

(2001) 06 AP CK 0073

In the Andhra Pradesh High Court

Case No : Writ Petition No. 9857 of 2001 and Batch

A.P. Sarpanchas Association

APPELLANT

Vs

Government of A.P. and others

RESPONDENT

Date of Decision : 27-06-2001

Acts Referred:

Andhra Pradesh Gram Panchayats (Declaration of Village) Rules, 1994 — Rule 3, 4, 5, 6

Andhra Pradesh Panchayat Raj (Conduct of Election of Members and Sarpanch of Gram Panchayat, Members of Mandal Parishad and Members of Zilla Parishad) Rules, 1994 — Rule 5(2)

Andhra Pradesh Panchayat Raj Act, 1994 — Section 11(2), 161, 165, 167, 186

Andhra Pradesh Scheduled Castes (Rationalisation of Reservations) Act, 2000 — Section 2

Andhra Pradesh Scheduled Castes (Rationalisation of Reservations) Rules, 2000 — Rule 4

Census Act, 1948 — Section 2(29)

Constitution of India, 1950 — Article 15, 15(4), 16(4)

Citation : AIR 2001 AP 474 : (2001) 4 ALT 309

Hon'ble Judges : S.B. Sinha, C.J.; V.V.S. Rao, J.; B. Subhashan Reddy, J

Bench : Full Bench

Advocate : M/s. S. Ramachander Rao for K.R. Prabhakar and S. Bharat Kumar, A.A.G., V.V. Prabhakara Rao, L. Narasimha Reddy, SC for Central Govt., A. Satya Prasad, B. Mahender Reddy and K.S. Murthy, for the Appellant;

Final Decision : Dismissed

Judgement

S.B. Sinha, CJ

1. The above five writ petitions, although couched in different forms and seeking different reliefs filed by different persons, aim at cancellation/ stay of Panchayat elections the process whereof as directed by the Apex Court as also this Court must be concluded by 31-7-2001.

2. A.P. State Sarpanchas Association, Pilli Lakshmi, Shailaya I, B. V. Seshamma, D. M. Varaprasad Rao and Lambadi Hakkula Porata Samithi are the petitioners in

these writ petitions respectively.

3. Writ Petition No.9857 of 2001 (for short "the first writ petition") raises the question as to whether the provisions of Andhra Pradesh Panchayat Raj Act, 1994 (for short "the Act") purporting to have been enacted in terms of Part IX of the Constitution inserted by reason of the Constitution (Seventy Third) Amendment Act, 1992 should be given effect to as it does not conform in letter and spirit thereon.

Writ Petition No.9862 of 2001 (for short "the second writ petition") raises the question as to whether the State has constitutional compulsion to enumerate the backward classes population in the State although the prayer made therein is confined only to issue a writ in the nature of mandamus directing the respondents to implement the judgment of this Court in Prakasam District Sarpanchas Association and another Vs. Govt. of A.P. and others, .

Writ Petition No.9879 of 2001 (for short the third writ petition) raises the question whether reservation to the members of the scheduled castes and scheduled tribes could be granted in terms of 1991 census on the premise that their population figures of 2001 census are available.

In Writ Petition No.9889 of 2001 (for short "the fourth writ petition"), the principle of categorisation amongst the scheduled castes is in question inter alia on the ground that political right also comes within the purview of clause (4) of Article 15 of the Constitution of India.

The last writ petition marked as WP No.26415 of 2000 (for short "the fifth writ petition") centers round declaration of 6000 lambada tandas (hamlets) each allegedly having the population of more than one thousand as independent Panchayat villages for the purpose of local self Government and consequently in the absence thereof, whether any valid election can be held.

4. Before dealing with the questions raised in the writ applications, it may be necessary to take stock of the background leading to the filing of these cases. In terms of provisions of Article 243-E of the Constitution of India, the election for panchayats must be mandatorily held within a period of five years. The said elections had been held in the State of Andhra Pradesh in 1995. In terms of the aforementioned provisions, the Panchayat elections were to be held before March, 2000 for Mandal Parishad Territorial Constituencies (MPTCs) and Zilla Parishad Territorial Constituencies (ZPTCs) and before October, 2000 for Grama panchayats. A proposal was mooted as regard amendment of the constitutional provisions so as to have a three-tier Panchayat Raj system instead of five-tier Panchayat Raj system in the State of Andhra Pradesh. Pursuant thereto, a unanimous resolution was passed by the Legislative Assembly and it had been duly communicated to the Central Government for appropriate action. In the meanwhile, the State in exercise of its power conferred upon it under Article 213(1) of the Constitution promulgated an Ordinance known as Andhra Pradesh Mandala Parishads and Zilla Parishads (Transitional Arrangements) Ordinance,

2000 which came up for consideration before a Division Bench of this Court in State Election Commission Vs. State of Andhra Pradesh and another, , whereon the provisions of the said ordinance were declared to be unconstitutional. A SLP there against was filed before the Apex Court by the State of Andhra Pradesh which became infructuous as the ordinance was allowed to lapse. In the said situation, the Apex Court directed that the election must be held and concluded by March, 2000.

