
(2007) 02 AP CK 0098

In the Andhra Pradesh High Court

Case No : Writ Petition No. 21358 of 2006

A.P. Sarpanches Association and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-02-2007

Acts Referred:

Andhra Pradesh Districts (Formation) Act, 1974 — Section 3
Andhra Pradesh Legislative Council Act, 2005 — Section 4
Andhra Pradesh Municipalities Act, 1965 — Section 10, 11, 12, 8, 9
Andhra Pradesh Panchayat Raj Act, 1994 — Section 11, 117, 12, 14(1), 140
Constitution of India, 1950 — Article 14, 169, 169(1), 171, 171(1)
Hyderabad Municipal Corporation Act, 1955 — Section 10, 11, 12, 1A, 1B
Representation of the People Act, 1950 — Section 15, 16, 18, 22, 23

Citation : AIR 2007 AP 273 : (2007) 4 ALD 783 : (2007) 5 ALT 707

Hon'ble Judges : G.S. Singhvi, C.J.;C.V. Nagarjuna Reddy, J

Bench : Division Bench

Advocate : S. Ramachandra Rao, for K.R. Prabbakar, for the Appellant; A. Rajashekar Reddy, Asst. Solicitor General of India for Respondent No. 1, C. Jayasree Saradhy, for Respondent No. 2, Advocate-General for Respondent Nos. 3 and 4 and V.V. Prabhakar Rao, SC for State Election Commission, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, C.J.—Whether the Sarpanchas of Gram Panchayats are entitled to participate in the election to the Andhra Pradesh Legislative Council (for short, "the Legislative Council") as of right is the moot question which arises for determination in this petition filed for striking down Section 4(b) of the Andhra Pradesh Legislative Council Act, 2005 (for short, "the 2005 Act") and for issue of a mandamus to the respondents to include the Sarpanchas and Gram Sabhas as electors for the local authorities constituency in the Fourth Schedule to the Representation of People Act, 1950 (for short, "the 1950 Act").

2. Petitioner No. 1 is an association of Sarpanchas of different Gram Panchayats of the State of Andhra Pradesh. Petitioner No. 2 is the Sarpanch of Ammenpur

Gram Panchayat, Pathancheru Mandal, Medak District. Petitioner No. 3 is the former Sarpanch of Gundlapalli Gram Panchayat, Maddipadu Mandal, Prakasam District and also the Advisor of petitioner No. 1 association. Petitioner No. 4 is also the Advisor of petitioner No. 1 association. Petitioner No. 5 is the Sarpanch of Kothapeta Gram Panchayat, Vetapalem Mandal, Prakasam District and also the General Secretary of the Prakasam District Sarpanchas Association. Petitioner No. 6 is the Secretary of the Andhra Pradesh State Panchayat Raj Chamber and petitioner No. 7 is the Sarpanch of Badsa Gram Panchayat, Nizamabad Rural Mandal and District and also the Treasurer of petitioner No. 1 association. They have jointly filed this petition as a piece of public interest litigation for ensuring that Gram Panchayats are included in the local authorities' constituency and the Sarpanchas are made eligible for participating in the forthcoming elections to the Legislative Council.

3. The case set up by the petitioners is that the Gram Panchayats are local bodies at the grass root of the rural areas, which have been declared as units of self-Government by virtue of Article 243(d) of the Constitution of India, but while enacting the 2005 Act, the Parliament has not included the Gram Panchayats in the Fourth Schedule of the 1950 Act and, on that account, 28,700 Sarpanchas, who represent the people of the villages, will be deprived of the opportunity to participate in the election to the Legislative Council. The petitioners have raised twofold plea of discrimination. In the first place, they have pleaded that while in the States of Maharashtra, Bihar, Uttar Pradesh, Jammu and Kashmir and Karnataka, the Saipanchas and their counterparts are eligible to vote for the election of the members of the Legislative Council, the 2005 Act excludes the Gram Sabhas from the local authorities' constituency and, as a result of that, Sarpanchas are not eligible to cast vote for election to the Legislative Council. In the second place, it has been pleaded that till the abolition of the Legislative Council in 1985, the Gram Panchayats were included in the list of local authorities and the Sarpanchas were eligible to participate in the election to the Legislative Council, and while reviving the Legislative Council by means of the 2005 Act, the Parliament has arbitrarily and without any rhyme or reason excluded the Gram Panchayats. They have referred to the provisions of Articles 171(3)(a), 243(b), 243A, 243B and 243G of the Constitution of India and claimed that the expression "local authorities" should be interpreted as inclusive of Gram Panchayats, which work within the framework of Part IX of the Constitution. The petitioners have also referred to Section 27(2)(a) of the 1950 Act and pleaded that exclusion of the Gram Sabhas from the purview of the local authorities would deprive the members elected from the local authorities' constituency of their true character as representatives of the people of the rural areas.

