

(2006) 01 AHC CK 0100

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 14451 of 2002

Hari Om Yadav

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 13-01-2006

Acts Referred:

Constitution of India, 1950 — Article 101(1)(2), 13, 13(1), 13(2), 158
Hindu Adoptions and Maintenance Act, 1956 — Section 12, 14, 7, 8
Penal Code, 1860 (IPC) — Section 272, 273, 274, 275, 276
University Grants Commission Act, 1956 — Section 10(20A), 10(21), 10(22),
10(22B), 10(23BB)
Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 — Rule 40(3),
19, 27, 27A, 27A(1)
Uttar Pradesh Municipalities Act, 1916 — Section 54(2)

Citation : (2006) 1 AWC 771

Hon'ble Judges : S. Rafat Alam, J; Poonam Srivastava, J

Bench : Division Bench

Advocate : S.P. Gupta and Yashwant Varma, for the Appellant; Yogesh Kumar Saxena, B.D. Mandhyan, P.K. Mishra, Aditya Nerain, Anil Kumar, Satish Mandhyan and Chandra Shekhsr Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

S. Rafat Alam and Poonam Srivastava, JJ.—In the instant petition sole petitioner has challenged the constitutional validity of Section 27-A of the U.P. Kshetriya Panchayats and Zila Panchayats Adhiniyam, 1961 U.P. Act No. 53 of 1961 (hereinafter referred to as "1961 Act"), which imposes bar on legislatures and holders of certain offices oecoming and continuing as Pramukh, Up Pramukh, Adhyaksn and Jpadhyaksh.

2. Heard Shri S.P. Gupta, Senior Advocate, assisted by Mr. Yashwant Vermo, learner counsel for the petitioner, Shri Chandra Shekhar Singh, learned Standing Counsel appearing for the State, Shri P.K. Mishra, learned counsel appearing for the State Election Commission, Shri B.D. Madhyan, learned Senior Advocate* assisted by Shri Satish Madhyan, learned Senior Counsel appearing tor Shri

Brijendra Singh son of Ram Bharosey Lal, newly impleaded respondent, who has filed impleadment application as he is elected member from Ward No. 22 of Zila Panchayat, Firozabad. He has staked his claim to the office of Adhyaksh, which has become vacant on account of previous Adhyaksh namely, Hari Om Yadav, petitioner having been elected as Member of Legislative Assembly (hereinafter referred to as "M.L.A.").

3. Counter and rejoinder affidavits have been exchanged. As the parties have agreed that the writ petition may be decided finally, we have proceeded to hear counsel for the respective parties to decide the case finally.

4. The facts, giving rise to the instant dispute, are that on 19.5.2000 the petitioner was elected as a member of Zila Panchayat, Firozabad. Thereafter on 6th August, 2000 he was elected as Adhyaksh, Zila Panchayat, Firozabad. The petitioner while still in office of Adhyaksh contested the election for the membership of 14th Legislative Assembly of U.P. from the constituency of Shikohabad. The elections were held in February, 2002 and he was elected on 24.2.2002. The result was published in the Gazette of Uttar Pradesh. As a result of election of the petitioner as a member of 14th legislative assembly of Uttar Pradesh, by operation of law u/s 27-A (1)(b) of 1961 Act a casual vacancy occurred in the office of Pramukh of Zila Panchayat, Firozabad. This has given rise to the present writ petition assailing the constitutional validity of Section 27-A by the petitioner on the ground that it is unconstitutional, being in conflict with the scheme of Part IX of the constitution of India. The petitioner besides seeking declaration of Section 27-A of 1961 Act as unconstitutional and inoperative after enforcement of Part IX of the Constitution of India has further prayed for mandamus compelling the respondents from enforcing the provision of Section 27-A of 1961 Act in respect of the petitioner.

5. A Division Bench of this Court had passed an interim order on 30th April, 2000 directing that the casual vacancy in the office of Adhyaksh that may have occurred due to election of the petitioner shall not be filled up.

