

(2012) 10 BOM CK 0020

In the Bombay High Court

Case No : Writ Petition No. 4595 of 2010

Gajanan Baburao Sankpal

APPELLANT

Vs

Avinash Bhauso Kamble

RESPONDENT

Date of Decision : 17-10-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 243, 243(b), 243(b)

Citation : (2013) 1 ABR 136 : (2013) 1 ALLMR 67 : (2013) 1 BomCR 345 :
(2012) 114 BOMLR 3788 : (2013) 1 MhLj 614

Hon'ble Judges : S.C. Dharmadhikari, J

Bench : Single Bench

Advocate : Amit Sale, for the Appellant; Rahul Walvekar, for the Respondent
Nos. 1 and 2 and Mr. R.M. Patne, AGP, for the Respondent Nos. 3 and 4, for the
Respondent

Judgement

S.C. Dharmadhikari, J.—Rule. The Respondents waive service By consent, Rule is made returnable forthwith.

2. By this Writ Petition under Articles 226 and 227 of the Constitution of India, the Petitioner is challenging the order passed by the Commissioner, Pune Division, Pune dated 06.05.2010 in an appeal. That appeal was challenging the order passed by the Additional Collector, District: Kolhapur dated 14.12.2009.

3. The relevant facts are that there is a Village Panchayat in Shirol, Taluka : Shirol, District : Kolhapur. That Village Panchayat has constituted a Committee called "Pani Purvatha Ani Swachhata Samiti" (Water Supply and Sanitation Committee). That Committee was constituted in the Gram Sabha dated 26.01.2006. The Petitioner was unanimously appointed as the Chairman of the said Committee. In the election of the Village Panchayat held in June-July 2008, the Respondent No. 1 was initially elected as a member and later on as Sarpanch of this Village Panchayat on 09.07.2008. It is the case of the Petitioner that after the change in the ruling party in the Village Panchayat, the Respondent No. 1 hastily inserted an agenda of formation of the said Pani Purvatha Ani Swachhata

Samiti. This item was introduced in the agenda of the Gram Sabha held on 15.08.2008. This Gram Sabha of village Shirol was held on 15.08.2008 and it concluded within a short span of 08 minutes. The agenda item No. 2 was inserted in the notice of Gram Sabha in respect of formation of this Committee though such Committee was already functioning in the Village Panchayat. It had completed 40% of the total work. Thus, insertion of agenda item No. 2 hurriedly and hastily and without intimating villagers well in advance, was with ulterior motive. The ulterior motive was that the Respondent No. 1 wanted to form a new Committee of himself and his group.

4. When the Gram Sabha was over and the decision on agenda item No. 2 was taken, the Petitioner lodged a complaint with the Block Development Officer of the Panchayat Samiti, Shirol. The Petitioner pointed out that the Extension Officer from the office of Block Development Officer was to attend the Gram Sabha on the relevant date, however, he could not attend it as when he reached the venue at 10:08 a.m., he was informed that the Gram Sabha was over. It is in these circumstances that the Petitioner complained to the Block Development Officer. The Petitioner was accompanied by about 1000 villagers.

5. The Block Development Officer on receipt of this complaint on 15.08.2008 at 12:15 p.m. took telephonic instructions and was informed that the Gram Sabha proceedings were not complete and under preparation. Thus, a farce of meeting was held and the resolution passed at that Gram Sabha was not acceptable to even majority. Therefore, the Petitioner relying on this complaint filed a revision application before the Additional Collector, Kolhapur. The Petitioner pointed out in the application that the Gram Sabha is invalid as it was concluded within 08 minutes. The Sarpanch has left before conclusion of the meeting. The Gram Sabha was not held in Sabhagruha. One person has signed twice or thrice for his attendance. There was no quorum. There was no resolution passed leave alone by majority and thus, there was no Gram Sabha in the eyes of law.

6. This Revision Application was opposed by the Respondent No. 1 and he denied the contents and asserted that the Gram Sabha was held and it was valid.

7. The Additional Collector, after hearing both sides, passed an order on 14.12.2009 holding that the Gram Sabha cannot be said to be validly convened particularly in terms of a Government Resolution dated 19.05.2004. It is impossible that 07 subjects were read out, discussed and voted within a short span of 08 minutes. Therefore, he allowed the Revision Application No. 50/2008 and declared the Gram Sabha of 15.08.2008 as cancelled.

8. Aggrieved and dissatisfied with this order, the Respondent Nos. 1 and 2 preferred an appeal being Appeal No. 602/2010. This appeal was contested by the Petitioner by urging that it was not maintainable. However, the Commissioner, Pune Division, Pune allowed this appeal by the impugned order dated 06.05.2010 and therefore, this Writ Petition.

9. Mr. Sale, Learned Counsel appearing for the Petitioner, firstly submitted that

the impugned order passed by the Commissioner is contrary to the principles of natural justice as the Petitioner was not heard. The hearing could not have been held as the Petitioner and his Advocate appeared on 05.04.2010. On that day no effective proceedings were held as it was the first appearance. The 06th May, 2010 was the day on which the hearing was adjourned and the Petitioner remained present, but even on that day, there was an issue of maintainability raised by the Petitioner by filing an application. There was no reply filed to that application and the matter was not argued as well. However, inspection of records by the Petitioner on 17.05.2010 revealed that the Commissioner has already passed an order allowing the appeal on 06.05.2010. Therefore, the impugned order is passed in flagrant breach and violation of the principles of natural justice and must be set aside on this ground alone.

10. Secondly, there was inordinate delay in passing this order inasmuch as the Gram Sabha Resolution of 2006 was sought to be nullified in 2008 which nullification was not accepted by the Additional Collector vide his order dated 14.12.2009. There was no occasion for setting aside this order of the Additional Collector after four months. For all these reasons, Mr. Sale submits that, the impugned order must be set aside.

11. It must also be set aside because the Commissioner has erroneously held that the Collector has no power to set aside a decision of the Gram Sabha. The reasoning of the Commissioner in that behalf is contrary to law. There is no question of the Collector possessing no power as far as Gram Sabha proceedings are concerned. If the Collector as delegate of the State Government can issue directions and control the proceedings of Village Panchayat as a whole, then, it is inconceivable that he does not possess any power to set aside a resolution or decision of the Gram Sabha even if same is contrary to the object and purpose of the Act. In such circumstances the order under challenge should be set aside. Mr. Sale has relied upon a judgment of the Honourable Supreme Court reported in Corporation of the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and others, .

12. On the other hand, Mr. Walvekar, Learned Counsel appearing for the Respondent Nos. 1 and 2 and Mr. Patne, learned AGP appearing for the Respondent Nos. 3 and 4, have submitted that in this case while the Additional Collector has proceeded to set aside the Gram Sabha, what the Commissioner has done and rightly, is to peruse the provisions of the Act and come to an independent conclusion that the Collector has no jurisdiction to cancel the Gram Sabha which is covered by Section 7 of the Act.

13. It is contended and very strenuously that if there was some irregularity found in the Gram Sabha meetings and if the Gram Sabha is not held in accordance with the Bombay Village Panchayat (Meeting of Gram Sabha) Rules, 1959 and if any member, Sarpanch or Upa-Sarpanch of the Village Panchayat, violated any rules of these Rules, the Petitioner can file a complaint/application before the Commissioner u/s 39 of the Act. Since the Collector has no jurisdiction

to cancel the Gram Sabha, it is clear that the order of Collector cannot be sustained and the Commissioner has rightly set aside the same.