Another question came up for consideration before the Division Bench in WP No. 17232 of 2000 and Batch -Prakasham District Sarpanchas" case (supra) related to enumeration of Backward Classes and the Bench having regard to the Herculean task that was required to be undertaken by the State in the event it is directed to enumerate the Backward Classes and further having regard to the fact that a similar exercise for some other purpose had taken a few years and a consensus arrived at as regards an alternative proposal i.e., the Backward Classes voters should be identified from the available voters list of every Gram Panchayat whereupon the seats in Gram Panchayat would be reserved in descending manner by rotation which found favour with the Division Bench and it was directed:

Having regard to our discussion in the foregoing paragraphs, we are convinced, if the second proposal which emerged as a result of consensus of all the parties viz., to direct the State authorities to identify the BC, voters from the existing voters list of each Gram Panchayat and on the basis of such identification, reservations in favour of BCs, in Gram Panchayat could be made in descending manner as far as possible, seems to be a just and reasonable solution to settle the controversy with regard to this vexatious issue. We accordingly, issue the following directions:

(1) The State Government shall take immediate steps to identify the Backward Class voters from the existing voter-list of each Gram Panchayat in the State of Andhra Pradesh prepared for the Gram Panchayat Elections, 2000 without regard to the census work of the year 2001 which is in progress. On such identification of Backward Class voters from the existing voter list, reserve the seats/Offices in favour of Backward Classes according to rules in descending order and on rotation basis as far as possible.

(2) The State Government, after carrying out the process of reservations to be made in favour of various categories in the changed circumstances, as directed above, shall issue revised notification to that effect and intimate the same to the State Election Commission, Andhra Pradesh. This entire process shall be completed on or before 31-5-2001.

(3) On such particulars being furnished by the State of Andhra Pradesh, forthwith by fixing necessary schedule.

The Commission was directed to hold election by 31-5-2001 allegedly with a view to give effect to the said judgment.

In terms of the said judgment, the State proceeded to take action. It is not in dispute that Election Commission was also asked to hold the election. The stages for identification of Backward Classes voters were fixed in the following terms:

1. Obtaining Panchayat wise MPHS data 16-3-2001 (one day);
2. Verification of data and marking B.C. voters in the electoral roll - 22-3-2001 (five days);
3. Publication of such lists of BC voters on the Panchayat Notice Board 22-3-2001 (one day);
4. Time for filing objections (29-3-2001) (one week.) ;
5. Enquiry and finalisation of the objections drawing up draft electoral rolls remarked with BCs -5-4-2001 (one week);
6. Validating the same in the Gram Sabha to be called for this purpose to be completed by 15-4-2001 (ten days);
7. Preparation and publication of final marked electoral roll with BC voters 25-4-2001 (ten days);
8. Making reservations for panchayats based on the electoral roll information 26-4-2001 to 20-5-2001 (twenty five days);
9. Gazette notification of the Reservation in the Districts 25-5-2001 (five days);
10. Obtaining Gazette notification and intimation to State Election Commission by State Government 28-5-2001 (three days).

5. Whence the State obtained the report, certain defects and irregularities were noticed and with a view to remove the same, extension of time by the High Court was sought for as the time for completion of the said exercise was to be completed by 13-6-2001. An application for extension of time was also filed in SLP No.7979-7986 of 2000, and the Apex Court by an order dated 4-4-2001, directed that the process of election must be concluded by 31-7-2001.

6. The submissions made by the learned Counsel for the parties in the writ petitions are required to be determined in the aforementioned factual background. For the said purpose and having regard to the order proposed to be passed by us, we would like to advert to the contentions raised in the second writ petition first.