4. In the counter filed on behalf of respondent No. 1-Union of India in the form of the affidavit of Sri R. Sreenivas, Assistant Legislative Counsel, Legislative Department, Ministry of Law and Justice, Government of India, it has been averred that the creation/abolition of the Legislative Council and voting rights for

that purpose are purely based on the resolution passed by the Legislative Assembly of the State in terms of Article 169(1) of the Constitution of India, and the provisions of the 2005 Act cannot be struck down by invoking Article 14 simply because the Sarpanchas are included in the voters list of the Legislative Council in some other States. It has been further averred that pursuant to resolution dated 22-1-1990 passed by the Andhra Pradesh Legislative Assembly, a Bill for revival of the Legislative Council in the State was introduced in the Rajya Sabha on 10-5-1990, and was passed on 28-5-1990, but the same lapsed because of the dissolution of the 9th Lok Sabha and that the Andhra Pradesh Legislative Council Bill, 2004 is based on the earlier Bill.

5. On behalf of the State of Andhra Pradesh (respondent No. 3), counter has been filed in the form of the affidavit of Sri V. Bhaskar, Chief Electoral Officer and Ex-officio Principal Secretary to Government, General Administration (Elections-E) Department. According to Sri V. Bhaskar, like Gram Panchayats, Mandal Praja Parishads and Zilla Praja Parishads are the local authorities, the members of which are directly elected by the voters of the village and it cannot be said that the persons elected from the "local authorities" constituency" in which Zilla Praja Parishads and Mandal Praja Parishads have been included will not be true representatives of the people of the villages. In Paragraph 7 of his affidavit, Sri V. Bhaskar has categorically averred that at the time of abolition of the Legislative Council in 1985, the Gram Panchayats were not included in the local authorities" constituency and the contrary assertion made in the affidavit filed on behalf of the petitioners is misleading. According to Sri V. Bhaskar, the structure of the proposed Legislative Council is similar to the one which was obtaining prior to its abolition in 1985 and the only substantive change relates to deletion of Panchayat Samithis and inclusion of Mandal Parishads, both of which are intermediate level panchayats. The deponent has then averred that Mandal Parishad Territorial Constituency member shares the same electorate as the Sarpanchas of the Gram Panchayat. In Paragraph 10 of his affidavit, Sri V. Bhaskar has controverted the petitioners" assertion that in Maharashtra and Uttar Pradesh, Gram Panchayats are included in the Fourth Schedule of the 1950 Act. According to him, only Municipalities, Cantonment Boards and Zilla Parishads are listed in the Fourth Schedule of the 1950 Act for the State of Maharashtra. As regards Uttar Pradesh, Sri V. Bhaskar has averred that Gram Panchayats are not included as a body in the Fourth Schedule of the 1950 Act, but in their capacity as members of Kshettra Panchayats (an intermediate panchayat), the Sarpanchas participate in the Legislative Council election. In Paragraph 13 of the affidavit, Sri V. Bhaskar has averred that Gram Panchayats Class I and Class II were included in the list of "local authorities" constituency" when the Legislative Council was first constituted i.e. in 1957-58, but they were deleted from the list in 1963 and replaced by Panchayat Samithis and this position continued till 1985 when the Legislative Council was abolished. In Paragraphs 19, 22, 24 and 25 of the affidavit, Sri V. Bhaskar has referred to the provisions of Article 171(3) of the Constitution and Section 27 of the 1950 Act and averred that only local bodies

can be included in the Fourth Schedule of the 1950 Act and not its members i.e. Sarpanchas etc. and a body like Gram Sabha, which consists only of voters who elect various bodies in the rural area, cannot seek inclusion in the said Schedule.