14. For properly appreciating the rival contentions, what must be immediately noticed is that a complaint was made based on a report submitted to the Block Development Officer that Shirol Gram Panchayat had convened a Gram Sabha, but even authorized official reached at about 10:08 a.m., at that time, he was informed that the Gram Sabha was over. Even the Gram Sabha proceedings were incomplete as was informed. In such circumstances what the Petitioner had alleged was that the proceedings have been initiated and concluded on account of political enmity and for political reasons. In the earlier Gram Sabha of 26.01.2006 the Petitioner was unanimously appointed as the Chairman of the aforementioned Committee. Later on, the Respondent No. 1 was elected as a member of the Gram Panchayat in elections held in June-July, 2008. He was elected as Sarpanch on 09.07.2008. The allegation is that he was anxious of changing the Committee and that is why in the Gram Sabha a subject was introduced at the last minute and about 08 subjects in all were taken up for discussion and the meeting concluded within 08 minutes. It was alleged that there was objection taken to all this before the Block Development Officer and thereafter, there is a complaint lodged in the Civil Court.

15. To this application, the contesting Respondent No. 1 filed a reply and stated that this application is not maintainable and in addition, what has been stated is that all allegations are false and the Petitioner has made a false complaint. The Petitioner needs to be proceeded against in accordance with law. The Petitioner has failed to obtain any interim orders in the proceedings before the Civil Court. The Petitioner has failed to bring to notice of the Collector that in terms of Section 39 of the Act r/w Government Circular dated 06.12.2006 the "Gram Arogya, Poshan, Pani Purwatha and Swachhata Samitis" (Rural Health, Nutrition, Water Supply and Sanitation Committees) have been set up and that is in terms of a Agenda Item No. 2 of the Gram Sabha meeting dated 15.08.2008. A report based on the decision taken in the Gram Sabha was forwarded to the Chief Executive Officer, Zilla Parishad, Kolhapur and the said decision has been approved. It is stated that all other allegations are false and absolutely untenable.

16. The Additional Collector curiously has rejected the argument of the Petitioner that constitution of the Water Supply and Sanitation Committee was an item introduced at last minute in Agenda of the Gram Sabha. However, what he has held is that the Chief Executive Officer, Zilla Parishad, Kolhapur has by a letter dated 10.10.2008 informed that he has approved the Rural Health, Water Supply and Sanitation Committee. However, he has not approved the Gram Sabha of 15.08.2008. In such circumstances it would not be proper to hold that the Chief Executive Officer has approved the Gram Sabha.

17. By relying on a report of one Mr. Y.K. Jadhav, Extension Officer, Panchayat Samiti, Shirol, what the Additional Collector has held is that the Gram Sabha was convened at 10 a.m. and it got over within 08 minutes. In 08 minutes, 07

subjects were called out and resolutions are stated to have been passed, as set out in the minutes of the Gram Sabha. According to the Additional Collector, it will not be possible within this short span to obtain signatures of those present, elect a Chairman of meeting, ascertain whether there is requisite quorum or not and most importantly whether, directives in the Government circular dated 19.05.2004 have been followed or not. These directives contemplate that subjects have to be called out and discussed. Therefore, it is impossible that in a short span of 7 to 8 minutes all subjects or items on Agenda were called out, discussed and were put to vote by the House. In these circumstances the Gram Sabha deserves to be cancelled.

18. Such conclusion of the Additional Collector has been set aside by the Additional Commissioner by holding that the power conferred vide Section 153 of the Act is to ensure control and implementation of the provisions of the Act by giving directions from time to time. By Section 154 what is contemplated is that the Commissioner and the Collector have the same powers as are conferred upon them by the Maharashtra Land Revenue Code, 1966, of monitoring and controlling the functioning and working of officials subordinate to them. Similarly, by Section 155 the State has been conferred the powers to go into and decide the validity and legality of any order passed by officials of the Panchayat by calling for records and proceedings in relation thereto.

19. All such powers as are referred to in these provisions do not envisage and contemplate annulling or cancelling the Gram Sabha and decisions taken there at. Therefore, if the Additional Collector was to call for records and proceedings in relation to the Gram Sabha to verify and scrutinize them and later on set aside the same, then, he must be conferred with such specific powers. That is not covered by these provisions and therefore, he had no jurisdiction to set aside the Gram Sabha. His powers do not enable him to interfere with a Gram Sabha when Gram Sabha is properly convened and there is requisite quorum at the same. In such circumstances and when there is nothing indicated in the rules as to how much time has to be given for each subject nor is there any outer limit prescribed for conclusion of the Gram Sabha, then, the Gram Sabha should not have been cancelled. In other words, duration of meeting, time for discussion on each subjects have not been prescribed in the Rules. If they are not so prescribed, then, the finding and conclusion of the Additional Collector that the Gram Sabha was convened and concluded hastily cannot be upheld. On this basis, the Additional Commissioner proceeded to set aside the order of the Additional Collector, Pune.

20. To my mind, these observations are too wide and sweeping in nature. What the Additional Commissioner has done is to separate a Gram Sabha from Gram Panchayat or Village Panchayat and its affairs. He has proceeded on the footing that a Gram Sabha is a meeting of villagers as a whole. The meeting of Village Panchayat, its functioning, its decisions, resolutions and orders are distinct matters and the control thereof only is permissible in law. A Gram Sabha is a

distinct entity and though governed by the Act, but its functioning and its affairs are beyond powers of control envisaged by the Act. It is difficult to accept such conclusions.

21. The Bombay Village Panchayats Act, 1958 is an Act to amend and consolidate the law relating to the constitution and administration of Village Panchayats in the State of Bombay with a view to establishing a Village Panchayat for every village or group of villages and investing them with such powers and authority as may be necessary to enable them to function as units of local self-government and of development activities in rural areas, and for certain other matters. Section 3 contains definitions and the term "Gram Sabha" is defined in clause (9) as under:-

Section 3(9) "Gram Sabha" means a body consisting of persons registered in the electoral rolls relating to village comprised within the area of the Panchayat.

The term "Panchayat" is defined in Section 3(14) whereas the term "prescribed" as defined in Section 3(15) means prescribed by rules. The terms "Village" and "a group of villages" have been defined in Section 3(24) and read as under:-

Section 3(24) "Village" and "a group of villages" means the village or, as the case may be, a group of villages specified in the notification issued under clause (g) of Article 243 of the Constitution of India.