7. Mr. S. Ramachandra Rao, learned senior Counsel appearing on behalf of the petitioners vehemently submitted that the State had failed to carry out the mandate of this Court in *Prakasham District Sarpanchas*" case (supra). According to the learned Counsel, enumeration of Backward Classes had never been conducted on door to door basis. The purported identification upon the Electoral Rolls, 1991 wherein the voters* caste had not been mentioned would lead to an absurd result inasmuch as the verifications/objections as regards thereto could

not be determined. The learned Counsel would contend that no reservations could be carried out on such premise and on the basis of such figures which are not in conformity with this Court's directions and the same would also be violative of Article 14 of the Constitution. Our attention has been drawn to paragraph (7) of the counter-affidavit affirmed by Sri I.Y.R. Krishna Rao, Secretary to Government, Panchayat Raj and Rural Development Department wherein it is admitted that no door to door survey had been conducted.

8. The learned Additional Advocate-General appearing for the respondents on the other hand would urge that the Division Bench of this Court while issuing directions as mentioned supra had not laid down any procedure thereof and merely directed the State to carry out the exercise of identification of Backward Classes on the basis of voters' list. Even after filing of the writ petition on 15-5-2001, a circular letter had been issued on 19-5-2001 in terms whereof all concerned persons including the political parties had been granted an opportunity to raise objections. It was pointed out that as the petitioner association was a party in the earlier writ petition, now it should not be permitted to contend that the direction issued by this Court would lead to an absurdity. It has been submitted that had the writ petitioner been vigilant, it could have not only raised an objection when the State moved an application for extension of time, and it could also have taken part in the hearing. According to the learned Counsel, no complaint had been made by the petitioner-association even before the Collector.

9. According to the learned Additional Advocate-General although no door to door exercise had been carried out, the procedure adopted by the State was fair and reasonable. It had not been shown, urges the learned Counsel, as to how and in what manner the directions of this Court have not been complied with or any person was prejudiced thereby. A contention has been raised on behalf of the respondents to the effect that the writ petition is also not maintainable as it serves implementation of the Court's order.

10. For the purpose of determining the question, we may at the very out set state that by reason of the provisions contained in Article 243D(6), an enabling provision has been made for making provision for reservation of seats in the Offices of Panchayats. It is also not in dispute that pursuant to and in furtherance of legislative policy, the State has reserved 34% seats for the Backward Classes. Those who intend to contest the election in the said reserved category will have no difficulty whatsoever in filing their nomination papers in terms of the extant rules along with the declaration required to be filed.

Rule 5(2) of A.P. Panchayat Raj (Conduct of Elections of Members and Sarpanch of Gram Panchayat, Members of Mandal Parishad and Members of Zilla Parishad) Rules, 1994 reads thus:

5(2)(a) A candidate for the Office of Member and Sarpanch of Gram Panchayat, Member of Mandal Parishad and Member of Zilla Parishad / and his proposer shall be persons whose names are registered in the electoral roll for that Gram

Panchayat /Mandal Parishad /Zilla Parishad.

(b) The Office of Members and Sarpanch in a Gram Panchayat and Members in Mandal Parishad and Zilla Parishad, which is reserved, to be filled by a candidate belonging to the Scheduled Tribes or Scheduled Castes or Women or Backward Classes, as the case may be, shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying the particular tribe or caste or class of which he is a member and the area in relation to which that tribe or caste as a Scheduled Tribe or as the case may be, a Scheduled Caste or Backward Class of the State. This declaration shall be made before any Gazetted Officer of the Government or before any local Revenue Officer not below the rank of a Revenue Inspector.

(c) Each candidate shall be nominated on a separate nomination paper.

(d) A candidate may be nominated by more than one proposer separately for the same elective post in a separate nomination form.

11. Such declaration is required to be filed in Form 3 which is as follows;

FORM 3

(See Rules 5(i) and 6)

(Scheduled Area/Non-scheduled Area)

Nomination Paper

1. Name of the Office - Member/ Sarpanch

2. Name or number of the ward

3. Whether the ward is reserved for (a) SCs (b) STs (c) Women (d) BCs

*(xxxxxx)

*(omitted by G.O. Ms. No.80, PR, RD and R (Elec.III), Department, dated 7-2-1995).

4. Full name of the candidate

5. Father's or husband's name

6. Serial number of candidate in the Electoral Roll

7. Age

8. Sex

9. Occupation and Address

10. Full name of the proposer

11. Serial number of proposer in the electoral roll

12. Signature of the proposer.

Candidate's Declaration

I hereby declare that I belong to..... caste/Tribe which has been declared to be Scheduled Caste/Tribe/Backward Class/Woman.