6. Sri S. Ramachandra Rao, Senior Counsel appearing for the petitioners referred to Articles 169, 171, 243(b), 243B, 243E, 243K, 243Q and XI Schedule of the Constitution, Section 27 of the 1950 Act, the judgments of the Supreme Court in *Municipal Corporation of Delhi Vs. Birla Cotton, Spinning and Weaving Mills, Delhi and Another*, *Union of India (UOI) and Others Vs. Shri R.C. Jain and Others*, and *Gadakh Yashwantrao Kankarrao Vs. E.V. alias Balasaheb Vikhe Patil and Others*, and argued that Section 4 of the 2005 Act, vide which the Fourth Schedule of the 1950 Act was amended by way of insertion of Andhra Pradesh is liable to be declared unconstitutional because, while including the Municipal Corporations, Municipalities, Nagar Panchayats, Cantonment Boards, Zilla Praja Parishads and Mandal Praja Parishads in the list of local authorities, the Parliament arbitrarily omitted to include the Gram Panchayats and thereby deprived the Sarpanchas, who are directly elected by the people of the villages, of their right to participate in the election of the Legislative Council. Learned Counsel emphasized that if six other bodies included in the list of local authorities are treated as representatives of the people of different urban and rural areas, there can be no valid ground or justification to omit the Gram Panchayats. Sri S. Ramachandra Rao argued that Gram Panchayats are true representatives of the voice of the people at the grass root and if the Sarpanchas are denied the right to participate in the election to the Legislative Council, the representation of the "local authorities" constituency will not be real. Learned Counsel emphasized that members of the Zilla Praja Parishads and Mandal Praja Parishads are elected from limited constituencies and, therefore, they cannot be treated as true representatives of the village people and inclusion of these bodies cannot justify exclusion of the Gram Panchayats. He submitted that by virtue of Article 243G and Schedule XI of the Constitution read with Sections 45, 161 and 192 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short, "the 1994 Act") and Schedule I appended thereto, the Gram Panchayats are delegated with the powers and functions of governance at the grass root and, therefore, their exclusion from the list of local authorities must be treated as opposed to the scheme of the provisions contained in Part IX of the Constitution. Learned Counsel pointed out that till 1985, the Gram Panchayats were included in the list of local authorities and the Sarpanchas were included in the list of voters meant for election to the Legislative Council, and argued that there is no justification to exclude the Gram Panchayats from the Fourth Schedule of the 1950 Act and, thereby, deprive the Sarpanchas of their right to participate in the election to the new Legislative Council.

7. Sri A. Rajasekhar Reddy, learned Assistant Solicitor General submitted that the right to participate in the election or to be included in the list of electors is neither a fundamental nor a constitutional right and the Court cannot issue a mandamus for including the Gram Panchayats in the list of local authorities so as

to enable the Sarpanchas to claim inclusion of their names in the electoral list of the "local authorities" constituency". In support of his arguments, Sri A. Rajasekhar Reddy relied on the judgments of the Supreme Court in G. Narayanaswami Vs. G. Pannerselvam and Others, , Rama Kant Pandey Vs. Union of India, , Anukul Chandra Pradhan, Advocate, Supreme Court Vs. Union of India and others, , Public Services Tribunal Bar Association Vs. State of U.P. and Another, and Dharam Dutt and Others Vs. Union of India (UOI) and Others, .

8. The learned Advocate-General emphasized that in terms of Article 243(d) read with Article 243B of the Constitution, Panchayats at the village, intermediate and district levels are units of self-Government for the rural areas and Gram Panchayats cannot be treated as the only representative bodies of the people of the rural area. He submitted that the voters list prepared for elections to the Municipal Corporations, Municipalities and Nagar Panchayats are distinct and separate, whereas there is a common voters list for election of the members and Sarpanchas of the Gram Panchayats, Members of Zilla Praja Parishads and Mandal Praja Parishads, and argued that omission of the Gram Panchayats from the list of local authorities cannot be declared violative of Article 14 of the Constitution only on the ground that three different bodies elected by the urban voters have been included in the list of local authorities under Article 171(3)(a) of the Constitution. He then argued that Members of the Zilla Praja Parishads and Mandal Praja Parishads, who will be included in the voters list of local authorities" constituency will represent the will of the villagers and non-inclusion of the Gram Panchayats in the list of local authorities under the Fourth Schedule of the 1950 Act will, in no way, adversely affect their right to choose the Members of the Legislative Council from "local authorities" constituency".