Equally the word "Village Development Committee" is defined in Section 3(24A). Importantly, the term "Panchayat" is defined in Section 3(14) to mean a Panchayat established or deemed to have been established under this Act. Section 5, therefore, appears after Section 4 under Chapter-II which deals with Gram Sabhas, Establishment and Constitution of Panchayats. Section 4 provides for Declaration of Village and Section 5 provides for Establishment of Panchayats. Section 7 provides for Meetings of Gram Sabha and reads as under:-

7. Meetings of Gram Sabha:-

(1) There shall be held at least six meetings of the Gram Sabha every financial year on such date, at such time and place, and in such manner, as may be prescribed and if the Sarpanch or in his absence the Upa-Sarpanch fails without sufficient cause to hold any of such four meetings, he shall be disqualified for continuing as Sarpanch, or as the case may be, Upa-Sarpanch or for being chosen as such for the remainder of the term of office of the members of the Panchayat; and the Secretary of the Panchayat shall also if, prima facie, found responsible of any lapse in convening such meeting, be liable to be suspended, and for being proceeded against, for such other disciplinary action as provided under the relevant rules. The decision of the Collector on the question whether or not there was such sufficient cause shall be final:

Provided that, the Sarpanch may, at any time of his own motion, and, shall, on requisition of the Standing Committee, Panchayat Samiti, or Chief Executive Officer, call a meeting of the Gram Sabha within the period specified in the

requisition; and, on failure to do so, the Chief Executive Officer shall require the Block Development Officer to call the meeting within fifteen days from the date he is so required to do. The meeting shall, notwithstanding the provisions of sub-section (3), be presided over by him or any officer authorized by the Block Development Officer, in that behalf.

Provided further that, a period of not more than three months shall be allowed to elapse between the two meetings of the Gram Sabha:

Provided also that, if the Sarpanch or Upa Sarpanch, as the case may be, fails to call any such meeting within the specified period, the Secretary shall call the meeting and it shall be presumed that such meeting has been called with the concurrence of the Sarpanch or, as the case may be, Upa Sarpanch;

(2) Any officer authorised in this behalf by the Standing Committee, Panchayat Samiti or Chief Executive Officer by general or special order shall have the right to speak in and otherwise to take part in the proceedings of a meeting of the Gram Sabha, but shall not be entitled to vote.

(3) Unless otherwise provided in this Act, the first meeting of the Gram Sabha after each general election to a Panchayat and thereafter the first meeting of every year, shall be presided over by the Sarpanch and in his absence by the Upa-Sarpanch; and all other subsequent meetings of the year of the Gram Sabha, shall be presided over by a person elected by the persons present in that meeting of the Gram Sabha.

(4) If any dispute arises as to whether a person is entitled to attend a meeting of Gram Sabha, such dispute shall be decided by the person presiding, regard being had to the entry in the list of voters for a whole village or ward thereof, as the case may be, and his decision shall be final.

(5) The meeting of the women members of the Gram Sabha, shall be held before every regular meeting of the Gram Sabha, convened under sub-section (1).

(6) The Gram Sabha shall have the disciplinary control over the Government, semi-Government and Panchayat employees working in the village including the matters relating to their daily attendance in the office. The annual evaluation of such employees shall be brought to the notice of their respective higher authorities by the Gram Sabha.

(7) The Gram Sabha shall report to the concerned Block Development Officer, the irregularities,, if any, committed, by any of such employees. The Block Development Officer shall consider such report within the period of three months from the date of its receipt. Such matters and the actions taken thereon shall be reviewed in the regular meetings of the Panchayat Samiti. If, the Block Development Officer fails to dispose of such reports within the specified period of three months, the same shall on the expiry of the said period, stand transferred to the Chief Executive Officer of the concerned Zilla Parishad for disposal, whose decision shall be final. The Chief Executive Officer of the Zilla Parishad shall take

the decision on such reports so transferred to him, within a period of three months from the date of their receipt.

(8) The Gram Sabha shall select the beneficiaries for individual beneficiary schemes of the State, or as the case may be, of the Central Government.

(9) The Gram Sabha shall generally fix the date, time and place of the next meeting of the Gram Sabha, in its previous meeting.

(10) Unless exempted by the Gram Sabha, all the Government, semi-Government and Panchayat employees working in the village shall attend the meetings of the Gram Sabha.

(11) The proceedings of every meeting of the Gram Sabha shall be prepared and maintained by the concerned Secretary of the Panchayat and in his absence, the proceedings shall be prepared by any Government, semi-Government or Panchayat employee working in the village, such as Teacher, Talathi or Anganwadi Sevika as directed by the Sarpanch and the same shall be handed over to the Panchayat for records.

Sections 8 and 8AA read as under:-

8. Panchayat to place before Gram Sabha statement of accounts etc., and duties of Gram Sabha:-

(1) The first meeting of the Gram Sabha in every financial year shall be held within two months from the commencement of that year, and the Panchayat shall place before such meeting,

(i) the annual statement of accounts;

(ii) the report of the administration of the preceding financial year;

(iii) the development and other programme of work proposed for the current financial year;

(iv) the last audit note and replies (if any) made thereto;

(v) any other matter which the Standing Committee, Panchayat Samiti or Chief Executive Officer or any officer authorised by the Standing Committee or Panchayat Samiti in this behalf, require to be placed before such meeting.

(1A) The Panchayat shall place the report of the expenditure incurred on the development activities before the Gram Sabha once in every six months, and display the information thereof on the notice board of the Panchayat.

(2) It shall be open to the Gram Sabha to discuss any or all of the matters placed before it under sub-section (1) or sub-section (1A) and the Panchayat shall consider suggestions, if any made by the Gram Sabha.

(3) A Gram Sabha shall carry out any other functions as the State Government may by general or special order require.

8AA. Powers and duties of Gram Sabha:-

It shall be competent for every Gram Sabha:

- (i) to approve the social or economic development plans, programmes and projects to be implemented by the Panchayat before such plans, programmes and projects are taken up for implementation by such Panchayat;
- (ii) to grant permission for incurring any expenditure by the Panchayat on the development schemes;
- (iii) to convey its views to the Panchayat before taking any decision by the Panchayat in respect of any proposal for acquisition of any land falling within the jurisdiction of such Panchayat, for the Government purpose, by the Land Acquisition Authority concerned.

22. Then comes Section 9 which provides for Incorporation of Panchayats whereas Section 10 provides for its constitution. Rest of the provisions in this Chapter deal with eligibility for contesting election to the Panchayat, role of the State Election Commission, manner in which elections have to be held, list of voters, persons qualified to vote and to be elected, vacation of seats, disqualifications, determination of validity of elections, enquiry by judge and procedure. Sections 15A, 16, 18, 19 to 26 provide for elections and matters in relation thereto. Section 27 onwards provide for term of office of members, commencement of term of office, resignation whereas further provisions deal with Sarpanch and Upa-Sarpanch, manner of their election, their resignation and no confidence in them. Section 36 provides for time and place of sitting of Panchayat and procedure of meetings whereas Section 37 deals with modification or cancellation of resolutions. Section 38 deals with executive power of Panchayat and functions of Sarpanch and Upa-Sarpanch whereas Section 39 deals with removal of Sarpanch and Upa-Sarpanch from office. Section 39A confers power on the Government to direct inquiry whereas Sections 40 to 44 deal with various aspects in relation to Panchayat.

23. Then comes Chapter-III which provides for administrative powers and duties of Panchayats (Section 45). Therein Sections 46 to 48 provide for matters which have to be dealt with by the Panchayat and then comes Section 49 which deals with Village Development Committees. It reads as under:-

49. Village Development Committees:-

(1) A Gram Sabha may, in consultation with the Panchayat, from amongst the members of the Panchayat, representatives of community based organizations working in the Panchayat area, village level functionaries of Panchayat, Zilla Parishad, State Government and voters, constitute one or more Village Development Committees, by whatever name called.

(2) The term of such committee shall be co-terminus with the term of the Panchayat.