Signature of candidate.

12. The Division Bench in its judgment dealt with the question in the following terms:

Various proposals are put forth by the learned Counsel appearing on behalf of the writ petitioners as well as the Counsel appearing on behalf of the implead petitioners during the course of hearing the writ petitions. One of the proposals put forth is to direct the State Government to immediately go for enumeration of BC population throughout the State and then make reservations on the basis of the population figures ascertained in each Gram Panchayat, in descending order and on rotation basis as far as possible. The second proposal put forth before us across the Bar is that from out of the voter - list made ready for holding the present elections to the Gram Panchayats, the BC voters are to be identified from each Gram Panchayat and on the basis of such identification, reservations to BCs, could be provided in descending order and on rotation basis.

The above two proposals were discussed at length across the Bar.

As far as the first proposal that a direction could be issued to the State Government for enumeration of population of BCs, throughout the State and then make 34% reservations in their favour in descending manner, we do not think, this proposal could be adopted at this point of time. The population in the State of Andhra Pradesh, we are told, is about eight crores. The BC Finance Corporation which went into collecting the BC population figures in the State has taken nearly six years, i.e., from 1981-87 and roughly estimated the BC population figures to be around 38% in the year 1987. If the State Government is directed to enumerate the BC population at this point of time, it would be a Herculean task and such a work, in all probability, would take few years. We cannot postpone holding of elections to Gram Panchayats for an indefinite period. Therefore, this proposal seems to us not feasible at this juncture and we are not persuaded to take recourse to such a proposal.

The alternative proposal that has emerged as a consensus proposal is to identify the Backward Class voters from the available voter list of every Gram Panchayat, and on such identification, seats in Gram Panchayats could be reserved in favour of BCs, in descending manner, by rotation. We have given our anxious consideration to this proposal. Since this proposal seems to be consensus proposal of all the parties and appears to be more pragmatic and feasible, we are persuaded to examine this proposal judiciously.

13. As noticed hereinbefore, the | Division Bench did not consider it feasible and

practicable to direct enumeration of Backward Classes. Directions issued by the Court having emanated from the consensus of the parties and thus, they cannot now be heard to say that the same would result in absurdity. They are estopped and precluded from contending contra. Identification of voters belonging to Backward Classes in terms of village-wise voters list available was not a difficult task and with that end in view only neither any door to door survey was directed by the Division Bench nor was it necessary. For the aforementioned purpose, they had made use of multi-purpose household survey data which indisputably cover the social status of the voters included therein. A random check had also been conducted and as noticed, even the objections were called for and when certain deficiencies/defects were noticed, further enquiry was directed to be conducted so as to enable the concerned authorities to rectify the same.

Third Writ Petition

14. A contention has also been raised by Mr. S. Ramachandra Rao to the effect that the A.P. Panchayat Raj (Reservation of Seats and Offices of Gram Panchayats, Mandal Parishad and Zilla Parishads) Rules, 2001 having come into force only on 20-4-2001 by reason of G.O. Ms. No.140, Panchayat Raj and Rural Development (Elections) Department, the exercise carried out by the State with effect from 15-3-2001 must be held to be wholly illegal and without jurisdiction. By reason of the aforementioned rules, the State was to make reservations on the basis of the electoral rolls. Thus, if any exercise in that regard had been carried out, no illegality thereby can be said to have been committed particularly in view of the fact that such exercise had been done by the State in obedience of judgment of this Court.

15. In *Re, Presidential Election, 1974*, AIR 1974 SC 1682, the Apex Court noticed:

The maxim of law *impotentia excusat legem* is intimately connected with another maxim of law *iex non cogit adimpossibilia*. *Impotentia excusat legem* is that when there is a necessary or invincible disability to perform the mandatory part of the law that *impotentia* excuses. The law does not compel one to do that which one cannot possibly perform. Where the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and has no remedy over it, there the law will in general excuse him." Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like the act of God, the circumstances will be taken as a valid excuse, Where the act of God prevents the compliance of the words of a statute, the statutory provision is not denuded of its mandatory character because of supervening impossibility caused by the act of God.

16. In *Channala Ramachandra Rao Vs. State of A.P. and others*, , one of us (V.V.S. Rao, J.) held:

In the field of interpretation of Constitution, no word should be construed as surplus and no word should be treated as superfluous or wastage or vestige.