6. The argument on behalf of the petitioner is that the institutions like Zila panchayats are local Self Government at the village level. There are other Institutions at the intermediate and district level such as municipalities and municipal corporations. The main emphasis of the arguments of petitioner is that after the insertion and enforcement of Part IX of the constitution of India by virtue of the Seventy Third Amendment Act of 1992, these institutions became Self Government.

7. The argument advanced by Shri S.P. Gupta, learned Senior Counsel for the petitioner is that the institutions such as Panchayats at village level, Intermediate level, district level and municipalities including municipal corporations became permanent features of governance by insertion of Part IX and IX-A of the Constitution, Seventy Third Amendment, 1992. These institutions were previously creatures of State Legislation. On number of occasions, their existence

depended on the discretion of the State Government to supersede or dissolve them but later by making provisions regarding Constitution, composition, powers and functions of these bodies; after the insertion of Part IX and IX-A of the Constitution, the position stands altered. After Seventy Third Amendment their existence and continuance are now matters of governance under the Constitution. These local selfbodies are now constitutional bodies in fulfillment of directive principles of Article 40 of the Constitution of India. These constituents at the local level now constitute third tier of a government. It has been submitted that the Chairperson of Panchayat is constitutional and is an essential component of the, Panchayat. He has tried to draw a parallel between Adhyaksh of Panchayat to that of the Speaker or Deputy Speaker of, the Parliament of the state Legislature.

8. Shri S.P. Gupta, learned Senior Counsel has argued that Article 243(C)(iv) provides that the Chairperson and members of Panchayat, whether or not chosen by direct election, shall have a right to vote in the meeting of, the Panchayat. Similarly, under the constitutional scheme the membership of M.L.A., whether has a right to vote, is not inconsistent with the composition of the Panchayat. Thus, the necessary conclusion is that the Constitution alone prescribes qualification for eligibility of Chairperson of Panchayat at intermediate level and district level, as laid down by the Constitution, and the requirement is that he or she should be a member of Panchayat. The disqualification is laid down in Article 243 F, but this is in regard to a member of a Panchayat but no such disqualification is prescribed by the Constitution for the Chairperson. It is, therefore, submitted that Adhyaksh, being a constitutional component of the Panchayat, the State enactment cannot take away the right of the petitioner from continuing as such. It has further been argued that whenever the intention of the Constitution is that a person, who happens to hold more than one office should discontinue in one, then there is a specific provision creating a clear bar in the Constitution.

9. Shri S.P. Gupta, learned Senior Advocate after referring to Article 59 of the [Constitution of India further urged if the intention of the Constitution was that a person elected as Adhyaksh of Panchayat shall not continue to hold two offices simultaneously then the Constitution should have specifically mentioned as it is provided in Article 59, which restricts the president to continue as a member of two houses, which is not provided in Chapter IX. Argument proceeds that there is no such bar in the Constitution to hold office of M.L.A. and a member of Zila Panchayat and, therefore, by enactment, debarring an Adhyaksh to continue in his office, as M.L.A., is contrary to the scheme provided in Part IX and IX-A of the Constitution, The enactment requiring the Chairperson not to continue in the office of Adhyaksh should be held to be unconstitutional and the restriction imposed by the State Legislature on the basis of Section 27-A (1)(b) of the 1961 Act, being inconsistent with the scheme of the Constitution, is invalid and ultra vires to the provisions of the Constitution.

10. Lastly, it has been argued by the learned counsel that it is necessary to examine the provisions of Section 27-A (1)(b) from another angle. The principle of interpretation of statute is that if a provision is not made in the statute, which may have been otherwise made, it should be construed that the intention is that the said provision is not contemplated in that statute. To highlight his arguments reliance has been placed on the following decisions of the Hon''ble Apex Court in the Cases of: -

1. Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. Vs. Custodian of Vested Forests, Palghat and another, and

