground that there has been violation of Article 246 of the Constitution and the legislature has abdicated its function and there has been excessive delegation of essential legislative functions. Before I deal with this contention it may be relevant to refer to the decision in the case of H. C. Chowdhury v. State of West Bengal (supra). There the learned Judge held that Ss. 3, 5, 725 and 26 of the West Bengal Panchayat Act, 1956 being Act 1 of 1957 were intra vires the Constitution and did not suffer from the defect of excessive delegation of legislative function and were not discriminatory and were not contrary to the provisions of Article 14 of the Constitution. The learned Judge, further, held that S. 11(2) & (3) were ultra vires the Constitution as they suffered from the defect of excessive delegation of legislative function and were discriminatory and violative of Article 14 of the Constitution. Section 11 of the said Act as it stood at the irrelevant time was as follows:

11 (1) There shall be a Gram Panchayat for every Gram Sabha.

(2) The members of a Gram Sabha shall elect in the manner prescribed them amongst themselves such number of members not being less than nine not more than fifteen as may be determined by the prescribed authority, and the members so elected shall constitute the Gram Panchayat.

(3) The prescribed authority may divide the area of a Gram Sabha into such number of constituencies as may be convenient for the purpose of election.

9. The learned Judge found that the number of members to be elected was left to be determined by the prescribed authority under sub-s. (2) of S. 11. There was no guidance provided. The prescribed authority was not the State Government and no qualifications for prescribed authority had been laid down in the Act. It could be any body. Therefore, the learned Judge felt that there was the possibility of the said determination of the number of members being discriminatory and whimsical and therefore the legislature had not performed its essential legislative function. Similarly, in sub-s. (3) of S. 11 there was no guideline provided as to how the prescribed authority would divide the area of Gram Sabha into a number of constituencies. Here again the power was given not the State Government but to the prescribed authority. As mentioned hereinbefore after said judgment the Act was amended in 1965 and the prescribed authority was enjoined by sub-s. (2) to act in accordance with such rules as may be prescribed by the State Government. Sub-section (3) was also substantially re-casted. It is not necessary for my present purpose to refer to the actual amendments. I am concerned with S. 4(2) before and after amendment and S. 4(3) before and after amendment of the West Bengal Panchayat Act, 1973. The principles in the light of which the validity of a legislation on the ground of excessive delegation should be considered have been reiterated by the Supreme Court and the High Courts in several decisions. Reference may however be made to the observations of the Supreme Court in the case of *Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others*, where the Supreme Court at page 1901 of the report has reiterated that the Constitution confers a power and imposes a duty on the legislatures to make the laws. The essential legislative function is the determination of the legislative policy and its formulation as a rule of conduct. The legislature cannot abdicate its function in favour of another. But in view of the multifarious activities of the State, it cannot presumably work out all the details to suit the varying aspects of a complex situation. It must necessarily delegate the working out of details to the executive or any other agency. But there is a danger inherent in such a process of delegation. An overburdened legislature or one controlled by a powerful executive may unduly overstep the limits of delegation. It may not lay down any policy at all; it may declare its policy in vague and general terms, it may not set down any standard for guidance of the executive; it may confer an arbitrary power on the executive to change or modify the policy laid down by it without reserving for itself any control over subordinate legislation. This self effacement of legislative power in favour of another agency either in whole or in part is beyond the permissible limits of delegation. It is for the Court to hold on a fair, generous and liberal

construction of an impugned statute whether the legislature has exceeded such limits. But the said liberal construction should not be carried by the Courts to the extent of always trying to discover a dormant or latent legislative policy to sustain an arbitrary power conferred on executive authorities. This aspect was again considered by the Supreme Court in *Sable Waghire and Company and Others Vs. The Union of India (UOI) and Others*, where the Supreme Court was examining the validity of S. 8 of The Emblems and Names (Prevention of Improper Use) Act, 1970. The Supreme Court held that the scheme disclosed in the provisions of the Act read with the preamble and the objects and reasons made it clear that there was imperative necessity for regulating the use of certain emblems and names. The fact that only improper use of the names and emblems is prohibited in itself is guidance. According to the Supreme Court in the nature of things there was no abdication of legislative function by the Parliament in delegating its power under S. 8 of the Act in favour of the Central Government which would be the proper authority to consider from time to time as to the items to be included or omitted from the schedule in the light of the knowledge and experience gathered from the nook and corner of the entire country. There was, therefore, according to the Supreme Court, no excessive delegation of legislative function by the Parliament in favour of the Central Government. From the objects and reasons, the preamble and the provisions of the Act with the built-in limitations in S. 3 of that Act taken with the schedule, according to the Supreme Court, a policy was clearly discernible and therefore there was sufficient guidance to enable the Central Government to exercise its power under the Act. Reliance in this connection may also be placed on the observations of the Supreme Court in the case of *Virendra v. State of Punjab* AIR 1957 SC 897. There the Supreme Court dealing with Ss. 2 & 3 of the Punjab Special Powers (Press) Act, 1966, observed that these laid down the principle that the State Government or the delegated authority could exercise the power only if it was satisfied that it was necessary to exercise the power for the purpose mentioned in the section. It could not be exercised for any other purposes. It was held that the said sections did not suffer from vice of excessive delegation.