Therefore, wide meaning shall have to be given while reading the various Articles and various clauses in the Articles together. Further, in interpreting the law or a provision of law, if two views are possible, the one, which renders the provision constitutionally invalid should be avoided and the view, which renders the provision constitutionally valid, should be preferred to.

17. Clause (4) of Article 243-D reads thus:

The Offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:

Provided that the number of Offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such Offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State;

Provided further that no less than one-third of the total number of the Offices of Chairpersons in the Panchayats at each level shall be reserved for women.

Provided also that the number of Offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

18. Census of Population takes place in terms of the provisions of Census Act, 1948 once in every ten years. Section 2(29) of the Act defines "population" to mean the population as ascertained at the last preceding census of which the relevant figures have been published. As has been pointed out by Mr. Ramachandra Rao, certain figures are available and there has been increase in population. But the question which must be posed and answered is whether the State was bound by the purported census of 2001 so as to determine the number of voters belonging to the Scheduled Castes and Scheduled Tribes. The answer to this question must be rendered in negative having regard to the definition of the "population" as noticed hereinbefore. In any event, the elections were to be held before March, 2000 in case of ZPTCs and MPTCs and before October, 2000 in case of Panchayats. The election which is going to be held is merely a deferred one. Had the election taken place within the prescribed period, such objection as has been sought to be raised in the instant writ applications, could not have been raised.

19. It is also not in dispute that various procedures had to be completed before the census particulars are published and it takes long years. Furthermore, proviso to Section 11(2) of the Act reads thus:

.....

Provided that if the electoral roll is not prepared and published as aforesaid, the validity or continued operation of the said electoral roll, shall not thereby be

affected. (Subs. by A.P. Act No.26 of 2000, with effect from 31-7-2000).

20. Proviso appended to sub-section (2) of Section 11 therefore postulates that non-preparation of electoral roll in connection with Gram Panchayat election will not invalidate the continued operation of such election. The said vires of the amendment which had been introduced by A.P. Act 26 of 2000 has come into effect from 31-7-2000 is not in question. It is also not in dispute that the census figures have not yet been published and various other formalities are required to be complied with.

Fourth writ petition

21. The State enacted A.P. Scheduled Castes (Rationalisation of Reservations) Act, (Act No.20 of 2000) whereby and whereunder 15% seats reserved for Scheduled castes were distributed amongst "A", "B", "C" and "D" categories. The vires of the said legislation came up for consideration before a Full Bench of this Court in Mallela Venkata Rao and others Vs. State of Andhra Pradesh and others, . The legislative competence and consequently the constitutionality of the said Act was upheld. The submission of Mr. Ramachandra Rao is that Article 15(4) of the Constitution being of wide amplitude, the same must be held to cover parliamentary reservations also. Strong reliance has been placed on Nain Sukh Das and Another Vs. The State of Uttar Pradesh and Others, , Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., , and on Satyanarayana Reddy v. State of A.P. 1987 (1) ALT 665.

22. Section 2(e) of the afore-mentioned Act 20 of 2000 reads thus:

"Rule of Reservation" means any rule or provision, for reservation of appointments or posts in public service in the special rules applicable to any particular service or the General Rules of the Andhra Pradesh State and Subordinate Service Rules, as the case may be or any rule or provision for reservation of seats in the rules or instruction for admission into educational institutions, as the case may be, in favour of Scheduled Castes or Scheduled Tribes or Backward Classes or Women;

23. The State also framed rules under the Act No.20 of 2000 known as A.P. Scheduled Castes (Rationalisation of Reservations) Rules, 2000, Rule 4 whereof reads thus:

Reservation for women to an extent of 33.1/3% provided in public services in each roster cycle of 100 points fixed shall be adjusted by allotting two seats for Scheduled Castes-B, two seats for Scheduled Castes-C, one seat alternately for Scheduled Castes-A and one seat to Scheduled Castes-D as specified in Section 3 of the Act.

24. Categorisation of Scheduled Castes was made for specific purposes laid down therein viz., for education, and public employment. The State has not extended the same for those who intend to hold political office. Although, there cannot be any doubt or dispute that Article 15(4) of the Constitution is of wide amplitude

which embraces within its fold political rights also, but having regard to the provisions contained in Article 243-D of the Constitution, the decisions relied upon by Sri S. Ramachandra Rao cannot be said to have any application in this case. Article 243-D(1) reads thus:

243-D. Reservation of Seats :--(1) Seats shall be reserved for :--

(a) the Scheduled Castes; and

(b) the Scheduled Tribes

in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

The said provision refers only "Scheduled Castes and Scheduled Tribes". It does not mandate reservations in Panchayats on the basis of any categorisation. "Scheduled Castes" has not been defined in Part IX of the Constitution. It has been defined in Article 366(1). The said definition does not postulate any enumeration by way of group or class so as to claim reservations for one or the other enumerated group or class of scheduled castes. Further, having regard to Constitutional prescription in Article 243-D(1), it is not possible to accept any submission that when reservation is provided for SC, it should be done only after categorising them as was done by State Act 20 of 2000.