2. Smt. Vijayalakshamma and Another Vs. B.T. Shankar,

11. The petitioner further urged that consequent upon the enforcement of the provisions of Part IX of the Constitution further changes were made. The Zila Parishad was substituted by Zila Panchayat and the new Act was called U.P. Kshetriya Panchayats and Zila Parishad Adhiniyam, 1961. On the advent of Part IX of the Constitution many other changes in the old Zila Parishad were made by the U.P. Panchayat Laws (Amendment Act, 1994), On the basis of the aforesaid arguments learned counsel for the petitioner has concluded that no law can be made by legislature laying down disqualification of a Chairperson by the State enactment, as has been done in the instant case, since Part IX is silent regarding disqualification of a person to continue as Adhyaksh Zila Panchayat subsequent, to his being elected as an M.L.A. or M.P. ;

12. In support of the aforesaid submission learned Senior Counsel appearing for the petitioner relied upon the following judgments of the Hon''ble Apex Court in the cases of: -

1 M/s. Oxford University Press etc. Vs. Commissioner of Income Tax,

2. Krishi Utpadan Mandi Samiti and Others Vs. Pillibhit Pantnagar Beej Ltd. and Another,

3. Union of India (UOI) Vs. Shiv Dayal Soin and Sons Pvt. Ltd. and Others, and

4. Orissa State Warehousing Corporation Vs. Commissioner of Income Tax,

13. He further, referring to the judgments of the Hon''ble Apex Court in above cases, urged that since the Constitution is silent in respect of any restriction for holding the dual office of Adhyaksh Zila Panchayat and Member of Legislative Assembly, it should be construed that as a member of Zila Panchaya* the petitioner does not cease to continue as a member after he is elected as an M.L.A. or M.P. Similarly since Constitution is silent regarding Adhyaksh as well, the State legislature cannot impose a restriction not contemplated by the Constitution. Therefore, the provisions of Section 27-A (b) of the Act is in direct conflict and is inconsistent with the Constitution of India and is liable to be struck down. It is also submitted that besides the impugned provisions of the Act being unconstitutional, the same is arbitrary, undemocratic and leaves the elected

Adhyaksh of Zila Panchayat without any choice after he is elected as Member of Legislative Assembly.

14. Shri Chandra Shekhar Singh, learned Standing Counsel has filed a detailed counter affidavit and refuted each and every argument of Shri S.P. Gupta. The submission of the learned Standing Counsel is that Article 245 of the Constitution specifically clothes the legislature of the State to legislate subject to the provisions of the Constitution and similarly Article 246 deals with the distribution of the legislative powers between the Union and the State Legislature with The reference to the different list in Seventh Schedule. Learned Standing Counsel in support of his submission also refers and relies to the following judgments of the Hon"ble Apex Court as well as this Court: -

- 1 Javed and Others Vs. State of Haryana and Others,
2. Anukjul Chandra Pradhan v. Union of India AIR 1999 SC 2814
3. State of Punjab and Others Vs. Bhajan Singh and Another,
4. Mahendra Kumar Shastri Vs. Union of India (UOI) and Another,
5. Jumuna Prasad Mukhariya and Others Vs. Lachhi Ram and Others,
- 6 N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others,
7. Jyoti Basu and Others Vs. Debi Ghosal and Others, ; and
8. State of U.P. v. C.O.D., Cheoki (1997) 2 UPLBEC 793
9. Buddhan Chowdhary v. State of Bihar 1955 SC 191
10. Bar Council of U.P. v. State of U.P. 1973 SC 231;
11. Abdul Qayyum Vs. State of U.P. and others,
12. State of U.P. and others etc. Vs. Pradhan Sangh Kshettra Samiti and others etc., and
13. Bipinchandra Parshottamdas Patel (Vakil) Vs. State of Gujarat and Others,
15. Contention of the State-respondent is that subject to the provisions of this Constitution the object of Articles 245 and 246 is only to distribute the legislative powers and not to exempt them from any of the limitations, which are imposed by the other provisions of the Constitution upon legislative powers, though each legislature in India has plenary powers, both Union and State Legislature have their powers but the same is limited by (a) The fundamental right guaranteed by the Constitution; (b) The limitation imposed by the entries in the legislative list in the 7th Schedule as to the subject matter on which State legislature may legislate; (c) other mandatory provision of the Constitution, which expressly imposes limitation upon the powers of legislature -such as Articles 286, 301 and 303 of the Constitution. Learned Standing Counsel emphasized that the powers to legislate cannot be fettered by anything outside the purview of the