10. Now in the instant case under sub-s. (2) of S. 4 before amendment the range of number of namely not less than 7 and not more than 25 had been laid down. The prescribed authority was to determine the number in accordance with the rules which were to be framed by the State Government. The said power was for the purpose of election of the members of the Gram Panchayats. Having regard to the preamble of the Act which was, inter alia, to re-organise the Panchayats in rural areas and in the light of the scheme of the entire Act that is to say to re-organize the Panchayats and to hold elections necessary for that purpose, in my opinion, in as much as the prescribed authority was obliged to act in accordance with the rules prescribed by the State Government, there was sufficient guidance and sub-s. (2) of S. 4 did not, in my opinion, suffer from the vice of excessive delegation. In the amended provisions of sub-s. (2) of S. 4 what has been done

is that the prescribed authority should act having regard to the number of voters in hill areas and other areas and in accordance with such rules as made by the State Government. Therefore, the number in the amended sub-s. (2) of s. 4 has to be determined by the prescribed authority in the light of the rules and having regard to the number of voters in hill areas and other areas within the range indicated by the legislature. If this power is read in the light of the preamble and the scheme of the Act, in my opinion, there is sufficient guidance for the prescribed authority to act given by the legislature. This amended provision of sub-s. (2) of S. 4 does not, therefore, suffer from the vice of excessive delegation. Section 3A has been inserted after S. 3 of S. 4. It enjoins that the local limits of the jurisdiction of the first election to be held under the Act of 1973 would be the Gram Sabha constituted under the West Bengal Panchayat Act, 1957. There is nothing illegal about it. It provides sufficient guideline and the provision is reasonable and practicable. The facts of the case of Radhy Sham v. Chief Commissioner Ajmer (1956) Ajmer 25 were different. But the proviso to sub-s. (3A) authorises the prescribed authority only "if it thinks it necessary to do so for the purpose of allocation of seats to a constituency" to divide the local limits of the jurisdiction of a Gram Sabha constituted under that Act into such a number of the constituencies as the prescribed authority "may think fit". On what basis the prescribed authority would divide the local limits of the jurisdiction of a Gram Sabha into such numbers of the constituencies except its subjective opinion has not been indicated except if this be though necessary and fit for the purpose by the prescribed authority. There is no guidance provided by the legislature. I, therefore, hold that proviso to sub-s. (3A) of S. 4 as amended by the West Bengal Amendment Act, 1978 is bad because it amounts to excessive delegation of legislative function. The legislature has not provided the necessary guidance and it has to be borne in mind the power has been given not to the State Government but to the prescribed authority. Therefore, proviso to sub-s. (3A) is bad and violative of Article 246 of the Constitution. There is, however, no statement or allegation in this petition before me of any action, in respect of any constituency for which election will beheld pursuant to the notification dated 23rd of March, 1978 taken under proviso to sub-s., (3A) of S. 4 of the Act. On behalf of the State Government counsel stated from the Bar that no action has been taken under the proviso to sub-s. (3A) in respect of the impending election. Therefore, though this will not affect actions taken or to be taken in connection with election to be held on the 4th June, 1978 pursuant to the notification dated 23rd of March, 1978 this power under sub-s. (3A) is struck down and the respondents are directed not to act in pursuance of this proviso. This, however, will not prevent the respondents from making appropriate provision of law to that effect in accordance with the law. On behalf of the petitioners it was further contended that in as much as the West Bengal Panchayat Act, 1973 was amended by the West Bengal Panchayat Amending Act 1978 with retrospective effect from 28th of November, 1977 any action delimiting the constituencies of Gram Sabhas on the basis of the West Bengal Panchayat Act, 1957 as contemplated by sub-s. (3A) of S. 4 of the Act prior to 28th of November, 1977

was bad. Quite independently of sub-s. (3A) of S. 4 the jurisdiction of Gram Sabhas have been created by the notification issued in 1976 as mentioned hereinbefore. Therefore, even if action under sub-s. (3A) of S. 4 of the Act cannot be given any retrospective effect beyond 28th of November, 1977 the delimitation of Gram Sabha on the basis of which the present election on the 4th of June, is being held would not be materially affected. Furthermore, in any event since 28th of November, 1977 the local limits of the jurisdiction of Gram Sabha created prior thereto would continue to be the same as constituted under sub-s. (3A) of S. 4 of the Act.

11. While on S. 4(2) & (3) and (3A) of the Act it is also necessary to examine the contention of the petitioners that the said provisions are violative of Article 14 of the Constitution. It is well settled that differentiation is possible provided such differentiation has a rational nexus with the policy and the object to be achieved by the Act. Any differentiation which has a rational nexus with the object of the Act cannot be said to be discriminatory and violative of Article 14 of the Constitution. It is also well settled that law in order to be valid must be in consonance with Article 14 of the Constitution not only in the substantial part of it but also in respect of the procedure provided by the law. These principles are well settled but reference may be made to the observations of the Supreme Court in the case of *Budhan Choudhry and Others Vs. The State of Bihar*, . In the impugned sections in the power that has been given, in my opinion, there is a clearly discernible policy which has a rational nexus with the object of the Act and as such no question of violation of Article 14 of the Constitution arises. Though mention has been made of Articles 19 and 31 of the Constitution no arguments were advanced in support of the proposition that the sections impugned are violative either of Article 19 or of Article 31 of the Constitution.

12. The next section which requires consideration is S. 222 which has been set out hereinbefore. By this section power has been given to the State Government to take such steps or issue such orders as were not inconsistent with the provisions of the Act and as it may appear to the State Government to be necessary and expedient for the purpose of removing any difficulty. Therefore the State Government has been made the sole judge to find out whether any difficulty has arisen. There is no indication as to in which cases the difficulty can be said to have arisen it is the subjective view of the State Government whether a difficulty has arisen or not which enables the State Government to invoke the power under S. 222 of the Act. Secondly, there is no indication as to what kind of steps, legislative, executive or by rule making, the State Government can take in a particular situation again except that the State Government should not take action inconsistent with the provision of the Act. There is complete freedom of the State Government to take any action which it considers necessary or expedient. This appears to be naked and arbitrary power even though the power has been given to the State Government. In the case of *Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union*, the Supreme Court was concerned with the