25. For the reasons afore-mentioned, we are of the opinion that the non-categorisation of members of Scheduled Castes for the purpose of giving effect to the reservation policy in the Panchayats would not vitiate the election process.

Fifth Writ petition

26. The Lambada Hakkula Porata Samithi has filed the fifth writ petition claiming inter alia the following relief:

"To identify Lambada Tandas that are in the State and declare them as separate village for the purpose of Gram Panchayat Act either by declaring them independently as they are existing or by merging several tandas proximately situated into one unit and declare them as "villages" for the purposes of Gram Panchayat Act.

27. The population of Scheduled Castes in the State of Andhra Pradesh allegedly ranges between 50 to 70 lakhs spread over in about 6000 tandas (hamlets). According to the petitioner, such hamlets must be treated to be villages for the purposes of Panchayat election. Our attention has been drawn to an interim order passed by this Court whereby a status report was directed to be produced. Admittedly, the said status report has not been produced.

In relation to identification of villages for the purpose of the same being treated as Panchayat villages, rules have been framed by the State which are known as the Andhra Pradesh Gram Panchayats (Declaration of Villages) Rules, 1994. They are applicable to tandas also. The relevant rules read as under:

3. Save as otherwise provided in these rules ordinarily every revenue village including scheduled areas with a population of 1000 and more shall be declared as a village :

Provided that the number of Gram Panchayats in a Mandal Parishad Territorial Constituency shall not exceed three Gram Panchayats, as far as possible.

4. Any hamlet of a revenue village declared as a village under Rule 3, lying within a distance of (two kilometers) irrespective of its population and income shall ordinarily be included in that village:

Provided that the Commissioner, for special reasons such as geographical features, communication facilities or viability, may declare one or more such hamlets into a separate village.

5. In the Scheduled Areas, the Commissioner may declare one or more revenue villages or a group revenue villages or (hamlets thereof) irrespective of the population and income as a village, having regard to the distance, terrain and viability of the local area comprised therein.

.....

6. If a local area comprised in a revenue village or villages which is beyond a distance of two kilometers from that revenue village or villages, as the case may be, and has a population of the thousand and more, shall be declared as a separate village.

28. The aforementioned rules therefore do not mandate that each tanda has to be declared as a Panchayat village. Rule 5 postulates not only the population, but also distance, terrain and viability of the local area. It is, from the aforementioned rules, further evident that revenue villages are different from the "tandas". By reason of the said rule, the distance of two kilometers has been fixed for the purpose of including the tanda within the village unless the preconditions thereof are fulfilled. It is also not in dispute that executive instructions have been issued from time to time for the purpose of supplementing the rule. The State contends that about 47 villages have been identified and the steps are taken for completion of the procedure in term of the said rules. Having regard to the facts and in the circumstances of the case, we are of the opinion that non-declaration of tandas as Panchayat villages by itself would not vitiate the election process in the entire State.

First writ petition

29. In this writ petition, the petitioner claimed the following relief:

To direct the State of A.P. to take appropriate steps as mandated by the 73rd Constitutional Amendment by conferring the powers on the local self Government units i.e., Gram Panchayats and other local bodies, after declaring if necessary that Sections 161, 165, 167, 186, 188 and 193 of Panchayat Raj Act, 1994 are unconstitutional for violating the constitutional mandate in Part IX of the Constitution of India.

30. The first part of the prayer seeks the mandamus to the State Legislature to take steps as mandated by Article 243-G of the Constitution of India. The aid provision provides that the State may endow the units of Local Self Government with powers with respect to preparation of circumstances for economic and social justice. As noticed earlier, the State has enacted the Act in furtherance of the Part IX of the Constitution of India. Sections 45 and 46 deal with duties and powers of Gram Panchayat respectively. Section 45(2) lays down that the Government may, subject to such rules as may be made in this behalf, entrust the Gram Panchayats with any functions in relation to the subjects specified in Schedule I. Be it noted that the subject enumerated in the Eleventh Schedule to the Constitution only are included in the Schedule I of the Act. Therefore, the question that requires consideration is whether it is competent for the Court to issue mandamus either to legislate with reference to Article 243-G or whether to give a direction to make rules to enable the Gram Panchayats and other units of Local Self Government, to discharge powers and functions in relation to the subjects enumerated in Eleventh Schedule.