Constitution. Article 243C do not provide any restriction on the legislative powers of the State legislature. On plain reading of two provisions of Articles 243C and 245, it is clear that it cannot be read that the intention of the Constitution was to impose any limitation on the legislative powers of the State. The phrase "subject to the provisions of this Constitution..." cannot be read while interpreting Article 243C as if it imposes a limitation on the legislative powers of the State, which is otherwise available by virtue of Article 245, 246 read with entry 5 list II. It is correct that entry 5 list II empowers the State legislature to legislate with respect to any subject relating to local government including the, Constitution of such local authority. The Constitution of Panchayat, as provided in Article 243B, and composition of Panchayat In Article 243C does not limit the powers of State legislature. In fact, it includes the ancillary powers for the election, nomination and other matters including disqualification for holding the. post of Chairperson of a local authority as well as the settlement of dispute arising therefrom. The legislative powers of the State has not been curtailed by Chapter IX of the Constitution. In fact by introducing 73rd Amendment it was to give effect to the idea, as intended in Article 40 of the Constitution. Learned Standing Counsel has placed reliance on a number of decisions decided by the Hon"ble Apex Court including Javed and Ors. v. State of Haryana, (supra) on the basis of the aforesaid decision it has been argued by the learned Standing Counsel that the purpose of Section 27-A (b) is that a person should hold only one office so that he can effectively discharge his duties and may not be treated as mere status symbol. Sections 56 (2) & 58 of the Act prescribes duty of Adhyaksh of Panchayat, which is of such a nature, that it requires the Adhyaksh to be constantly present and a complete involvement in the affairs of the Panchayat. Admittedly, if the Adhyaksh is elected as a Member of Legislative Assembly or Member of Parliament, he double responsibility. It is the bounded duty to look will be burdened by after the welfare of his constituency and in the circumstances, it would be next to impossible to hold the dual charge.

16. Learned Standing Counsel has also emphasized, the the Court should draw the presumption that the legislature was well within its competence in putting an embargo on an elected Member of Legislative Assembly to continue as Adhyaksh Zila Panchayat. The court should not give a restrictive meaning to the provision of the Act under challenge.

17. Counter affidavit has also been filed by Shri Satish Madhyan, Advocate on behalf of newly impleaded respondent, who is also of member of Panchayat and is claimant for the post of Adhyaksh, As the petitioner is, liable to vacate the seat of Adhyaksh after being elected M.L.A. He has supported the arguments of the learned Standing Counsel.

18. We have given careful consideration to the arguments advanced on both sides and gone through various decisions cited on behalf of the petitioner as well as on behalf of the State. Before proceeding to discuss the rival submissions made on behalf of the parties, it would be useful to have a close look to the

various provisions cited by the learned counsel for the parties and which are necessary for the consideration of the issues raised by them.

19. In order to impart certainty, continuity and strength to certain basic and essential features of the Panchayat Raj Institution under 73rd Amendment of the Constitution, Article 243 or 243-O was enacted, which came into force on 24.4.1993, inserting Part IX of the Constitution relating to Panchayat. Some of the Articles relevant for the purposes of present dispute, referred to by the learned counsel for the parties, are reproduced below:-

243-B. 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 accordance with law " State having population " not exceeding twenty lakhs.

243-C. Composition of Panchayats -

(1) Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats;

Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State.

(2) All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area

(3) The Legislature of a State may, by law, provide for the representation -

(a) of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level, or in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level;

(b) of the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the district level;

(c) of the members of the House of the People and the Members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly a Panchayat area at a level other than the village level, in such Panchayat;

(d) of the members of the Council of States and the Members of the Legislative Council of the State, where they are registered as electors within:-

(i) a Panchayat area at the intermediate level, in Panchayat at the intermediate level;

(ii) a Panchayat area at the district level, in Panchayat at the district level.

(4) The Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayats.

(5) The Chairperson of -

(a) A Panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide, and

(b) A Panchayat at the intermediate level or district level shall be elected by, and from amongst, the elected members thereof."