9. We have given serious thought to the respective arguments and examined the relevant constitutional and statutory provisions. Articles 171(1), (2), (3) and (4), 243(b), (c), (d), (g), 243B, 243P(e), 243Q of the Constitution of India, Section 27(1) and (2) of the Representation of the People Act, 1950, Sections 2(17), (18), (23), (45), 8, 14(1), 148(1), 149(1), 151, 177(1), (2) and (3) and 179 of the 1994 Act, and Section 4 of the Legislative Council Act, 2005, which have bearing on the decision of the writ petition, reads as under:

Constitution of India

171. Composition of the legislative Councils.-

(1) The total number of Members in the Legislative Council of a State having such a Council shall not exceed one-third of the total number of Members in the Legislative Assembly of that State:

Provided that the total number of Members in the Legislative Council of a State shall in no case be less than forty.

(2) Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in Clause (3).

(3) Of the total number of members of the Legislative Council of State-

(a) as nearly as may be, one-third shall be elected by electorates consisting of Members of Municipalities, District Boards and such other local authorities in the State as Parliament may by law specify;

(b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any University in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such University.

(c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;

(d) as nearly as may be, one-third shall be elected by the Members of the Legislative Assembly of the State from amongst persons who are not Members of the Assembly;

(e) the remainder shall be nominated by the Governor in accordance with the provisions of Clause (5).

243. Definitions.-In this Part unless the context otherwise requires,-

(b) "Gram Sabha" means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level:

(c) "Intermediate level" means a level between the village and district levels specified by the Governor of a State by public notification to be the intermediate level for the purposes of this Part:

(d) "Panchayat" means an institution (by whatever name called) of self-government constituted under Article 243B, for the rural areas:

(g) "village" means a village specified by the Governor by public notification to be a village for the purposes of this Part and includes a group of villages so specified.

243B. Constitution of Panchayats.-(1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.

(2) Notwithstanding anything in Clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs.

243P. Definitions.-In this Part, unless the context otherwise requires,-

(e) "Municipality" means an institution of self-government constituted under

Article 243Q;

243Q. Constitution of Municipalities.-(1) There shall be constituted in every State,-

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this Article, "a transitional area", a smaller urban area" or "larger urban area" means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.

Representation of the People Act, 1950

27. Preparation of electoral roll for Council Constituencies-(1) In this section, "local authorities" constituency", "graduates constituency" and "teachers" constituency" means a constituency for the purpose of elections to a Legislative Council under Sub-clause (a), Sub-clause (b) and Sub-clause (c) respectively, of Clause (3) of Article 171.

(2) For the purpose of elections to the Legislative Council of a State in any local authorities" constituency-

(a) the electorate shall consist of members of such local authorities exercising jurisdiction in any place or area within the limits of that constituency as are specified in relation to that State in the Fourth Schedule;

(b) every member of each such local authority within a local authorities" constituency shall be entitled to be registered in the electoral roll for that constituency;

(c) the Electoral Registration Officer for every local authorities constituency shall maintain in his office in the prescribed manner and form the electoral roll for that constituency corrected up-to-date;

(d) in order to enable the Electoral Registration Officer to maintain the electoral roll corrected up-to-date, the Chief Executive Officer of every local authority (by

whatever designation such officer may be known) shall immediately inform the Electoral Registration Officer about every change in the membership of that local authority; and the Electoral Registration Officer shall, on receipt of the information, strike off from the electoral roll the names of persons who have ceased to be, and include therein the names of persons who have become, members of that local authority; and

(e) the provisions of Sections 15, 16, 18, 22 and 23 shall apply in relation to local authorities" constituencies as they apply in relation to Assembly constituencies.

The Andhra Pradesh Panchayat Raj Act, 1994

2. Definitions.-In this Act unless the context otherwise requires,-

(17) "Gram Panchayat" means the body constituted for the local administration of a village under this Act;

(18) "Gram Sabha" means the Gram Sabha which comes into existence u/s 6;

(23) "Mandal Parishad" means, a Mandal Parishad constituted or reconstituted u/s 148;

(45) "Zilla Parishad" means a Zilla Parishad constituted u/s 117.

8. Election of Members.-All members of the Gram Panchayat shall be elected by the registered voters in the Ward by the method of secret ballot and in accordance with such rules as may be made in this behalf.