31. It is the contention of the learned senior Counsel that before Constitution Seventy Third Amendment, Article 40 which is a directive principle provided for creation of units of Local Self Government and conferment of powers on them. However, after the advent of Part IX of the Constitution, it is now mandatory for the State not only to constitute panchayats and other such units, but also confer on them the powers in relation to subjects which are included in Eleventh Schedule as well as the Schedule I of the Act. We are afraid, we cannot agree with the submission. A bare reading of Article 243-G shows that the State is required to endow the Gram Panchayats with the powers to deal with the subjects by making law. It is axiomatic that it is not within the scope of writ of mandamus to direct the legislature to enact on a particular subject. If any in this behalf authority is required, we may refer to the decisions of the Apex Court in *Rajender Singh and Others Vs. Santa Singh and Others*, and in *Union of India v. Deoki Nanda Aggarwal*, 1992 Supl. (I) SCC 323, *Narinder Chand Hem Raj and Others Vs. Lt. Governor, Administrator, Union Territory, Himachal Pradesh and Others*, , *State of Jammu and Kashmir Vs. A.R. Zakki and others*, , *State of Karnataka Vs. State of Andhra Pradesh and Others*, .

32. Further as already noticed, the A.P. State Legislature has already enacted Panchayat Act and sub-section (2) of Section 45 lays down that State may by making appropriate rules empower the Panchayats to discharge powers and functions in relation to the subjects enumerated in Schedule I. In *A.K. Roy and*

Others Vs. Union of India (UOI) and Others, , a question came up as to whether the Court can give a direction to bring into force the law enacted by competent authority. Answering the question in negative, the Supreme Court laid down:

It is, true, as contended by Sri Tarkunde, that if the question as regards the justiciability of the President's satisfaction is not to be considered for the reasons that the ordinance has become an Act, the occasion will hardly ever arise for considering that question because by the time the challenge made to an ordinance comes up for consideration before the Court. The ordinance almost invariably shall have been replaced by an Act. All the same, the position is firmly established in the field of constitutional adjudication that the Court will decide no more than needs to be decided in any particular case. Abstract questions present interesting challenges, but it is for scholars and text book writers to unravel their mystique. It is not for the Courts to decide questions which are but of academic importance.

33. In our opinion, a writ of mandamus cannot be issued directing a delegated legislative authority to make rules in furtherance of a statutory provision nor the Court can usurp the legislative function with regard the vacuum therein if any. The Court in exercise of its power under Article 226 of the Constitution cannot direct the State to legislate when there exists an enabling provision. This question is no longer *res Integra* in view of the Full Bench decision of this Court in *Andhra Bank Scheduled Tribe Employees' Welfare Association Vs. Andhra Bank, Hyderabad*, . In the said decision, this Court has *inter alia* noticed the judgment of the Apex Court in *Ajit Singh and Others Vs. The State of Punjab and Others*, , wherein the contention to the effect that where the power is conferred coupled with the duty, a writ of mandamus may issue, was rejected. The Court further noticed the decision of the Apex Court in *Indira Sawhney Vs. Union of India and Others*, , it was held:

In view of the afore-mentioned authoritative pronouncements of the Apex Court, it must be held that unless the reservation policy was existing, the question of providing therefore and extending the same in terms of Article 16(4-A) does not arise. In any event, this Court in exercise of its jurisdiction under Article 226 of the Constitution cannot issue a writ of mandamus directing the respondents to provide for such a policy particularly in view of the fact that Article 16(4-A) is an enabling provision. If no reservation has been made by the State, the High Court has no jurisdiction under Article 226 of the Constitution to issue any direction therefor.

In any event, a writ in the nature of mandamus as prayed for cannot be issued.