243-D- Reservation of seats. -

(1) Seats shall be reserved for -

(a) the Scheduled castes; and,

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

(2) Not less than one-third of the total number of seats reserved under Clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall, be reserved for women and such seats may be allotted" by rotation to different constituencies in a Panchayat.

(4) The offices of the Chairpersons in the Panchayat at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may, by law, provide.

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

Provided further that not less than one-third of the total number of, offices of Chairpersons in the Panchayats at each level shall be reserved for women

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

(5) That reservation of seats under clauses (1) the reservation of office of Chairpersons and (2) and (other than the reservation for women) under clause,- (4) shall cease to have effect on the expiration of the period specified in Article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.

243-F. Disqualifications for membership.- (1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat" -

(a) if he is so disqualified by or under any law for the time being in force for the purposes of elections of the Legislature of the State concerned:

Provided that no persons shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

(b) if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in Clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide."

243-K. Elections of the Panchayats.- (1) The superintendence, direction and control of the preparation of electoral rolls, for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

(2) Subject to the provisions of any law made by the Legislature of a State, the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine;

Provided that the State Election Commissioner shall not be removed from his office except in the like manner and on the like grounds as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.

(3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by Clause (1);

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats."

"245. (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

246. (1) Notwithstanding anything in clauses (2) and (3) parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union of India").

(2) Notwithstanding any thing in Clause (3), Parliament, and subject to Clause (1), the Legislature of any State...also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Union List").

(3) Subject to clauses (1) and (2), the legislature of any-State... has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in the Constitution, referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

20. As per provisions, contained in Part IX, and in order to bring the State Legislature consistent with 73rd Amendment of the Constitution the U.P. Legislature vide U.P. Amendment Act No. 9 of 1994 made major amendments in 1961 Act, which shall be dealt with by the Court later on as the context would require. Presently, Section 27-A of the 1961 Act, which was inserted vide U.P. Act No. 6 of 1969 i.e. almost more than 30 years earlier when the present writ petition was filed and constitutional validity whereof has been assailed by the petitioner in the present writ petition, would be necessary to be reproduced as under: -

Section 27-A. Bar to legislators and holders of certain offices becoming or continuing as Pramukh, Up Pramukh, Adhyaksh or Upadhyaksh.- (1) Notwithstanding anything contained in Sections 7, 19 and 27 -

(a) a person shall be disqualified for being elected at, and for being, a Pramukh, Up Pramukh, Adhyaksh or Upadhyaksh if he is -

(i) a member of Parliament or of the State legislature; or

(ii) Nagar Pramukh or Up-Nagar Pramukh of a Nagar Mahapalika, or

(iii) President or Vice President of a Municipal Board, or

(iv) Chairman of a Town Area Committee or President as a Notified Area Committee;

(b) If a person after his election as Pramukh, Up Pramukh, Adhyaksh or Upadhyaksh is subsequently elected or nominated to any of the offices mentioned in Sub-clause (i) to (iv) of Clause (a), he shall, on the date of first publication in the Gazette of India or of Uttar Pradesh of the declaration of his election or his nomination cease to hold the office of Pramukh, Up Pramukh, Adhyaksh or Upadhyaksh and a casual vacancy shall thereupon occur in the office of Pramukh, as the case may be;

(c) No question or dispute as to whether a person has ceased to hold the office of Adhyaksh or Upadhyaksh under Clause (b) shall be referred to or be raised before the Judge u/s 27;

(d) no suit in respect of any question or dispute as to whether a person has ceased to hold the office of Pramukh, Up Pramukh, Adhyaksh or Upadhyaksh under Clause (b); shall lie in any civil court.

(2) Notwithstanding any judgment, decree or order of any Court or tribunal to the contrary, where any person after his election as Pramukh, Up Pramukh, Adhyaksh or Upadhyaksh is subsequently, at any time before the thirtieth day of April, 1969, elected or nominated to any of the offices mentioned in Sub-clause (i) to (iv) of Clause (a) of sub Section (1) and continues immediately before the said date to hold such office he shall on the said date, cease to hold the office of Pramukh, Up Pramukh, Adhyaksh or Upadhyaksh and a casual vacancy shall thereupon occur in the" office of Pramukh, Up Pramukh, Adhyaksh or Upadhyaksh, as the case may be, and the provisions of clauses (c) and (d) of the said sub Section shall apply in relation to such cessation as they apply in relation to cessation under Clause (d) of that sub Section, and any reference pending before the Judge, u/s 27 or any suit pending in any civil court immediately before the said date in respect of any such question or dispute shall abate.