14. Election and term of office of Sarpanch.- (1) There shall be a Sarpanch for every Gram Panchayat, who shall be elected in the prescribed manner by the persons whose names appear in the electoral roll for the Gram Panchayat, from among themselves. A person shall not be qualified to stand for election as Sarpanch, unless he is not less than twenty one years of age:

148. Constitution and incorporation of Mandal Parishads :-(1) There shall be constituted by the Government by notification from time to time, and with effect on and from such date, as may be specified therein constitute a Mandal Parishad for each Mandal.

149. Composition of Mandal Parishad :-(1) Every Mandal Parishad shall consist of the following members, namely:

(i) persons elected u/s 151;

(ii) the Member of the Legislative Assembly of the State representing a constituency which comprises either wholly or partly the Mandal concerned;

(iii) the Member of the House of the People representing a constituency which comprises either wholly or partly the Mandal concerned;

(iv) any Member of the Council of States who is a registered voter in the Mandal

concerned.

(v) One person belonging to minorities to be co-opted in the prescribed manner by the members specified in Clause (i) from among persons who are registered voters in the Mandal and who are not less than 21 years of age.

151. Election of members from territorial constituencies :-(1) One member shall be elected to the Mandal Parishad from each territorial constituency specified in Section 150 by the method of secret ballot, from among persons who are registered voters in the Mandal Parishad.

(2) For purposes of preparation and publication of the electoral roll for the elections to the office of member under this section, the provisions of Sections 11 and 12 shall, mutatis mutandis apply, subject to such rules as may be made in this behalf.

177. Constitution, Incorporation, and Composition of Zilla Parishad :-(1) There shall be constituted by the Government by notification a Zilla Parishad for a district with effect from such date as may be specified therein.

(2) Every Zilla Parishad shall, by the name of the district for which it is constituted, be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and to enter into contracts and may by its corporate name, sue and be sued.

(3) Every Zilla Parishad shall consist of the following members, namely,

(i) persons elected u/s 179;

(ii) the Member of the Legislative Assembly of the State representing the constituency which comprises either wholly or partly the district concerned.

179. Election of members from Territorial Constituencies :-(1) One member shall be elected to the Zilla Parishad from each Territorial Constituency specified in Section 178 by the method of secret ballot by the registered voters in the Territorial Constituency concerned:

Provided that a registered voter in the district shall be entitled to contest from any Territorial Constituency of the Zilla Parishad.

(2) For purposes of preparation and publication of the electoral roll for the elections to the office of member under this section, the provisions of Sections 11 and 12 shall, mutatis mutandis apply subject to such rules as may be made in this behalf.

The Andhra Pradesh legislative Council Act, 2005

4. In the Representation of the People Act, 1950-

(a) in the Third Schedule, before Entry No. 2 relating to Bihar, the following entry shall be inserted, namely:

"1. Andhra Pradesh 90 8 31 12"

31 8

(b) in the Fourth Schedule, before the heading "BIHAR", the following heading and entries shall be inserted, namely:

ANDHRA PRADESH

(1) Municipal Corporations

(2) Municipalities

(3) Nagar Panchayats

(4) Cantonment Boards

(5) Zilla Praja Parishads

(6) Mandal Praja Parishads.

10. A conjoint reading of Article 171(1) to (4), Section 27 of the 1950 Act and Fourth Schedule appended thereto (as it stands after the enactment of the 2005 Act) shows that by virtue of the positive and negative mandate enshrined in Clause (1) of Article 171, the minimum number of Members in the Legislative Council shall be 40, but the total number cannot exceed one-third of the total number of vacancies in the Legislative Assembly of the State. The composition of the Legislative Council of a State is determined by Clause (3) of Article 171. Sub-clause (a) thereof lays down that as nearly as may be, one-third of the total number of Members of the Legislative Council shall be elected by electorate consisting of Members of Municipalities, District Boards and such other local authorities in the State as may be specified by Parliament by appropriate legislation. The 1950 Act is such legislation. Sub-section (1) of Section 27 of the 1950 Act contains the definition of the "local authorities" constituency", "graduates constituency" and "teachers" constituency" by reference to Article 171(3) of the Constitution. Sub-section (2) lays down that for the purpose of elections to the Legislative Council in any local authorities" constituency, the electorate shall consist of members of such local authorities as are specified in relation to that State in the Fourth Schedule and every member of such local authority falling within a local authorities" constituency shall be entitled to be registered in the electoral roll for that constituency.