34. We may notice that although recently, a Division Bench of this Court in *Gandham Venkata Swami Naidu and others Vs. Deputy Registrar of Co-operative Societies, Bhimavaram, West Godavari District and others*, , observed:

Constitution of Panchayats is no longer covered by statutory provisions. The democratic polity of Gram Panchayats now finds place in Part IX of the

Constitution of India by reason of the Constitution (Seventy Third Amendment) Act, 1992. Article 243-B mandates that there shall be constituted in every State, panchayats at the village, intermediate and district levels in accordance with the provisions of Part-IX. Clause (1) of Article 243-C also provides for the composition of Panchayats. Clause (2) of Article 243-C speaks of filling up of the seats in a Panchayat by direct election from territorial constituencies in the Panchayat area. By reason of the Constitution (Seventy third Amendment) Act, democracy, which is the basic feature of the Constitution, has now been extended to the grass root level. In this connection, it is also relevant to note that Article 40 of the constitution also directs the State to organize village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self Government. Self governance, therefore, is the key area which is visualized by the Constitution makers. Democracy in this country will be further strengthened by the active involvement and participation of the panchayats at all levels. The desired goal of making a Panchayat more vibrant and self reliant will be best achieved if the constitutional provisions are given its full play. It is, therefore, not permissible to thwart that object and goal by the State by taking recourse to such provisions under the Act, which, in our opinion, does not contemplate a total prohibition of holding elections to the societies;

the same by itself would not mean that the Court can direct the State to enact the law in a particular mode or manner. The Court's power in this regard is limited, Only in a case where a legislation does not conform to the constitutional wisdom, the same either be declared ultra vires or may be read down or read up for upholding its validity, the Court can exercise its powers of judicial review.

It is nextly contended that the provisions of Sections 161, 165, 167, 186, 188 and 193 of the Panchayat Raj Act, 1994 are unconstitutional. The main thrust of the argument is that unbridled, uncanalised and naked power has been conferred upon the executive officers who although are supposed to be discharging their function under the supervision of the Panchayats are entitled to take measures for supersession of the Local Self Governments and/or removal of the elected members and/or cancellation of resolution. The election is yet to be held. It is now a well settled proposition of law that the factual foundation must be raised in the writ petition in order to enable the Constitutional Court to arrive at the conclusion that the provisions of the main Act could be the subject-matter of judicial review. In any event, without going into the merits of the matter, it may be noticed that possible misuse and abuse of the provisions of the Statute may not by itself be a ground for invalidation of the law. It is also well settled that the Constitutional Court may refuse to enter into such an academic question unless dire necessity has been made out thereof. In fact although Mr. Ramachandra Rao had addressed us at a great length, at the end of the submission on the said question, he himself contended that the Court may leave open the question of vires thereof. This Court has either to consider the validity of the said provision or refuse to do so. It upon the consideration of the question raised before it,

cannot refuse to render its judgment thereupon. If it does so, it will be failing in its duty. However, having regard to the fact that proper case has not been made out nor appropriate relief has been prayed for, this Court should refuse to determine as regards the validity of various provisions of the Act.

35. It will be a repetition to state that Article 243-E is mandatory in nature. The elections, which were postponed for some reason or the other as noticed hereinbefore, must be completed by 31-5-2001 which has since been extended to 31-7-2001. The contention of Mr. Ramachandra Rao to the effect that the order of the Supreme Court only related to ZPTCs, MPTCs and Gram Panchayats and would not cover other cases, is in our opinion wholly misconceived inasmuch as the election in all the three tiers must be held based on the same statistics and Constitution of one tier Panchayat would be dependent on the other. The process of reservation is the same for the panchayats, ZPTCs and MPTCs. In any event, the State and the Election Commission are bound to comply with the directions of the Supreme Court. Furthermore, the State and the parties are also bound by the Division Bench decision of this Court in *Prakasham District Sarpanchas*" case (supra). It is profitable to notice an unreported decision of the Supreme Court in WP (Civil) No.719 of 1995 dated 12-8-1997, wherein the Supreme Court observed:

.....It is necessary to emphasise that various clauses of Article 243 are to be followed in letter and spirit. The concerned States cannot be permitted to withhold election of Panchayats except in case of genuine supervening difficulties to hold such elections e.g., unforeseen natural calamities in the State like flood, earthquake etc., or extremely urgent situation prevailing in the State for which election of the Panchayats cannot be held within the time frame. It will be unfortunate if the concerned States remain insensitive to the constitutional mandate of holding election of Panchayats in time and by unjustified action, allows old bodies to continue in the Office of the Panchayats. We hope and trust that the State Government will be alive and sensitive to the duties and responsibilities flowing from the mandates of the Constitution in holding Panchayat elections."

36. We therefore find no merit in these, writ applications which are accordingly, dismissed. But in the circumstances of the case, there shall be no order as to costs.