(3) Such committees shall exercise such powers, discharge such duties and perform such functions of the Panchayat, as may be delegated or assigned to them by the Gram Sabha in consultation with the Panchayat, relating to the subjects and activities enumerated in Schedule I and such other works and activities related to or associated with the Panchayat as may be entrusted by the Gram Sabha, Zilla Parishad, Government or any other competent authority to the Panchayat, from time to time. The Gram Sabha may, subject to the general supervision and control of the Panchayat, regulate the procedure of such committees.

(4) The total number of the members in a Village Development Committee shall not be less than twelve and not more than twenty four:

Provided that:-

(a) not less than one third of its members shall be from amongst the members of the Panchayat;

(b) not less than one-half of its members shall be women; and

(c) such number of members, as may be specified by the Government in that behalf, shall be from the Scheduled Castes, Scheduled Tribes, Vimukta Jatis and Nomadic Tribes (hereinafter referred to as the "vulnerable class"):

Provided further that, the strength of the women members of the vulnerable class members on the Village Development Committee shall be not less than three-fourths of the total strength of such committee members, when such committee is constituted for the purpose of an activity, scheme or utility exclusively for the benefit of women or, as the case may be, for the vulnerable class;

(d) the Gram Sabha shall ordinarily nominate such women members to the Village Development Committee as recommended by Village Mahila Mandal or a Gram Sabha of the women voters specially called for the purpose, unless it has sufficient reason, to be recorded in the proceedings, to reject any such recommendation;

(e) the Gram Sabha, in its discretion, may give preference to the members of the village level institutions, if any, like Mahila Mandals, Youth Clubs, etc.;

(f) the Gram Sabha may, also invite any village level Government, semi-Government, Zilla Parishad officials or employees working in the village, such as teachers, talathis, anganwadi sevikas, village water men, village health workers, to attend any meeting or meetings of the Village Development Committee, as a special invitee for the purpose of assisting or advising it on any matter or matters. Such special invitee may take part in the deliberations in the meeting but, shall have no right to vote in such meeting.

(5) The Village Development Committee constituted under sub-section (1) shall be deemed to be a committee of the Panchayat and shall be under the overall

supervision and control of the Panchayat. The administrative machinery of the Panchayat shall assist such committee as it assists the Panchayat.

(6) The annual statement of accounts and proceedings of the Village Development Committee shall be kept and managed separately for day to day convenience but shall form an integral part of the Panchayat record, accounts and proceedings, and shall be presented through the Panchayat in the meeting of the Gram Sabha specially called for the purposes of approving annual budget and passing of the annual accounts of the Panchayat.

(7) The Panchayat shall normally not exercise the powers, discharge the duties and perform the functions entrusted to the Village Development Committee by the Gram Sabha unless, so resolved by the Gram Sabha in an extra-ordinary circumstances to be mentioned and approved by the majority of not less than two thirds of the members present and voting, in a meeting specially called for the purpose of withdrawing such powers, duties and functions of the Village Development Committee, and allowing the Panchayat to take over the same.

(8) (a) The members of the Village Development Committee, once appointed, shall not be removed or withdrawn before the completion of their term as provided in sub-section (2) except:

(i) by an express resolution passed by the Gram Sabha in a special meeting duly called for the purpose, or

(ii) when such member suffers from any of the disqualification specified in section 14 for the members of the Panchayats.

(b) Any vacancy caused by the death, resignation, removal or withdrawal, or otherwise disqualification of a member of the Village Development Committee, shall be filled up as provided under sub-section (1) read with sub-sections (2) and (4).

(9) On constitution of a new Panchayat, the Village Development Committee shall be reconstituted within forty-five days of the constitution of the new Panchayat:

Provided that, there shall be no bar for the members of the previous committee to be reappointed on the new committee, if otherwise eligible.

24. A bare perusal of the said provision, which was substituted by Maharashtra Act No. 23 of 2003 dated 01.08.2003, would indicate that a Gram Sabha may, in consultation with the Panchayat, from amongst the members of the Panchayat and other representatives constitute one or more Village Development Committees and the term of such committees shall be co-terminus with the term of the Panchayat. The powers, duties and functions of such committees are set out in sub-section (3) of Section 49 and it is for the Gram Sabha, but subject to the general supervision and control of the Panchayat, to regulate the procedure of such committees. Thereafter, there are further safeguards so that the Village Development Committees function effectively and properly. There can be joint

committees as dealt with by Section 50. The Government may vest certain lands in Panchayat and that is by Section 51. Whereas, Sections 52 and 53 deal with control on erection of buildings, obstructions and encroachments upon public streets and open sites. Section 54 deals with numbering of premises.

25. Chapter-III-A makes special provisions for Gram Sabha and Panchayat in the scheduled areas whereas Chapter-IV deals with property and fund of the Panchayat. Chapter-V provides for establishment, budget and accounts of the Panchayat. Then comes Chapter-IX which deals with levy and recovery of taxes and fees due to the Panchayat. Chapter-X provides for financial assistance to the Panchayat. Chapter-XI is entitled "control". The word "control" in legal terminology and parlance means "to restrain, to check, to regulate, to govern, to keep under check, to rule and direct, to subject to authority, superintendence." In *The Shamrao Vithal Co-operative Bank Ltd. Vs. Kasargod Pandhuranga Mallya*, the Honourable Supreme Court outlined the meaning of this term in the following words :-

6.... The word "control" is synonymous with superintendence, management or authority to direct, restrict or regulate (See p.442 of Words and Phrases (Vol.9) Permanent Edition). Control is exercised by a superior authority in exercise of its supervisory power....

Similar is the meaning ascribed or given to this term in a later decision *State of Mysore Vs. Allum Karibasappa and Others*, . Finally, in the case of *Corporation of the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and others*, , the Honourable Supreme Court holds as under:-

4. It is thus now settled by this Court that the term "control" is of a very wide connotation and amplitude and includes a large variety of powers which are incidental or consequential to achieve the powers vested in the authority concerned. In the aforesaid case, suspension from service pending a disciplinary inquiry has clearly been held to fall within the ambit of the word "control". On a parity of reasoning, therefore, the plain language of Clause (b) of Sec. 59(3), as extracted above irresistibly leads to the conclusions that the Municipal Commissioner was fully competent to suspend the respondents pending a departmental inquiry and hence the order of suspension passed against the respondents by the Municipal Commissioner did not suffer from any legal infirmity. The High Court was, therefore, in error in holding that the order of suspension passed by the Municipal Commissioner was without jurisdiction. In this view of the matter the order of the High Court cannot be maintained and has to be quashed.