21. In the constitutional scheme of the Indian democracy, governed by the rule of law stands in a hierarchy. The hierarchal structure of the legal order of the State is that the constitution is at the highest level within national law. Thereafter comes the statute enacted by the parliament and State legislature. Then comes the delegated legislature or subordinate legislation namely, rules and regulations framed thereunder and at the lowest pedestal, is the executive orders issued by the executive wing of the State.

22. Some fundamental principles governing interpretation of the Constitution and testing constitutionality of the statute are as under: -

1. By way of precedence the Courts have been cautioned and are guided by following rules in discharging solemn duty while considering constitutionality of legislative enactment: -

The constitutional validity of a statute depends entirely on the existence of the legislative power of the expressed provision in Article 13, apart from the limitation of the legislature, is not subject to any other prohibition. Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another,

2. There is a presumption in favour of constitutionality V.M. Syed Mohammad and Company Vs. The State of Andhra, and Madhubhai Amathalal Gandhi Vs. The Union of India (UOI),

3. All circumstances, which might lead to the statute, being upheld, must be presumed by the Court and must be shown not to exceed by the person challenging the validity of the Act. Durga Parshad Vs. Custodian of Evacuee Property "P" Block, New Delhi and Others,

4. Where the validity of the statute is questioned and there are two interpretations, one of which would make the law valid and the other void, the former must be referred and the validity of the law must be upheld. AIR 1942 S C 12 In re. The Hindu Women Rights to Property Act,).

5. The statute cannot be declared unconstitutional merely because in the opinion of the Court it violates one or more of the principles of liberty or the spirit the constitution unless such principles and that spirits are found in terms of the constitution. A.K. Gopalan Vs. The State of Madras,

6. In pronouncing the constitutional validity of the statute the Court is in concern with the wisdom or unwisdom, justice or injustice or the law. If that which is based into law is within the scope of the power conferred upon the legislature and violate no restriction upon that power, the law must be upheld whatever a Court may think of it. (The State of Bombay and Anr. v. F.N. Balsara AIR 1952 SC 318.

7. The Constitution is the conclusive instrument by which powers are affirmatively created or negatively restricted. The only relevant test for the validity of a statute made under Article 245 is whether the legislation is within the scope of the affirmative grant of power or is forbidden by some provision of the Constitution. (para 133)

... It is only where a piece of legislation clearly infringes a constitutional provision or in dubitably overrides a constitutional purpose or mandate or prohibition that Courts can interfere. (para 462)

... Ordinarily laws have to answer two tests for their validity: (1) The law must be within the legislature competence of the legislature as defined and specified in Chapter I. Part XI of the Constitution and (2) it must not offend against the provisions of Article 13(1) and (2) of the Constitution. (para 692) Smt. Indira Nehru Gandhi v. Raj Narain (supra).

8. "While examining the constitutional validity of laws the principle that is applied is that if it is possible to construe a statute so that its validity can be sustained

against a constitutional attack it should be so construed and that when part of a statute is valid and part is void, the valid part must be separated from the invalid part... (para 66) *Shri Kihota Hollohon Vs. Mr. Zachilhu and others*,

23. Without burdening this judgment with catena of decisions of the Hon''ble Apex Court on the aforesaid line, we now proceed to deal with the contention of the learned counsel for the petitioner that Section 27-A of the 1961 Act is unconstitutional and invalid, being violative of Part IX of the Constitution of India.