validity of S. 37 of the Payment of Bonus Act, 1965 which provision empowered the Central Government to remove doubts and defects. The said section of the Payment of Bonus Act, 1965 is more or less similar to S. 222 of Panchayat Act, 1973. By a majority judgment the Supreme Court struck down that section. In that view of the matter, in my opinion, on the basis of the ratio of the aforesaid decision this section suffers from the vice of exercise delegation and therefore bad and as no legislative policy is discernible the power given in the section would also be violative of Article 14 of the Constitution. I, therefore, declare that this section is bad and the respondents have no authority to take any action pursuant to the said section. However, my attention was not drawn nor is there any specific allegation in the petition, of any specific of the State Government in connection with the ensuing election which can be said to have been taken pursuant to S. 222 of the Act. Therefore, the invalidity of the said section does not in any way affect the election to be held on 4th of June, 1978 pursuant to the notification issued on the 23rd of March, 1978. Counsel for the petitioners, however, drew my attention to a certain publication which has been issued under the heading "Panchayat Election, 1978 What the Voters and the Candidates should know". I am unable to accept the position that the said handout was issued pursuant to the power under S. 222 of the Act. No question of violation of Article 19 or Article 31 of the Constitution also arises on this aspect of the Matter.

13. The next challenge was to S. 224 of the Act. I am unable to see any infirmity in the said section. The said section authorises the State Government to make "rules for carrying out the purposes of this Act". Therefore the ambit and the scope in respect of which rules can be made "after previous publication". The said section therefore attracts provision of S. 24 of the Bengal General Clauses Act, 1899. These are sufficient inbuilt, safeguards and indication of policy to save the section from the vice of excessive delegation. The challenge to the invalidity of this section on this ground, therefore, fails.

14. The next contention urged in this application is about the validity of rules 8, 9, 11, 17A, 17B, 18A, 18B, 20, 24, 41, 44, 46, 56, 64, 66, 66, 73, 75, 76, 77 and 99. The introductions and/or the amendments to the said rules have been challenged on various grounds. It has been contended that there has been no prior publication as required by S. 224 of the West Bengal Panchayat Act, 1973 read with S. 24 of the Bengal General Clauses Act, 1899. It has been further, contended that the said rules on notifications had not been laid before the State Assembly in compliance with the requirements of S. 224 of the Act. It has been urged that by the introductions and/or amendments of rules 8 & 9 there has been excessive sub-delegation of legislative function by the delegated authority and it has been also urged that by introduction of Rules 17A there has been politicisation of the Panchayats, contrary to the ideals of Panchayat rule and which was beyond the power of the State Government. It has been, further, urged that Rule 99 was bad because of excessive sub-delegation.

15. It will be necessary to examine each one of these contentions in detail. I have

noticed that sub-s. (1) of S. 224 of the Act authorises the State Government to make rules for carrying out the purposes of the Act after previous publication. Section 24 the Bengal General Clauses Act, 1899 deals with the provisions applicable to making of rules or bye-laws "after previous publication". It would be material to set out the provisions of the said S. 24 of the said Act.

24. Provisions applicable to making of rules or bye-laws after previous publication.

- Where, by any Bengal Act or West Bengal Act, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely -

(1) the authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;

(2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Government concerned prescribes;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) the authority having power to make rules or bye-laws, and, where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;

(5) the publication in the official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made.

16. As would be apparent from the aforesaid section that it is enjoined by sub-s. (3) of the above section that a draft of the proposed rules should be published specifying a date on or after which the draft would be taken into consideration. Sub-section (4) of the section further enjoins the authority having power to make the rules to consider any objections or suggestions which may be received by the authority having power to make the rules from persons making the objection or suggestions to the draft before the specified date. This is a very salutary safeguard provided against arbitrary use of power by rule making authority. Rule making authority does not enjoy the representative character of the legislature. Therefore, it is necessary before the rule making authority proceeds to discharge the function of legislation in the shape of making rules delegated to it by the appropriate legislature to ascertain and consider the objections and the view of persons affected and concerned. This provision is engrafted in the rule making procedure to make the same consistent with fair-play and justice. Therefore, the said provision in my opinion must be adhered to.

17. This question of the scope and effect of requirement of this type has been considered by several decisions.

In the case of *Batchu Sreeramulu Chetty Vs. State of Andhra (Now Andhra Pradesh)*, the Full Bench of the Andhra Pradesh High Court observed in dealing with S. 19 of the Madras General Sales Tax Act, 1939 that the same indicated that rules relating to all matters expressly required or allowed by the Act to be prescribed by the Rules such as those under sub-ss. (4) and (5) of S. 3 as well as rules authorised to be made under the other provisions of sub-s. (2) of S. 19 and those providing for penalty for breach of rules under sub-s. (3) of S. 19 were to be made in conformity with the conditions laid down in sub-s. (4) of S. 19, that is, they could only be made after previous publication for a period of not less than 4 weeks. The exercise of that power by the Government to make rules was itself subject to the conditions that these rules were made only after previous publication and in so far as the rules relating to matter specified in sub-s. (4) of S. 3 were concerned, they should also be approved by a resolution of the Legislative Assembly. It has to be borne in mind that the requirements of S. 224 of the West Bengal Panchayat Act, 1973 read with S. 24 of the Bengal General Clauses Act, 1894 are different in some aspects. It was, however, held by the Full Bench that the amendments to rule 13 of the Madras General Sales Tax (Turnover and Assessment) Rules made in 1947, 1951 and 1953 were invalid by reason of non-compliance with the conditions laid down in sub-s. (4) of S. 19 of the Madras General Sales Tax Act, 1939. The Full Bench further observed that where powers are delegated to an authority that authority is bound by the terms of its delegation and pay exercise of the powers in contravention of the condition precedent or statutory essential laid down would be invalid and ultra vires. In that case as it appears from the judgment there was no prior publication of the draft at all. This question was again considered in the case of *K.M. Mohamed Abdul Khader Vs. The State of Madras and Another*, where a Division Bench of the Madras High Court held that in promulgating the rules the procedure prescribed by both the proviso to S. 3(4) as well as that laid down in S. 19(4) of the Madras General Sales Tax Act, 1939 had to be followed. The Division Bench, however, held that, notwithstanding the facts that there had been failure of the Government to comply with the conditions of S. 19(4) in promulgating the rules it would not be open for the Courts to go into that question having regard to the provisions of S. 7(e) of the Madras General Clauses Act, 1891, which was in similar terms to sub-s. (5) of S. 24 of the Bengal General Clauses Act, 1899 and, therefore, the Court held that the new rules were valid. The Kerala High Court in the case of *Haji P.K. Mammoo Vs. State of Kerala*, had also occasion to consider this and they relied on the decision of the Full Bench in the case of *Batchu Sreeramulu Chetty v. State of Andhra Pradesh* (1958) 9 STC 215. It was held that as rule 17(3A) of the Madras General Sales Tax Rules, 1939 and rule 13 of the Madras Sales Tax (Turnover & Assessment) Rules, 1939, had not been previously published as provided by S. 19(4) of the Madras General Sales Tax Act, 1939 and these were invalid and ineffective. In the case of *C.J. Shah v.*