Therefore, to hold that the power does not include questioning or scrutinizing the decision or resolution of a Gram Sabha would be contrary to the mandate of Chapter-XI. The Sections therein read together and harmoniously will demonstrate the sweep of the power of the State acting through various Agencies and Officials. There is nothing in Parts IX and IX-A of the Constitution of

India which dilutes the scope of the State's authority to control the affairs and administration of the Panchayat. It is not possible to agree with the learned AGP or the learned Advocate for the other Respondents that this power does not include any authority and jurisdiction to set aside the decision or act of the Gram Sabha. Accepting their argument would mean Gram Sabha is distinct from a Panchayat in so far as Village administration is concerned. That would mean that it is separate authority by itself, although Gram Sabha is creation of the Bombay Village Panchayats Act, 1958. That would not be a proper reading of the Act. In *State of U.P. and others etc. Vs. Pradhan Sangh Kshettra Samiti and others etc.*, the Honourable Supreme Court considered all three concepts, namely, "Village", "Panchayat" and "Gram Sabha" as defined in Part IX of the Constitution of India and held thus:-

7. It is common knowledge that the needs of the people change with the development in the economic, scientific and technological fields as also with the developments in transport and communication. With them, the concept of self-sufficiency and the means, mode and range of self-governance also change. What is more, the units of self-governance at the lower level being interrelated and integrated with those at the higher levels as parts of the whole scheme of administration and development in the State, have to respond to and fall in line with the growth in the size and operation of the units at the higher level to form a coordinated democratic polity and administrative machinery. The concept of grassroot or lowest level administration must, therefore, necessarily change with the advance and progress at other levels. The governing units at all levels have to fit in a pattern, and a scheme for administration both for law and order and economic growth. They have to act as vehicles of overall stability and progress. For that purpose, their constitution and functioning have to be in conformity with the larger social, political and economic goals.

Hence there cannot be any immutable social, political, economic or organisational concept of village as a self governing unit. In a developing country like ours, where the population is growing fast, where the society is in ferment on all fronts, where divisive forces of all kinds abound, where the vast majority of population is illiterate and is the victim of ignorance, superstition, blind-faith, biases and prejudices, and is shackled by tradition, and irrational customs and practices, there is an urgent need to evolve means to unite and integrate the society, to expose the populace to larger and higher goals, to imbibe in them the wider perspectives and to forge a socially cohesive front for breaking the barriers of race, caste, class, religion and region rather than to pander to the age-old, self-centered physical and mental barriers. As stated earlier, Article 40 not only does not define "village" but also does not require that the village panchayats should be organised on the basis of any particular concept of village much less the vintage concept which appears to have appealed to the High Court. There is further nothing in the Mahatma Gandhi's advocacy of "village panchayat raj" from which the High Court has taken support to suggest that the village that Mahatmaji had in mind was of a particular description or dimension. It is

amusing in this respect to note that the High Court in support of its concept of village has even gone to the extent of observing that "it must be remembered that in considering the aspirations of the people, more so at the first level of democracy, the phenomena of a case of identity of the people, their sentiments, feelings and chauvinism, cannot be forgotten" the considerations which were, with respect, farthest from the mind of Mahatmaji and against which he fought throughout his life. If separate identities, chauvinism, divisible sentiments and feelings are nurtured from the grassroot level, they are bound to erode the foundation of the unity and integrity of the country and should be the last thing on the social and political agenda of the country. On the other hand, the need of the day is to create social, political and economic entities crossing all barriers and wedded to the nationhood as the ultimate goal. Anthropological and sociological entities may be natural so far as the blood and familial relationships and attachments go and have their place in certain limited spheres. But they have no place while shaping democratic, political and administrative units. Nor are they necessarily conducive to social and economic progress. On the other hand, they may prove and have in the past proved a positive hindrance to them. Although, therefore, it is true that most of the villages have developed with the initial settlement of a family or a group of families belonging to either the same tribe or ethnic group and in that sense have their historical and sociological identity, these identities are not necessarily healthy or desirable for promoting wider and diverse interests and attaining larger goals. On the other hand, they often prove insurmountable blockades to promoting the ideals enshrined in the Preamble of our Constitution, viz., social, political and economic justice; liberty of thought and expression, belief, faith and worship; equality of status and of opportunity; and fraternity assuring the dignity of the individual and the unity and integrity of the nation. Sometimes, smaller the social, political and administrative entities, the greater the dominance of one section or the other and deeper the prejudices. The need is to organise viable social, political, economic and administrative units of optimum size at the lowest level on a rational basis keeping in mind the size of population, the needs of social and economic development, availability of resources, the transport and communication facilities, convenience of administration and other relevant factors. Old is not always gold and mere historic accidents through which the villages of the concept of High Court have developed, cannot justify their perpetuation as political and administrative units to attain the modern goals of social and economic progress or furnish the rationale for their survival as basic democratic entities. What is further forgotten is that over the years, not only the population in the rural areas has grown enormously but the complexion of the rural areas has also undergone a change. With the increasing pressure on land, there has been a steady migration from the rural to the urban and semi-urban areas. Some villages are almost deserted while others survive much below the poverty line. At the same time, some have emerged as small pockets of comparative prosperity, thanks to marginal industrial and commercial activities around them and the nearness to the urban and semi-urban areas. There is

further a limit to the number of village panchayats which may be constituted with all the overhead expenses involved in the exercise which must have a rational relation to the result sought to be achieved. In the State of U.P., there are 1,20,000 villages. Before the present exercise of constituting the village panchayats under the Act, there were 74,000 gram sabhas which are now reduced to 55,000. With the nature and range of functions entrusted to the new village panchayats under the Act, and the expenditure that may have to be incurred in constituting and running them, it can hardly be said that their number, structure and Organisation militate in any way against the concept of democracy and the principle of self-governance. Section 11-F (1) by laying down for non-hilly areas a norm of a village panchayat for every 1000 population as far as practicable and for hilly areas, for every 5 kilometres radius distance, has in fact tried to observe the principle of self-governance as closely as possible.

The first premise of the High Court's reasoning is, therefore, faulty and it has led it to build an edifice which is equally defective. It is for this reason that we are unable to appreciate the portions of the impugned judgment dealing with the sentiments, feelings, chauvinism and will of the people (pages 16-20); holding that power to specify villages vests with the people and not with the State Government and that the villages cannot simply be a revenue village (pages 21 to 25); holding that the Governor is obliged to specify a village giving due regard to the wishes of the people (pages 26-27); holding that provisions of the Act referring to establishment of Gram Sabha for a group of villages are ultra vires, and beyond the intention of the Constitution (pages 32-33); that status of Gram Sabha has been compromised and belittled in the Act itself (pages 37-38); holding that the Act in explaining the expression "gram sabha" offends the Constitution and negates the concept of local self-government (page 40); and stating that Section 11-F gives rise to misunderstanding as it has scope for overlapping and duplication in notifying and declaring areas comprising a village or group of villages into panchayat area (page-59).