11. At the time of creation of the Legislative Council in 1957, the Fourth Schedule of the 1950 Act was as under:

Andhra Pradesh

(1) Municipalities

(2) District Boards

(3) Cantonment Boards

(4) City and Town Committees

(5) Class I Panchayats

(6) Class II Panchayats

12. After constitution of the Panchayat Samities in the State, the 1950 Act was amended by the Representation of the People (Amendment) Act, 1963 and Class I and Class II Panchayats were substituted by Panchayat Samities. The City and Town Committees were omitted from the Schedule by Act No. 14 of 1965. In the Legislative Council Bill, 1990, which was introduced in Rajya Sabha, the Fourth Schedule of the 1950 Act in relation to Andhra Pradesh was as under:

(1) Municipalities

(2) Zilla Parishads

(3) Cantonment Boards

(4) Panchayat Samities

13. By Section 4 of the 2005 Act, the Fourth Schedule of the 1950 Act was amended and the following entry came to be inserted:

Andhra Pradesh

(1) Municipal Corporations

(2) Municipalities

(3) Nagar Panchayats

(4) Cantonment Boards

(5) Zilla Praja Parishads

(6) Mandal Praja Parishads

14. The argument of Shri S. Ramachandra Rao that the Gram Panchayats fall within the ambit of the phrase "local authorities" is unexceptionable and finds full support from the judgments of the Supreme Court in *Delhi Municipality v. B.C.S. & W Mills* (supra) and *Union of India v. R.C. Jain* (supra). However, this, by itself, cannot lead to the inference that non-inclusion of the Gram Panchayats in the Fourth Schedule of the 1950 Act has resulted in denial of any constitutional or legal right to the Sarpanchas.

15. In *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, *Jumuna Prasad Mukhariya and Others Vs. Lachhi Ram and Others*, *Jyoti Basu and Others Vs. Debi Ghosal and Others*, and *Anukul Chandra Pradhan v. Union of India* (supra), the Supreme Court has unequivocally held that right to vote or to stand as a candidate and contest election is neither a fundamental nor a civil right, but is purely a statutory right and the same is subject to statutory limitations. Therefore, the Sarpanchas of the Gram

Panchayats cannot, as of right, claim inclusion of their names in the electoral rolls of the local authorities" constituencies of the Legislative Council.

16. The issue which remains to be considered is whether non-inclusion of the Gram Panchayats in the Fourth Schedule of the 1950 Act is discriminatory and violative of Article 14 of the Constitution.

17. Article 14 of the Constitution declares that the State shall not deny to any person equality before the laws or the equal protection of the laws within the territory of India. The doctrine of equality enshrined in Article 14 has been interpreted by the Courts to mean that "all persons similarly situated should be treated alike with reference to the purpose of legislation and there shall be no discrimination among similarly situated persons". At the same time, the Courts have also evolved a subsidiary doctrine, which is known as the doctrine of classification. In *Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others*, , the Constitution Bench of the Supreme Court made a beautiful synthesis of the doctrine of equality and doctrine of classification. While recognizing that Article 14 ensures to every person equality before law and equal protection of laws, the Supreme Court observed:

The constitutional code of equality and equal opportunity, however, does not mean that the same laws must be applicable to all persons. It does not compel the State to run "all its laws in the channels of general legislation". It recognizes that having regard to differences and disparities which exist among men and things, they cannot all be treated alike by the application of the same laws. "To recognize marked differences that exist in fact is living law; to disregard practical differences and concentrate on some abstract identities is lifeless logic". *Morey v. Doud* 354 US 457, P.473. The Legislature must necessarily, if it is to be effective at all in solving the manifold problems which continually come before it, enact special legislation directed towards specific ends and limited in its application to special classes of persons or things. "Indeed, the greater part of all legislation is special, either in the extent to which it operates, or the objects sought to be attained by it." (1889) 134 US 594.

18. The Constitution Bench also quoted with approval, the observations made by Justice Brewer in "The Equal Protection of the Laws", 37, *California Law Review*, 341, the relevant portion of which reads as under:

"The very idea of classification is that of inequality". The Court has tackled this paradox over the years and in doing so, it has neither abandoned the demand for equality nor denied the legislative right to classify. It has adopted a middle course of realistic reconciliation. It has resolved the contradictory demands of legislative specialization and constitutional generality by a doctrine of reasonable classification. This doctrine recognizes that the Legislature may classify for the purpose of legislation but requires that the classification must be reasonable. It should ensure that persons or things similarly situated are all similarly treated. The measure of reasonableness of a classification is the degree of its success in

treating similarly those similarly situated.