Chhambalal, 1968 Cri. L.J. 252 it was held that under S. 23(5) of the General Clauses Act the expression "after previous publication" went with the expression "purporting to have been made" and not with the expression power to make rules". The Rule making authority must make rules after previous publication and if it purports to do so then it shall be conclusive proof that Rule or Bye-law had been duly made. Rajasthan High Court had also occasion to consider this question. In the case of Maula Bux and Others Vs. The Appellate Tribunal of State Transport Authority and Others, a division bench of the Rajasthan High Court was considering the amended rule 108 Rajasthan Motor Vehicles Rules published in the official gazette. In the General Clauses Act 1897, S. 23(5) contains similar provision as the Bengal General Clauses Act, 1899, S. 24(5). The Rajasthan High Court observed that the rule making powers under S. 68 of the Motor Vehicle Act were subject to the condition of the previous publication only and after the draft of the amendment of the rules was published as required by S. 23 of the General Clauses Act which is similar to S. 24 of the Bengal General Clauses Act, it is open to the authority to make rules with or without changes in the previously published draft, subject however to the condition that the rule finally made was not absolutely foreign to the draft. It was, further, observed that sub-s. (5) of S. 23 of the General Clauses Act, 1897 which is identical to sub-s. (5) of S. 24 of the Bengal General Clauses Act, 1897 raised a conclusive presumption that after the publication of the rule in the official Gazette, it was to be inferred that the procedure for making such rule had been followed. Therefore it was held that when the amended Rule 108 of the Rajasthan Motor Vehicle Rules had been published in the official Gazette the irregularities in publishing the draft amendment could not be questioned. In the case of A. T. Rajasthan Pvt. Ltd. v. State of Rajasthan AIR 1962 SC 24 another division bench of the Rajasthan High Court had occasion to consider this aspect of the matter in connection with S. 133(1) and (2) of the Motor Vehicles Act, 1939. The division bench observed that previous publication meant that the authority concerned should publish a draft of the proposed rules and/or bye-laws for the information of persons likely to be affected thereby. The manner of publication was left to the authority concerned unless it had been otherwise prescribed by the government. Along with the draft rules a notice must also be published specifying a date on or after which the draft was to come up for consideration. The authority must then consider any objection or suggestion which might have been received before the specified date. And after all these requirements had been fulfilled the rules or the bye-laws as the case might be are finalise must be published in the official gazette and then the presumption under sub-s. (5) of S. 23 of the General Clauses Act arose that the rules had been duly made. The Court, further, observed that the expression "duly made" in S. 23 of the General Clauses Act meant that the publication of the rules in the official gazette which were purported to have been made in exercise of the power to make rules after previous publication was conclusive proof that the rules had been duly pre-published as required by law and that once the factum of pre-publication in the official gazette was brought to the notice of the Court such pre-production could not be questioned. But the

expression "duly made" had not been used in a wider and more comprehensive sense to mean and imply that the factum of the publication in the official gazette invested the rules with an absolutely unassailable character as to their validity also in the sense that these must be accepted to have been duly made, notwithstanding that these might be in excess of or in repugnance with the Act under which these has been made or that these might be otherwise invalid and that even so a ban is placed in the way of the Courts so that they could not examine and pronounce upon the validity. It was further observed that notwithstanding that the legislature might attribute finality to the decisions of subordinate courts or tribunals or what was analogous, invest the final publication of certain statutory rules in the official Gazette with the quality of conclusiveness of proof that the rules had been duly made the jurisdiction of the High Court as a court of judicial review and as possessed of extensive writ jurisdiction under Article 226 of the Constitution could not be taken away and if it is demonstrated that a statutory rule has been made in manifest and substantial breach of the statutory essentials thereof, then the rule of finality attributed by the legislature could not be accepted as barring the exercise of the power of the High Court under the Constitution to examine whether the rules were lawfully made or not. I respectfully agree with the aforesaid views. In my opinion the question before me must be examined from the aforesaid standpoint. In the case of Jagjit Singh and Others Vs. State of Rajasthan and Others, a division bench of the Rajasthan High Court held that printing notice in the official gazette which was not out of the press could not be deemed to be a good notice to the public at large. The Supreme Court had occasion in the case of The Municipal Corporation Bhopal, M.P. Vs. Misbahul Hasan and Others, to consider this aspect of the question. There the Supreme Court was concerned with the amendment of rule under S. 433 of the Madhya Pradesh Municipal Corporation Act, 1956. It was held that alteration in a rule governing age of retirement of an employee of the Corporation without following the procedure prescribed under S. 24 of the M.P. General Clauses Act, which is in similar terms to S. 24 of the Bengal General Clauses Act, 1899, was not valid alteration. It was, further, held that the provisions of S. 24 of the M.P. General Clauses Act were mandatory. The Court observed that the procedure envisaged by S. 24 of the M.P. General Clauses Act was in consonance with the notice of justice and fair-play as it would enable person likely to be affected to be informed so that they might take any such steps as might be open to them to have the wisdom of a proposed duly debated and considered before it became law. The Court found that the mandatory procedure was not shown to have been complied with in that case. It is, however, not clear as to whether any publication of the proposed draft rules was made at all or not. The Court also did not have occasion to consider whether each of the steps contemplated by the different sub-sections of S. 24 of the M. P General Clauses Act was mandatory or not. The Court had also no occasion to examine the effect of sub-s. (e) of S. 24 of M. P. General Clauses Act, 1957 which is in identical terms with sub-s. (5) of S. 24 of the Bengal General Clauses Act.