8. As pointed out above, Article 243(g) of the Constitution defines village to mean "a village specified by the Governor to be village and includes a group of villages so specified". In other words, according to this definition, any existing village or a group of the existing villages may be specified by the Governor as a village for the purposes of organising a village panchayat. The definition begs the question as to what is a village which the Governor can specify as a village for the purposes of constituting the "village panchayat". It is not disputed that almost all villages in the State have been recorded in the revenue records of the respective districts, in which they are situate. No material has been placed on record to show that villages have been recorded as such in any other record. There may be some villages and new settlements which are not so recorded. There is, therefore, nothing wrong if the Governor specifies the revenue villages as villages and settlements which are not so recorded in the revenue records as villages for the purposes of constituting village panchayats. The "revenue village" is, therefore, a documented ready-made concept of village and the Governor

while acting under Article 243(g) for specifying the village may adopt the same as village. No restriction has been placed by Article 243(g) on the Governor for accepting the revenue village as a village for the purposes of constituting village panchayat. In fact, the Governor has been empowered by the said constitutional provision to declare even a group of villages as a village. If this is so, we are unable to appreciate as to why the definition of village in Section 2(t) will fall foul of the provisions of Article 243(g). Section 2(t) not only speaks of villages recorded in the revenue records as such but also includes in the definition, any area which the State Government may by general or special order declare to be a village for the purposes of the Act. The concept of village is not foreign either to the Constitution or to the State legislation. Apart from the U.P. Land Revenue Act, the concept of village finds place in other State enactments such as U.P. Village and Road Police Act, 1873 and U.P. Villages Sanitation Act, 1892, U.P. Village Courts Act, 1892, U.P. Village Panchayats Act, 1920 which was replaced by the unamended U.P. Panchayat Raj Act, 1947, U.P. District Boards Act, 1922, U.P. Local Rates Act, 1914 which latter two Acts were replaced by the U.P. Kshettra Samities and Zila Parishads Adhiniyam, 1961. If, therefore, there is no restriction placed by the Constitution on the Governor in accepting any inhabited rural area as a village, it is difficult to appreciate how the Act is violative of the Constitution when the State Government declares any area including a revenue village as a village. In any case, the Court cannot substitute its concept of village for that of the State Government.

9.... In the present case, by the notification dated 9th May, 1994 issued u/s 96-A of the Act by the Governor, the powers of the State Government u/s 3 and Section 11-F of the Act were delegated to the Director, Panchayat Raj, U.P., Lucknow [hereinafter referred to as the "Director"]. Pursuant to this delegation, on 4th August, 1994 the Director issued notification establishing gram sabhas u/s 3 and declaring panchayat areas u/s 11-F of the Act. This was a composite notification both for establishing gram sabhas and declaring panchayat areas. It is true that neither in the notification dated 9th May, 1994 delegating powers under Sections 3 and 11-F to the Director nor in the notification dated 4th August, 1994 establishing gram sabhas and declaring the panchayat areas, there is a mention either of Section 2 (t) of the Act or of the power delegated to declare the village under the said provision. However, keeping in mind the scheme of the Act and the provisions of Sections 2(t), 3 and 11-F, it is clear that Section 2(t) merely defines "village" and by itself does not give power to the State Government to declare the village. It states that village means "any local area recorded as a village in the revenue records of the district in which it is situate and includes any area which the State Government may by general or special order declare to be a village for the purposes of the Act. The said section is therefore in two parts. By the first part, it adopts the villages recorded in the revenue records of the districts as villages for the purposes of the Act. By the second part, it accepts as village any area which the State Government may for the purposes of the Act declare as such village. There is no separate provision

giving power to the State Government to declare any area as village for the purposes of the Act. The legislature, probably rightly thought that since the power given to the State Government by Section 3 to establish a gram sabha and by Section 11-F to declare the panchayat area comprise in them the power to declare the village within the meaning of Section 2(t) and particularly of the second part of it, was not necessary to make an independent provision to enable the State Government to declare the village for the purposes of the Act. It cannot be said that this view of the State Government is wrong for it is not possible to establish a gram sabha or declare the panchayat area unless the village for which such gram sabha is to be established and its area are first determined. The notification which is issued on 4th August, 1994 further shows that the gram sabha which is inappropriately titled as gram panchayats are established for villages within the meaning of Section 2 (t) and they comprise the area either of one revenue village or of more revenue villages than one.....

10. The High Court has also held that there is a substantial difference between the definition of "gram sabha" in Article 243 (b) of the Constitution and in Section 2(g) of the Act and, therefore the latter definition is ultra vires the provisions of the Constitution. Frankly, we have been unable to understand the reasoning of the High Court in that behalf Article 243(b) of the Constitution defines "gram sabha" to mean "a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of panchayat at the village level" whereas Section 2(g) of the Act defines "gram sabha" to means "a body established u/s 3 of the Act consisting of persons registered in the electoral rolls relating to village comprised within the area of a gram panchayat". The High Court has taken exception to the word "established" in Section 2(g) of the Act. It must be remembered in this connection that there is no provision in Part IX of the Constitution such as Section 3 of the Act for establishing a gram sabha for a village or a group of villages by such name as may be specified, and to name the gram sabha in the name of the village having the largest population when the gram sabha is established for a group of villages. One may have quarrel with the use of the expression "established" in this connection. For it is true to say that gram sabha is nothing but the electorate of the village or villages comprised within the area of a gram panchayat and in that sense there is nothing to be established as far as gram sabha is concerned. What is to be established is the panchayat for a particular area and for the electorate constituted in that area. The moment the panchayat area is declared the electorate comprised in it gets automatically constituted into the gram sabha. It no longer remains merely an electorate. Whether such constitution is called establishment is immaterial. These are matters of description. Having followed a particular pattern, the legislature has used the expression "established" also in connection with the gram sabha along with the panchayat. We, however, do not see how the use of the said expression makes any difference to the intendment of the said provision and how the said provision goes counter to the provisions of the Constitution. Surely, it is not suggested that the gram sabha that the Act seeks to establish does not

consist of the entire electorate in the panchayat area or excludes some of it. So long as, therefore, the definition given in Section 2(g) and the provisions of Section 3 of the Act do not in any way detract from the provisions of Article 243 (b) or their intendment, they cannot be held ultra vires the provisions of the Constitution.....

The High Court has also held that the provisions of Section 3 of the Act which empower the State Government to establish a gram sabha for a group of villages by the name of the village having the largest population would result in the loss of identity of the village or villages with smaller population comprised in the gram sabha. The High Court has committed an obvious error here in that it has identified the village with the gram sabha and the village panchayat. When villages are united to form a gram sabha and a village panchayat, they do not lose their name and identity as separate villages. They come together only for the purpose of running the gram panchayat. In that process, they may also stand to gain inasmuch as they may have access to more resources, and the benefit from bigger schemes and projects and availability of better infrastructure and equipment to implement the projects and schemes.....

26. Thus, the survey of provisions and particularly those referred by me hereinabove, leave me in no manner of doubt that if a Gram Sabha in some matters is subjected to supervision of the Panchayat and the Panchayat in turn is bound by authority of the State in terms of Chapter-XI, then, the Standing Committee, Panchayat Samiti, the Chief Executive Officer of Zilla Parishad, the State are conferred with varied powers to deal with a situation of default or deliberate act of omission and commission by the Panchayat. To then hold that the Panchayat is bound by orders, directions and decisions of the State, but a Gram Sabha is not, would run counter to the object and purpose of inserting Chapter-XI. In this behalf, one may usefully refer to Sections 152 to 155 of the Act. They read as under:-

152. Panchayat to conform to instructions given by Parishad and Samiti:-

A Panchayat shall conform to any instructions that may from time to time, be given to it by the Zilla Parishad or the Panchayat Samiti or both, in the execution by the Panchayat of its duties and functions under this Act.

153. Inquiry by officers of State Government:-

(1) The State Government may order an inquiry to be held by any officer appointed by it in this behalf into any matters concerning the village administration of any Panchayat or any matters with respect to which the sanction, approval, consent or order of the State Government is required by this Act.

(2) The Officer holding such inquiry shall have the powers of a Court under the Code of Civil Procedure, 1908 (V of 1908), to take evidence and to compel the attendance of witnesses and the production of documents for the purposes of the

inquiry.