19. The Supreme Court then considered the question as to what meaning should be given to the phrase "similarly situated" and observed:

But the question is: what does this ambiguous and crucial phrase "similarly situated" means? Where are we to look for the test of similarity of situation which determines the reasonableness of a classification? The inescapable answer is that we must look beyond the classification to the purpose of the law. A reasonable classification is one which includes all persons or things similarly situated with respect to the purpose of the law. There should be no discrimination between one person or thing and another, if as regards the subject-matter of the legislation their position is substantially the same. This is sometimes epigrammatically described by saying that what the constitutional code of equality and equal opportunity requires is that among equals, the law should be equal and that like should be treated alike. But the basic principle underlying the doctrine is that the Legislature should have the right to classify and impose special burdens upon or grant special benefits to persons or things grouped together under the classification, so long as the classification is of persons or things similarly situated with respect to the purpose of the legislation, so that all persons or things similarly situated are treated alike by law. The test which has been evolved for this purpose is - and this test has consistently applied by this Court in all decided cases since the commencement of the Constitution - that the classification must be founded on an intelligible differentia which distinguishes certain persons or things that are grouped together from others and that differentia must have a rational relation to the object sought to be achieved by the legislation.

20. The petitioners have invoked the doctrine of equality and prayed for striking down of Section 4 of the 2005 Act on the premise that Gram Panchayats are included in the list of "local authorities" in respect of the States of Maharashtra, Uttar Pradesh and Karnataka, but the same have not been included in the list of the State of Andhra Pradesh. This plea of the petitioners is liable to be rejected. A perusal of the list of local authorities pertaining to Bihar shows that Gram Panchayats are not included and so is the case of Maharashtra and Madhya Pradesh. For Karnataka, Gram Panchayats are included in the list of local authorities, for Uttar Pradesh, Zilla Parishads, Nagar Panchayats and Kshettra Panchayats are included apart from other bodies. This shows that for different States, different local authorities have been included in the Fourth Schedule of the 1950 Act. This must have been done keeping in view the provisions contained in the local Acts relating to the Municipal Bodies and Panchayats. The petitioners have not shown that the provisions of the contemporaneous enactments of the States of Bihar, Karnataka, Madhya Pradesh, Maharashtra and Uttar Pradesh are similar to those of the State of Andhra Pradesh. Therefore, we do not find any valid ground or justification to declare Section 4 of the 2005 Act as discriminatory and violative of Article 14 of the Constitution.

21. The petitioner's plea of discrimination vis-a-vis other local authorities is based on a misconceived assumption of similarity between the municipal bodies operating in the urban areas and Zilla Parishads etc., operating in the rural areas. The Municipal Corporations owe their existence to two legislative instruments i.e., Hyderabad Municipal Corporation Act, 1955 and the Andhra Pradesh Municipal Corporations Act, 1994. The Municipalities and Nagar Panchayats owe their existence to the Andhra Pradesh Municipalities Act, 1965, the Cantonment Boards owe their existence to the Cantonments Act, 1924 (The 1924 Act has been repealed by the Cantonments Act, 2006), and Zilla Parishads and Mandal Parishads owe their existence to the Andhra Pradesh Panchayat Raj Act, 1994. Section 5 of the 1955 Act provides that the Corporation shall consist of such number of elected members as may be notified from time to time by the Government of Andhra Pradesh and other persons specified in Sections 1A, 1B and 1C. Sections 8 to 12 of the 1955 Act contain the procedure for holding election of members by dividing the city into Single Member Wards on the basis of population. Similar provisions are contained in the Municipal Corporations Act, 1994. Elections to the Nagar Panchayats and Municipalities are held in accordance with the provisions contained in Sections 8 to 12 of the 1965 Act. It is thus, evident that voters list for election of members of the Hyderabad Municipal Corporation, other Municipal Corporations, Municipalities and Nagar Panchayats are different because these bodies operate in different geographical areas and represent different compartments of people living in the urban areas. There cannot be a Municipal Corporation and Municipality for the same urban area. This is not true of the villages. In terms of Article 243(d), "Panchayat" is an institution of self-government constituted for the rural areas. Article 243-B mandates the constitution of Panchayats at the village, intermediate and district levels. Gram Panchayat is the body constituted for local administration of a village. Mandal Parishad is a body constituted for each Mandal, which is defined as an area in a district declared by the State Government to be a Mandal u/s 3 of the Andhra Pradesh Districts (Formation) Act, 1974 (for short, "the 1974 Act"). Zilla Parishad is a body constituted by the Government for a district which necessarily comprises Mandals notified by the State Government u/s 3 of the 1974 Act and the villages. To put it differently, the Gram Panchayat administers a smaller rural area, which is declared as a village under the 1994 Act. The Mandal Parishad is a Panchayat at intermediate level. It exercises power and discharges functions qua villages included within the Mandal and defined u/s 222 of the 1994 Act. Within a district, there are more than one Mandal and each Mandal has a Mandal Parishad. Zilla Parishad is a Panchayat at the district level. It is the representative of the entire population of the rural area of the district.