18. Keeping in background the aforesaid judicial decisions and the principles it is now necessary to examine the actual grievances of the petitioners. As I have mentioned before pursuant to the order of this Court certain inspections had taken place of the records in the office of the B. G. Press regarding the publication of the Gazette and other government records. The result of such inspection has been annexed in the form of a chart to the affidavit of Saswati Prasad Bag affirmed on 23rd of May, 1978. The facts stated in the said chart were not disputed on behalf of the respondents. Indeed petitioners had summoned those records and were willing to tender those records in the Court. But in as much as the factual statements in the chart were accepted on behalf of the respondents it was not thought necessary to have the documents tendered. The said chart reveals that notification No. 2878 dated 14th of May, regarding amendments of rules 24(1), 64(1), 64(4), 64(6), 73(c), 76(2), 76(5) and 77 were issued in the gazette bearing a date 14th of July, 1977. It appeared in the Calcutta Gazette Ordinary Part 1 at page 1689 to 90. All the date are not available but it appears that 10th of August, 1977 was the date on which the printed gazette was received from the Machine Section by the Binding Section for dispatch to Panchayat department, publication branch, subscribers etc. Further it appears that 10th August, 1977 naturally was the date on which the same was available for purchase by the public. Such notifications indicated the draft amendments and further stated:

The draft will be taken into consideration on or after the 15th of June, 1977 and any objection or suggestion with respect thereto which may be received by the undersigned before that date shall be considered.

19. The notification was issued by the Deputy Secretary. It was contended and in my opinion rightly that public could not file any objection or suggestion before the 15th of June, 1977 pursuant to the aforesaid notification in as much as the notification was available to the public only on or after 10th of August, 1977, 30th of December, 1977, however, is the date on which the printed Gazette was received by the Panchayat Department. Finalisation of the draft was made by the notification dated 12th of September, 1977 which was published in the gazette on 3rd of November, 1977. Similarly, notification No. 20758 dated 23rd of November, 1977 regarding amendments of Rules 8, 9 & 11(1) and insertion of Rule 99 was issued in a Gazette bearing the date 26th of November, 1977. This was the draft of the rules. The 24th November, 1977 was the date on which requisition of Panchayat Department was made for printing of the notification in the Gazette. The 7th of December, 1977 was the date on which the notification was printed in the Gazette by the Machine Section of the Press. On the 8th of December, 1977 such notification was received by the Binding Section for dispatch to Panchayat Department. The Gazette was available to the public on the 12th of December, 1977. The Gazette which published the draft indicated that the draft would be taken into consideration on or after the 15th day from the date of its publication in the official gazette and any objection or suggestion with respect thereto which might be received by the Secretary before that date

would be duly considered. That date expired on the 10th of December, 1977, two days before it was available to the public. The final rules pursuant to the notification was gazetted on the 11th of March, 1978, by which insertion of Rules 17A, 17B, 18A, 18B and amendments of Rule 19, 24(4), 44(5) & 66 were proposed, was published on the Gazette bearing the date 27th of December, 1977. From the chart it appears that the same could have been available to the public only on the 18th of January, 1978. The last date for submitting objections was 10th of January, 1978. The amendments were finally made by the Gazette notification dated 20th of March, 1978. Notification No. 3323 dated 16th of March, 1978 regarding amendments of Rule 20, 41(2) & Rule 46(1) was published in the Gazette bearing the date 20th of March, 1978. From the chart it appears that the said would have been available to the public only on the 2nd of May, 1978. But the last date for filing objections expired on the 23rd of March, 1978. The rules were finally gazetted as amended rules on the 7th of April, 1978. Notification No. 4689 dated 5th of April, 1978 regarding further amendments of Rule 17A was published in the Calcutta Gazette bearing the date 5th of April, 1978. It was available to the public on the 6th of May, 1978. The last date for filing the objections expired on the 11th of April, 1978 and the rules was finally gazetted on the 14th of April, 1978.