(3) The State Government may make orders so as to the cost of inquiries under sub-section (1) and as to the parties by whom and the funds out of which they shall be paid and any such order may, on the application of the State Government or of any person named therein, be executed as if it were a decree of a Civil Court.

153A. Power of State Government to give instructions and issue of directions to the Panchayats:-

The State Government may give to any Panchayat general instructions as to matters of policy to be followed by the Panchayat in respect of its duties or functions, and in particular, it may issue directions in the interest of the national or State Development plans in respect of the execution and maintenance of works and development schemes. Upon the issue of such instructions and directions it shall be the duty of the Panchayat to give effect to such instructions and directions.

153B. Power of State Government to give instructions and issue directions to Gram Sabha or Panchayat in Scheduled Areas:-

The State Government may give to any Gram Sabha or Panchayat in the scheduled areas general or special instructions as to the matters of policy to be followed by the Gram Sabha or Panchayat, as the case may be, in the interest of the tribals in the scheduled areas with reference to the implementation of or compliance with the provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996. Upon the issue of such instructions or directions it shall be the duty of the Gram Sabha or the Panchayat, as the case may be, to give effect to such instructions or directions.

154. Authority of State Government, Commissioner and Collectors:-

(1) In all matters connected with this Act, the State Government and the Commissioners and Collectors shall have and exercise the same authority and control over the Commissioner, the Collectors and their subordinates, respectively as they have and exercise over them in the general and revenue administration.

(2) In all matters connected with this Act, the State Government shall have and exercise the same authority and control over the Zilla Parishad and the Panchayat Samiti as it has and exercises over them under the Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 (Mah. V of 1962).

155. State Government may call for proceedings:-

The State Government may call for and examine the record of proceedings of the Zilla Parishad, Panchayat Samiti or Standing Committee, as the case may be or of any officer for the purpose of satisfying itself as to the legality or propriety of any order passed and may revise or modify the order as it shall deem just.

27. To my mind, therefore, it would not be proper to construe these provisions narrowly and read into them any restrictions much less of the nature read by the Additional Commissioner in this case. That would mean that a Gram Sabha can perform such acts or take such decisions or pass such resolutions as it desires or deems fit and proper, even contrary to the object and purpose of the Act and by brushing aside the same. In that event, such acts cannot be remedied or corrected is a improper and incomplete or erroneous reading of the provisions in question. That would make mockery of power of control conferred by Chapter-XI of the Act. Such is not intent of the Legislature and once the concept of Gram Sabha is understood as above. If a Gram Sabha is not a higher or superior body, but consists of persons registered in the electoral rolls relating to a village comprised within the area of the Panchayat and is understood as such, then, it is definitely a prominent and major part of village set up. However, it essentially performs the duties enumerated in Section 8AA of the Act. Its powers and duties are to approve the social or economic development plans, programmes and projects to be implemented by the Panchayat before such plans, programmes and projects are taken up for implementation by such Panchayat, to grant permission for incurring any expenditure by the Panchayat on development schemes and to convey its views to the Panchayat before taking any decision by the Panchayat in respect of any proposal for acquisition of any land falling within the jurisdiction of the Panchayat for the Government purpose, by the Land Authority concerned. Thus, it is a body comprising of the electorate of the village. It is a body which approves all plans, programmes and projects to be implemented by the Panchayat before they are taken up for implementation. Thus, the Panchayat will have to seek approval of the Gram Sabha before it implements the plans, programmes and projects. The Gram Sabha also grants permission for incurring any expenditure by the Panchayat on development schemes and equally, conveys its views to the Panchayat in the matter of any proposal for acquisition of any land. Nonetheless if one peruses Section 8 carefully what the Gram Sabha can do, in the matters enumerated in sub-section (1) and sub-section (1A) of Section 8, is to discuss any or all of these matters and make suggestions and which suggestions have to be considered by the Panchayat. Moreover, the mandate is that a Gram Sabha shall carry out any other functions as the State Government may by general or special order require. Therefore, to hold that a Gram Sabha is not answerable to the State Government or is not bound by any directions of the State Government, would mean that a Gram Sabha is free to act contrary to the mandate of the Act itself or to the authority of the State as a controlling body. That is not envisaged by the Act and therefore, it will not be proper on my part to accept the submissions of the Learned Counsel appearing for the Respondents including the learned AGP. That would mean that a Gram Sabha consisting of the electorate of a village can act contrary to interest of the village and the Panchayat and equally the State must accept its decisions, recommendations and suggestions straightaway. A helpless State is not conducive to democracy or democratic form of the Government. That would mean democracy itself is in peril and danger. It cannot

be presumed that in all matters the Gram Sabha will act necessarily in the interest of villagers or in public good. It would mean that a Gram Sabha recommendation and suggestion to the Panchayat in all matters, is beyond scrutiny and must be acted upon by the Panchayat. Equally it must be accepted by the State. Even if the role of a Gram Sabha is taken as a body advising the Panchayat or giving directions to the Panchayat in the matters covered by Sections 8 and 8AA of the Act, still the role of the State as a superior controlling and monitoring body is not ruled out, but rather provided by the Statute itself. Therefore, to construe the provisions in the manner suggested by the Respondents would render Chapter-XI redundant and derogatory. Any interpretation which results in this, has to be avoided. Without diluting the rigor of the provisions regarding a Gram Sabha, its functions and duties, its role in the village affairs, the power of control and supervision can be exercised by the State.

28. In a recent decision of the Honourable Supreme Court in the case of Village Panchayat, Calangute v/s Additional Director of Panchayat-II and others, reported in (2012) 7 SCC 550, what the Honourable Supreme Court has held would somewhat reinforce the conclusion with regard to the role of the Panchayat, village administration and the people connected with the village affairs. In this behalf, paragraphs 11, 12, 21, 22 and 23 of this judgment are relevant, which read thus:-

11. In 1992, the Constitution (Seventy-third Amendment) Act was introduced in Parliament and the existing Part IX was substituted. The background in which this amendment was introduced is evinced from the first two paragraphs of the Statement of Objects and Reasons, which are extracted below:

1. Though the Panchayati Raj institutions have been in existence for a long time, it has been observed that these institutions have not been able to acquire the status and dignity of viable and responsive people's bodies due to a number of reasons including absence of regular elections, prolonged supersessions, insufficient representation of weaker sections like Scheduled Castes, Scheduled Tribes and women, inadequate devolution of powers and lack of financial resources.

2. Article 40 of the Constitution which enshrines one of the directive principles of State Policy lays down that the State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. In the light of the experience in the last forty years and in view of the shortcomings which have been observed, it is considered that there is an imperative need to enshrine in the Constitution certain basic and essential features of Panchayati Raj institutions to impart certainty, continuity and strength to them.

12. The aforesaid amendment is a turning point in the history of local self-Government. By this amendment panchayat became an "institution of self-governance" -Article 243(d) and comprehensive provisions came to be

incorporated for democratic decentralization of governance on the Gandhian principle of participatory democracy. The Panchayati Raj institutions structured under the Seventy-third Amendment are meant to bring about sweeping changes in the governance at the grass root level. By this amendment, Parliament introduced three-tier system of Panchayati Raj institutions at village, block and district levels. Article 243-C provides for composition of a panchayat and filling up of the seats in a panchayat by direct election. Article 243-D provides for reservation of seats and Article 243-E provides for duration of panchayat. Article 243-F enumerates the grounds of disqualification of membership of the panchayat and Article 243-G prescribes the powers, authority and responsibilities of a panchayat.