24. As noted above, the precise contention of the learned counsel for the petitioner may be summarized as under: -

1. Part IX of the Constitution is a complete code in respect to Panchayat Raj institution and whatever should be possessed by the Panchayat Raj institution, it has been specifically mentioned in the various provisions of Part IX of the Constitution and something, which is not provided, should be deemed to be prohibited. Since Article 243F does not provide any disqualification with respect to the Chairperson of the Constitution, the said enactment cannot take away the right of the petitioner to function as Chairperson of Zila Panchayat. In other words, what is submitted is that since there is no such disqualification, as provided in Section 27-A of the 1961 Act provided in Part IX of the Constitution in regard to the Chairperson of the Zila Panchayat and Kshetra Panchayat, the said legislature, by necessary implication, be deemed to be lacking legislative competence to provide a disqualification on its own.

2. Taking clue from Article 59, the learned counsel for the petitioner urged that wherever the Constitution intends that an elected person should not continue to hold two offices simultaneously, it has provided specifically, as is apparent from Article 59 of the Constitution, therefore, since the Constitution itself provide a disqualification to a elected representative, holding office of the Chairperson of Zila Panchayat, from continuing to hold another elected office, such disqualification has to be deemed to be prohibited to State Legislature by necessary implication although not specifically prohibited in the Constitution.

3. The aforesaid submissions are apparently misconceived. Part IX of the Constitution of India is not, for the first time, conferring the legislative competence upon the State legislature to legislate with respect to Panchayat Raj institutions. The power is already possessed by the State Legislature in reference to Article 245 and 246 read with Entry 5 List II of the Constitution.

25. In the case of *P.N. Krishna Pa/ v. Union of India* 1995 Supp. (2) SCC 197 the Hon''ble Apex Court while dealing with the power of legislature observed as under: -

8. The first question is whether the State legislature was competent to enact the Amendment Act. Entry 8 of List II-State List of the Seventh Schedule to the Constitution read with Article 246(3) of the Constitution, empowers the State legislature to enact law relating to intoxicating liquors, that is to say, the

production, manufacture, possession, transport, purchase or sale of intoxicating liquor. Entry 64 deals with" offences against law with respect to any of the matters in List II. Entry 65 deals with jurisdiction and powers of all court except the Supreme Court with respect to any of the matters in List II. It is true that Sections 272 to 276 of the Indian Penal Code deal with punishment for adulteration of articles of food, while the prevention of Food Adulteration Act, 1954 also deals with the same topic. As a procedural facet Chapter 18 of the Code of Criminal Procedure, 1973 (for short "the Code") and the relevant provisions in the Evidence Act, 1872 deal with adduction of evidence and consideration thereof by the Court, in proof of the guilt or its non-proof. It is not necessary to burden the judgment with copious citations of diverse decisions on the scope of the consideration of an entry in the Seventh Schedule. In *Jilubhai Nambhai Khachar v. State of Gujarat*, this Court extensively considered the scope of an entry in the Seventh Schedule and held that such entry is not a power given to the legislature but is a field of its legislation. The legislature derives its power under Article 246 and other related articles in" the constitution. The language of an entry should be given the widest meaning fairly capable to meet the need of the Government envisaged by the Constitution. Each general word should extend to all ancillary or subsidiary matters which can fairly and reasonably comprehended within it. When the vires of an enactment is impugned, there is an initial presumption of its constitutionality. If. there exists any difficulty in ascertaining the limits of the legislative power, it must be resolved, as far as possible, in favour of legislature, putting the most liberal construction on the legislative entry so that it is intra vires. Narrow interpretation should be avoided and the construction to be adopted must be beneficial and cover the amplitude of the power. The board liberal spirit should inspire those whose duty it is to interpret the Constitution to find out whether the impugned Act is relatable to one or the other entry in the relevant list. The allocation of the subjects of the entries in the respective lists is not done by way of a scientific or logical definitions but it is mere enumeration of board and comprehensive categories. The power to legislate on a particular topic includes the power to legislate on subjects which are ancillary to or incidental thereto or for purposes necessary to give full effect of the power conferred by the entry.