20. It was contended on the basis of the aforesaid facts that there has been no "previous publication" as enjoined by S. 224 sub-s. (1) of the West Bengal Panchayat Act, 1973 read with S. 24 of the Bengal General Clauses Act 1899. It was submitted that the power to make rules was conditional and if the condition was not fulfilled the exercise of the power was void. It was, therefore, urged that the rules introduced and amended were no rules at all and could not be acted upon. On behalf of the respondents it was urged that under the provisions of S. 24 of the Bengal General Clauses Act, the rules were required to be published but the manner of publication was left to the discretion of the Government. The publication of the draft rule has also specified a date on which objections or suggestions "may be made". The authority also under sub-s. (4) of S. 24 indicated that it would consider such objections. Before I deal with this aspect of the matter I should indicate that in the affidavit in reply certain copies of the proceedings of the West Bengal Legislative Assembly have been annexed wherein on the 5th of May, 1978 regarding the complaint about non-placement of the rules before the House, the Hon'ble Minister is alleged to have said "under the General Clauses Act, 1889, when any draft publication is made, objections and suggestions are required to be considered by the State Government. This is the statutory obligatory duty of the State Government. Accordingly the objections and suggestions which were received after the draft publication were invariably considered by the State Government." No evidence was produced before me that any objections or suggestions after the draft notifications had been published were in fact received by the State Government or had in fact been considered by the State Government. I am however not concerned with the validity of the statement made on the floor of the House. If the petitioners have any grievances

in respect of the same the petitioners must seek redress elsewhere. Before me, however, there is no evidence as to whether any objection was received or whether there was any action for consideration by the State Government of the objections and suggestions. Counsel for the respondents urged before me that there was no evidence that any body had sought for any extension of time to file objections. Indeed he stressed the points that rules were finally made long after the date on which the drafts were available to the public and there is no evidence of any demand from the public of any extension of time to file objections. It was further urged that nobody had written to the Government to consider any objections and there was no evidence that any objection received after the due date mentioned in the draft publication was refused to be considered by the State Government because of belated submission of objection. He further urged that the rules as altered or as introduced have been acted upon by persons concerned and he drew my attention to the facts stated in the supplementary affidavit of Nikhil Ranjan Halder affirmed on the 26th of May, 1976 during the hearing of this application where it has been stated that about two lakhs of persons are contesting for 56000 of seats in Gram Panchayat, Panchayat Samiti and Zila Parishad. It was, further, stated that about rupees 9 crores have been scheduled to be spent for holding and conducting the said election and a very substantial sum-out of the same has already been spent for the purpose. He, further, submitted that people have deposited the fees in the reduced scale as contemplated by the amended rule 20 of the West Bengal Panchayat (Election) Rules, 1977 and candidates of all eligible political parties have shown eagerness to have the symbols allotted to them and in this contention counsel for the respondents submitted that public interest must transcend the fancied grievances of the petitioners. He urged, further, that the rules have been acted upon and in view of the decision of the Supreme Court in the case of The United Cereal Products Ltd. and Others Vs. Union of India and Another, and he relied on the observations at page 1607 of the report in aid of the submission that as such rules have been acted upon the petitioners could not be allowed to challenge the rules. That case however was entirely different. Having obtained the benefit under a rule a party may be precluded from challenging the validity of the rule. But here all the voters are interested and in my opinion are entitled to ensure that proper rules are framed. Compliance with the rules by some of the candidates in the shape of participation is no evidence that the petitioners have accepted the said rules so as to disentitle them to challenge the validity of the rules. It was further contended that in view of sub-s. (5) of S. 24 of the Bengal General Clauses Act the petitioners were not entitled to challenge the illegality if any of the rules as the same have been finally published in the gazette. He drew my attention to the observation of the Privy Council in the case of Calcutta Port Commissioner v. Calcutta Corporation, AIR 1937 PC 307 : 64 Ind App 363 and he also submitted that as the Government has purported to act in pursuance of S. 24 of the Bengal General Clauses Act even though if there has been some irregularity the same cannot be questioned at this stage. I am of the opinion that the decision is not of much assistance. If in appropriate cases there has been

substantial infraction of the procedural safeguard enjoined by sub-ss. (3) & (4) of S. 24 of the Bengal General Clauses Act the conclusiveness that the rule has been duly made enjoined by sub-s. (5) of S. 24 is no bar for the Court to investigate and to invalidate in appropriate cases the rules on that the ground the rules have not been duly made. In this aspect I agree respectfully with the views of the Rajasthan High Court referred to hereinbefore. Here as has been mentioned before there has been in a manner which did not give sufficient or proper opportunity to the public to submit their objections and suggestions. That was very salutary safeguard. The public interest of which counsel for the respondents has spoken demands that the authorities must act in accordance with the law. That is the first public interest with which the courts of law are concerned. Yet at the same time the Courts cannot ignore the facts of a particular case in which non-compliance has been occasioned in such manner which might not have resulted in grave miscarriage of justice. This aspect of the matter has caused me great anxiety but having considered all aspects of the matter and specially in view of the fact that nearly 2 to 3 months time had elapsed from the dates on which the Gazettes containing the proposed draft were available to the public to the dates on which these were finally gazetted as rules and as there is no evidence that any voter or person concerned wanted any extension of time, and no objection was refused consideration because of belated submissions of objections in my opinion, it should be treated that the said non-compliances, in the facts and circumstances of the case, were irregularities which did not make the exercise of the power void. When there has been failure of compliance with certain provision either of attitude or of rule whether that failure of compliance makes the action void or not, cannot, in my opinion, be judged in the abstract on the ground whether the provision is mandatory or directory. It is not easy to determine whether a provision is to be considered absolutely or merely directory. In the background of the facts of this case where there is no evidence that the non-compliances or the failure of compliance of the rule of prior publication giving opportunities to the persons who would have objected to the draft of the proposed rules have not in fact being denied such opportunity because there is no evidence either in the form of demand or of filing of belated objections that they sought for and would have availed themselves of such opportunities, then, having regard of the subject matter, the importance of the provision and the general object intended to be secured by the requirement of the provision and upon a review of the case I have come to the conclusion, though with a certain amount of hesitancy, that in this case the failure of compliance as referred to hereinbefore has not made the exercise of the power in framing the rules void. Reference in this connection may be made to the observation of Lord Campbell as cited by Lord Penzance in the case of *Howard v. Bodington* referred to in *Craies on Statute law* (1971) Edition, pages 262-263. See also *Collector of Monghyar v. Keshav Praad* AIR 1962 SC 1064.