21. The Preamble, Part IV and Part IX of the Constitution must guide our understanding of the Panchayati Raj institutions and the role they play in the lives of the people in rural parts of the country. The conceptualisation of the village panchayat as a unit of self-government having the responsibility to promote social justice and economic development and as a representative of the people within its jurisdiction must be borne in mind while interpreting the laws enacted by the State which seek to define the ambit and scope of the powers and the functions of panchayats at various levels.

22. An analysis of Article 40 and Articles 243 to 243-O shows that the Framers of the Constitution had envisaged the village panchayat to be the foundation of the country's political democracy-a decentralised form of government where each village was to be responsible for its own affairs. By enacting the Constitution (Seventy-third Amendment) Act, Parliament has attempted to remedy the defects and remove the deficiencies of the Panchayati Raj system evolved after independence, which failed to live up to the expectation of the people in rural India. The provisions contained in Part IX provide firm basis for self-governance by the people at the grass root through the institution of Panchayats at different levels.

23. For achieving the objectives enshrined in Part IX of the Constitution, the State Legislatures have enacted laws and made provision for devolution of powers upon and assigned various functions listed in the Eleventh Schedule to the panchayats. The primary focus of the subjects enumerated in the Eleventh Schedule is on social and economic development of the rural parts of the country by conferring upon the panchayat the status of a constitutional body. Parliament has ensured that the panchayats would no longer perform the role of simply executing the programs and policies evolved by the political executive of the State. By virtue of the provisions contained in Part IX, the panchayats have been empowered to formulate and implement their own programs of economic development and social justice in tune with their status as the third tier of the government which is mandated to represent the interests of the people living within its jurisdiction. The system of panchayats envisaged in this Part aims at establishing strong and accountable systems of governance that will in turn

ensure more equitable distribution of resources in a manner beneficial to all.

29. As a result of the above discussion, it is not possible to agree with the Commissioner that the Collector had no power to scrutinize the proceedings of Gram Sabha of the relevant date and equally, the Commissioner possesses no such power. The conclusion of the Commissioner means even the State does not possess such power and that is unsustainable considering the plain language of the Statute in question.

30. Once the above view is taken, then, the apprehension expressed by the Learned Counsel appearing for the Respondents that the Collectors and the Commissioners and equally the State Government may call for records of every Gram Sabha and set at naught every decision or resolution or act of the Gram Sabha, is not well founded. This cannot be done as a matter of routine or normal course. A complaint with regard to a specific Gram Sabha and equally which action or decision in the same, is impugned is necessary to be set out with details for the State and its agencies and officers to act. Equally, there must be cogent, proper and complete material enabling the State to take suo-motu action. It is not that accountability and answerability of a Gram Sabha to the State means a Gram Sabha surrenders its power to the State. The State is expected to act as a patriarch, namely, as a parental body giving guidance, issuing directions and undertaking scrutiny of Gram Sabha in exceptional and specific cases. The State cannot ignore recommendations and views of the Gram Sabhas merely because they express a different political or social view point. In democracy the freedom of people is paramount. Their role is predominant because it is people residing in village and registered as voters of a village, who are expected to participate in affairs and administration of the village through Gram Sabha. Their views may not be politically palatable or acceptable. As long as the proceedings of Gram Sabha are not vitiated by fraud, its acts and decisions do not usurp the authority of the State or the Gram Sabha does something which is contrary to or defeats the object and purpose of setting up institutions or units of the self-government at village level, the Gram Sabha does something which is beyond the powers conferred in it by Part-IX of the Constitution of India, the Gram Sabha does something which shocks the conscience of any reasonable, peace loving and law abiding person inasmuch as public interest or public good is disregarded, completely given a go bye by the Gram Sabha, it will not be permissible for the State to intervene. Thus, the proceedings should be such as would undermine the role and authority of the State as a larger entity and incharge of upholding public trust and public interest. It is only then the State can interfere and not otherwise. There are instances for illustration of a call by Gram Sabha of social boycott, withdrawal of essential services to any particular community, giving any call or taking any decision which affects the social fabric in such a manner that the constitutional goal as enshrined in the Preamble to the Constitution of India is defeated to such an extent that there is a apprehension of the breakdown of the constitutional order. Ultimately, Gram Sabha comprises of the electorate of a village. They are

residents of a village, but citizens of India. They have to perform the duties, which are fundamental as enshrined by Article 51A of the Constitution of India. Therefore, their role as a citizen of India who enjoys fundamental rights which are subject to reasonable restrictions and equally has to abide by his fundamental duties, cannot be forgotten and overlooked. Every right has a corresponding duty without which it is incomplete. Village and local interests and the larger role as emphasized by the Honourable Supreme Court in the above decision have to be balanced and a reasonable approach is required to be taken in such matters.

31. Thus, no general rule can be laid down, but interference and intervention in the exercise of people's power should be not routine or as a matter of course, but in rare and deserving cases. The satisfaction on all these and such matters must be recorded before the Gram Sabha is interfered and its acts and decisions are set aside. Thus, the interference and intervention should be minimum and exceptional. The Authorities have to assign reasons while arriving at a satisfaction that the Gram Sabha as a whole or qua a particular act should be set aside. If once the above conclusion is arrived at, then, ultimate act of the Gram Sabha in this case need not be interfered with. If the above tests are applied and which alone can be applied, to my mind, the decision in the instant case of the Gram Sabha is not of such nature which requires interference or intervention by the State. It appears to be a political dispute and on account of political enmity that the complaint was made. The Gram Sabha has not done anything beyond constituting another Rural Health, Nutrition, Water Supply and Sanitation Committee. That the earlier Committee is displaced and a new committee has been put in place which does not include the Petitioner, is no ground to interfere in this case. This Committee is functional since 2008. After a lapse of nearly four years it will be futile to examine the grievance and that too of a political nature. The Gram Sabha has not done something by which village interests are surrendered or sacrificed or given a go bye. It has not done something by which village administration itself is in jeopardy. Further, it has not called upon the Panchayat to do anything by which one can conclude that the object and purpose of the Act itself is defeated and frustrated. If merely a Committee is replaced and that decision was taken expeditiously inasmuch as the meeting concluded in 08 minutes, by itself and without anything more is no ground to interfere and intervene. If as alleged by the Petitioner about 1000 villagers marched to the Office of Block Development Officer complaining about the Gram Sabha, but in absence of any material of the above nature, this itself will not enable the Collector to set aside the Gram Sabha. The Commissioner, therefore, was in no error while setting aside the decision of the Collector. However, that is a conclusion which can be sustained on merits and not on the ground of lack of power or jurisdiction in the Collector, as erroneously held. Ordinarily, therefore, the matter should have been remanded to the Commissioner, Pune Division for scrutiny of the order of the Collector on merits, but finding that there was nothing in the complaint which would warrant interference and intervention in

the Gram Sabha of 15.08.2008, this course need not be adopted. For the reasons enumerated above, this is not a fit case for interference in writ jurisdiction, which is equitable and discretionary. Thus, while upholding the final conclusion of the Commissioner in setting aside the order of the Collector, but on different grounds, I proceed to dismiss this Writ Petition. Rule is discharged, but without any order as to costs.