22. The most significant difference between the local bodies operating in the urban areas i.e., Municipal Corporations, Municipalities and Nagar Panchayats and similar bodies operating in the rural areas i.e., Gram Panchayats, Mandal Parishads and Zilla Parishads is that the geographical areas of urban bodies as well as their electors are distinct and separate whereas the area of the Mandal

Parishads is inclusive of various villages for which separate Gram Panchayats are constituted and the area of every Zilla Parishad is a district, which comprises of the villages of different Mandals constituted in the particular district. The Electoral College which elects the members of the Gram Panchayat and the Sarpanch and Members of the Mandal Parishads and Zilla Parishads is the same. This is clearly evinced from a bare reading of Sections 8, 11, 12, 140, 151 and 179 of the 1994 Act. It is, thus, evident that while the Municipal Corporations, Municipalities and the Nagar Panchayats are representative of different segments of the urban area and different sets of people living in those geographical constituencies, the Gram Panchayats, Mandal Praja Parishads and Zilla Praja Parishads represent the same set of people.

23. In view of the above, we hold that the non-inclusion of Gram Panchayats in the Fourth Schedule of the 1950 Act does not suffer from the vice of discrimination and is not violative of Article 14 of the Constitution.

24. The argument of Shri S. Ramachandra Rao that on account of non-inclusion of the Gram Panchayats in the Fourth Schedule of the 1950 Act the Members of Zilla Parishads and Mandal Praja Parishads who will be registered in the electoral roll for the local authorities' constituencies will not be true representatives of the people of the villages is also without substance. It is true that Gram Panchayats are units of self-government and fall within the ambit of the expression "local authority", but it is equally true that the Mandal Parishads and Zilla Parishads, which are also constitutionally recognized as Panchayats at intermediate and district level are "local authorities" and their members are as much representatives of the people of the villages as are the Sarpanchas. The mere fact that the number of Sarpanchas who represent the Gram Panchayats (there are about 28,700 Sarpanchas in the State) is larger than the total number of Members of Zilla Parishads and Mandal Parishads (there are about 19,000 members of these two bodies) cannot lead to the conclusion that the Zilla Parishads and Mandal Parishads will not be true representatives of the people of the villages.

25. As regards the contention of Shri S. Ramachandra Rao that the Sarpanchas were included in the list of the electors for the Legislative Council till 1985, and, therefore, their non-inclusion in the list of local authorities specified in Section 4 of the 2005 Act should be declared as arbitrary, it is apposite to mention that the assertion to this effect contained in the affidavit filed on behalf of the petitioners has been specifically controverted by Shri v. Bhaskar, who has averred that the Gram Sabhas were included in the list of "local authorities" only upto 1963. This assertion of Shri v. Bahskar is amply supported by the entries made in the Fourth Schedule of the 1950 Act, which was amended by Act No. 2 of 1963. By that amendment, Panchayat Samities were substituted for Class I and Class II Panchayats. This shows that from 1963, till the abolition of the Legislative Council in 1985, the Gram Panchayats were not in the Fourth Schedule of the 1950 Act and the Sarpanchas were not included in the list of electors prepared in

terms of Section 27(2) of the 1950 Act. Of course, in their capacity as ex-officio Members of the Panchayat Samities, some of the Sarpanchas were included in the list of electors.

26. In the result, the writ petition is dismissed.