21. The other aspect of the matter which requires consideration is the submission that the rules were not laid before the Assembly in compliance with

sub-s. (4) of S. 224 of the Act. From the chart referred to hereinbefore it appears that except the rules as incorporated by the Gazette dated 3rd of November, 1977 others have been laid before the Assembly on the dates mentioned in the chart. The last mentioned gazette notification dated 14th of April, 1978 was also laid before the Assembly on 20th of April, 1978. So as far as first notification incorporating the amendment which was not laid before the Assembly it was stated in the affidavit in opposition that all the amendments except the amendment made by the notification No. 13225 dated 12th of September, 1977 were laid before the legislature as soon as possible and the reason for which this amendment No. 13225 was not laid was that the West Bengal Panchayat Election Rules, 1974 were laid before the legislature and the same had been considered by a committee on subordinate legislation and the said committee had considered the same and suggested amendments were incorporated in the notification. From the report of the committee on subordinate legislation which was presented on the 18th of April, 1975 it further appears that not all the suggestions had been accepted in the final amendments. Be that as it may, infraction of the procedure enjoined by sub-s. (4) of s. 224, in the facts and circumstances of the case, does not invalidate the rules. In this connection reliance may be placed in the decision of the Supreme Court in the case of Ram Gopal Chaturvedi Vs. State of Madhya Pradesh, , Jan Mohammad Noor Mohammad Begban Vs. State of Gujarat and Another, and the decision of this Court in the cases of Munna Lal v. M. R. Scott AIR 1955 Cal. Page 451 and Brojendra Kumar Saha Vs. Union of India (UOI), . It was urged that there was delay in placing the rules before the State Legislature. Though there is some justification for this criticism, the delay in this case in my opinion is not fatal to the validity of the rules.

22. The next challenge to the rules is there has been excessive delegation to the sub-delegatee in Rules 8 & 9. Rules 8 & 9 provide that the prescribed authority should determine the number of members to be elected of a Gram Panchayat on the following basis namely for the whole subdivision of the District of Darjeeling one member for every hundred voters and one additional member for other fraction thereof and in respect of other areas one member for every 400 voters. In my opinion the said rules have been made to carry out the purposes of the Act and there has been proper guidance given to the prescribed authority. There has been no excessive delegatee to sub-delegatee. There is also a rational basis on which the rules have been made. These cannot therefore be said to be violative of Article 14 of the Constitution. Similar is the position of rule 9, both before and after amendment. In both these rules I find there is substantial guidance given to the prescribed authority by the State Government and therefore these two rules cannot be considered to be bad on account of excessive delegation.

23. So far as the Rule 99 is concerned, however, in my opinion, the said rule amounts to excessive delegation by the delegatee to the sub-delegatee. The State Government is authorized to issue general or special direction giving effect to the rules. But on what basis the State Government would give directions for

holding the election under the Act no indication has been given. Furthermore, sub-rule (2) of Rule 99 authorises the State Government in case of difficulty to do anything that appears to be necessary for purpose of removing any difficulty or for holding the election. This in my opinion also amounts to excessive delegation of legislative functions. The incautious manner in which the respondents have proceeded in issuing the notifications for making the amendments is also a factor which the Court should take into consideration in clipping the wide wings provided by Rule 99 giving scope and apprehension of exercise of arbitrary power. I, therefore, hold that Rule 99 is bad so far as it gives the State Government power to issue any direction for holding any election. Similarly, sub-rule (2) of Rule 99 is without any guidance. It states that if any difficulty arises in giving effect to the provisions of these rules or in holding any election the Government as occasion requires may by order do anything which appears to be necessary for purpose of removing the difficulty. The principles upon which delegation of legislative function is possible have been discussed before. The same principles would be applicable in case of delegation by a delegatee to the sub-delegatee. In sub-rule (2) of Rule 99 there is no guidance as to what sort of difficulties are contemplated by sub-rule (2) and what difficulty in holding election can Government rectify. It also give no indication as to the extent of what the Government can do to remove the difficulty. I, therefore, hold that sub-rule (2) is wholly bad and sub-rule (1) of Rule 99 in so far as it gives power to issue directions, apart from issuing directions to give effect to the purpose of the rules, is bad. The respondents are, therefore, restrained from acting in pursuance of Rule 99 to the extent indicated above. This, however, will not prevent the respondents from issuing any administrative or executive order for giving effect to the rules and the Act.

24. The next main challenge is to Rule 17A, 17B, 18A & 18B. By these rules classification of symbols have been provided for. Classification of recognized political parties have been also provided for and choice of reserved symbol has also been stipulated and when a candidate shall be deemed to be set up by a political party has also been provided for. Counsel for the petitioners contended that said rules were beyond the powers of the rule making authority. He, further, urged that by the said rules the respondents have tried to politicize the Panchayats which was unwarranted by the scheme of the Act or the rules. Reliance was placed on Charan Dass Dogra and Others Vs. Punjab State and Others, . He drew my attention to the relevant provision of Election Symbol (Reserve & Allotment) Order, 1968 issued under Article 324 of the Constitution read with Rules 5 & 10 of the Conduct of Election Rules under the Representation of People Act. He submitted that the basis upon which political parties have been chosen are irrational and he urged that as a result therein Communist Party of India which has two seats in the West Bengal Assembly has been recognized as a party having the right to reserved symbol while the Socialist Unity Centre of India which has 4 seats has not been given that right. This question has to be examined in the light of the power to make rules. The State Government has the

power to make rules to carry out the purposes of the Act. Making arrangement for the election of Panchayats and other allied bodies, is, one of the purposes of the Act. Therefore, formulation of rules for carrying out the said elections is within the purposes of the Act. If in carrying out that purpose the rule making authority proceeds on a reasonable and rational basis, then, the exercise of the power cannot be said to be illegal even though the power might have been exercised differently by some other authority. In this case the State Government has recognized the existence of political parties and has given them the right to contest the elections on party basis having the right to choose certain symbols. The Act in question does not prohibit political parties from contesting as political parties in Panchayat elections. Therefore, it cannot be said that by providing for a rule whereby the political parties might contest the elections with certain symbols on the basis of such political parties the respondents were politicizing the institution which was unwarranted by the Act. There is no prohibition in the Act for the political parties to contest the election on political party basis. Nobody however is obliged by the Act or by the rules framed to contest the elections on the basis of political parties. Nobody however is prevented, whether the political parties should contest the elections on party basis is another debate with which this Court is not concerned. In the rules as framed I find no exercise of the power beyond the scope of the Act. Furthermore, if the respondents have acted more or less on the basis of political parties on the national basis as prevalent under the Representation of People Act, it cannot be said that such action was irrational or whimsical. Whether there was or could have been a better basis which would have reflected the realities of the State politics is another point. Proceeding in the manner they have done it cannot be said that they have acted illegally or in excess of their powers. Counsel for the petitioners have contended that the respondents have opened 56,000 battle fronts on political levels. I do not know if that is so. But even if that is so, so long as the respondents act within scope of the Act or the rules, the wisdom and the good sense of their action, must be left to the judgment of enlightened public opinion and cannot be made subject to the judicial review.

25. There is another challenge that in issuing certain corrigendum's to which my attention was drawn the respondents have acted illegally. It was urged that the corrigendum's were not corrigendum's but substantial amendments. Therefore, it was submitted that in the guise of corrigendum's the respondents have caused amendments. My attention was drawn to a Gazette notification dated 1st of March, 1978 where by in the corrigendum issued in respect of District Cooch Behar in the Constituency of Khorla Nalghorha the number of seats were purported to be altered. Similarly, in the constituency of Sidheswari the number of seats were attempted to be altered by the corrigendum dated 12th of April, 1976. I have looked into the said two notifications and I find that the total number has not been changed only there has been some re-allocation within the number. Furthermore, the petitioners not being voters in these constituencies, cannot, in my opinion make any grievance in respect of the same. This point was

also not taken in the petition as such.

26. Counsel for the respondents contended that in this case there was no demand for justice and as such the petitioners were not entitled to any relief. He drew my attention to the decisions in the cases of *State of Haryana and Another Vs. Chanan Mal and Others*, , *M. S. Jain v. State of Haryana*, AIR 197 SC 276 and *Cyril E. Fernandes Vs. Sr. Maria Lydia and Others*, . These decisions reiterated that ordinarily and normally for a writ of mandamus there must be demand for justice. But in this case the petitioners are primarily seeking their relief's on the ground that some sections of the Act and some rules framed are illegal. The respondents cannot rescind these sections of the Act unless these are so declared. In that view demand for justice would have been an empty formality. In these circumstances, in my opinion, the petitioners cannot be denied their right to move this application on the absence of formal demand for justice. Reliance in this connection may be placed on the observation of this Court in the case of *Nirmal Kumar Sikdar Vs. Chief Electoral Officer and Others*, at 295. On behalf of the respondents it was, further, urged that the petitioners have no right to maintain the challenge. Apart from fact that petitioners are ex officio members of the Zila Parishad to be constituted, the petitioners are voters in their respective constituencies in the Panchayat election. That, in my opinion, gives the petitioner sufficient locus standi to maintain this application. In that view of the matter it is not necessary for me to discuss the decision in the case of *State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo*, .

27. On behalf of the petitioners it was urged that fair-play has been infringed in the matter of arranging for the elections to the Panchayats. Counsel urged that democratic norms required that not only there should be free and fair elections but it should appear that free and fair elections have been held. He relied on certain observation of the Delhi High Court in the case of *Mohindar Singh Grill v. Chief Election Commissioner*, AIR 1978 Delhi, Notes on Short Cases page 7, and he also relied on the observations of the Supreme Court in the case of *K. Kamaraja Nadar Vs. Kunju Thevar and Others*, at 693 and *Parmar Himatsingh Jugatsingh Vs. Patel Harmanbhai Narsibhai*, at 955. Counsel submitted that in issuing the draft amendments in the manner the respondents have done and in issuing the corrigendum's in the manner they have done and in delegating various power by sub-delegation to government employees fair-play in the election has been endangered. Fair-play in the elections is certainly at the very root of democratic institutions. Functioning of democratic institutions depend on the habit of tolerance and co-operation. While law help, laws cannot create and sustain that habit of tolerance. For that an enlightened, vigilant and assertive public opinion is required. As I have found no infringement of any particular rules or section I am unable to interfere with the sections except to the extent indicated above of the respondents.

28. I therefore direct :

(1) That proviso to S. 4(3A) of the Act is ultra vires and invalid. The respondents

are restrained from acting in pursuance thereof.

(2) I hold that S. 222 of the Act is ultra vires and invalid. The respondents are restrained from acting in pursuance thereof.

(3) I hold that sub-rule (2) of Rule 99 is invalid and bad.

(4) I hold further that sub-rule (1) of Rule 99 so far as it authorizes the respondents to issue any direction for the conduct of the election is bad and invalid. The respondents are restrained from acting in pursuance of those rules. This however will not prevent the respondents from issuing any executive or administrative directions in accordance with the Act or the other portions of the Rules.

(5) The rest of the challenge made is dismissed.

The Rule is made absolute only to the extent indicated above. The challenge to the ensuing Panchayat elections is rejected. But this order will not prevent the petitioners from challenging the election in accordance with the law after the elections. This order will not prevent the petitioners from challenging any other provisions of the Act or the rules if they are entitled to do so under the law. No order as to costs.