26. Entry 5 list II basically prescribes fields of legislation by the State legislature including matters relating to the local government i.e. constitution and its powers etc. This authority to legislate is granted to the State by virtue of Article 73rd Amendment and subsequent to it, the power to legislate with regard to local government has not been curtailed. On joint reading to Article 246 with newly added Article 243C(1)(3) we agree with the learned Standing ounsel that the power, which was earlier exercised by virtue of Article 246, is intact and complete and cannot be circumscribed in any manner by Article 243C. In the circumstances, we do not agree with the agreement of Mr. Gupta that since the word "disqualification" in Article 243C do not specify impugned disqualification to hold dual post as it is in Section 27-A (1)(b) of the Act and the State enactment

should be held to be unconstitutional. On the contrary the State enactment is well intentioned and in the interest of the local body, has, well been taken care of. Besides, it is within competence of the state legislature to make enactments prescribing disqualification of a Chairperson. Article 243C(5) states that a Panchayat of the village level shall be elected in such manner as the legislature of state made by law provided and Panchayat at the intermediate level or district level shall be elected by, and from amongst the elected members thereof. It is thus clear that the disqualification has envisaged in Section 27-A (b), which is under challenged in this writ petition, and by no stretch of imagination can be said to be inconsistent with Article 243C or 243N.

27. There is no concept of implied restriction on the legislative powers conferred by Article 243C read with Article 246. The entries or the legislative heads are of an enabling character. They are designed to define and delimit the respective area of the legislative competence of the state. Neither entry 5 nor Article 243C imposes any implied restriction on the legislative power conferred by the Article. It nowhere prescribed specifically any restriction or duty to exercise that legislative power in any particular manner only. It is well settled that once it is established that legislative power exists then each general word of the Constitution should accordingly, be held, to extend to all ancillary or subsidiary matter, we therefore, conclude that the comparison drawn by the counsel for the petitioner vis-a-vis Article 59, 101(1)(2), 158 and 190(1) and (2), which imposes a restriction on the President of India, Governor of a State or a Member of Parliament and legislative assembly from holding dual office, is specifically provided in the Constitution whereas in the case of Adhyaksh, Zila Panchayat, the constitution is silent, therefore, the restriction imposed in Section 27-A (b) of the Act is against the intention of the Constitution, cannot be accepted. We fail to agree with the argument that on the contrary. The legislature, while enacting Section 27-A (b) proceeded to impose bar on the basis of same theory and analysis. It is thus reasonable and proper for the State legislature to ensure for an efficient functioning of the local body such as Zila Panchayat. In the instant case, the enactment confirms the intention of the Constitution.

28. Similar contention was raised in Smt. Indira Nehru Gandhi v. Raj Narain (supra) and the Constitution Bench of the Hon'ble Apex Court in various paragraphs of the judgment repelled the said contention as under: -

... Election laws a part of the normal legislative process and what is permitted in the matter of ordinary legislation would also be permissible in the matter of legislation relating to elections unless there be some provision in the Constitution which forbids such a course. We have not been referred to any provision in the Constitution which has the effect of creating a bar in the way of the legislative making a law relating to elections with retrospective operation. (para 227)

The doctrine of the "spirit" of the Constitution is a slippery slope. The courts are not at liberty to declare an act void, because in their opinion, it is opposed to the spirit of democracy or republicanism supposed to pervade the Constitution but

not expressed in words. When the fundamental law has not limited, either in terms or by necessary implication, the general powers conferred upon the legislature, we cannot declare a limitation under the notion of having discovered some ideal norms of free and fair election. (para 352)

This Court, exercising the powers vested in it under the Constitution to declare the law of the land, cannot go behind the clear words of the Constitution on such a matter...(para 556)

29. In the case of Saij Gram Panchayat Vs. The State of Gujarat and Others, some what similar argument was raised that if an area forms part of the Panchayat under part IX of the Constitution, it cannot be treated as an industrial township under Part IX-A of the Constitution. The Hon''ble Apex Court while rejecting the submission observed as under: -

The contention is based oh a misconception about the relationship of the provisions of Parts IX and IX-A of the Constitution with any legislation pertaining to industrial development. The Gujarat Industrial Development Act operates in a totally different sphere from Parts IX and IX-A of the Constitution as well as the Gujarat Panchayats Act, 1961 and the Gujarat Municipalities Act, 1962 - the latter being provisions dealing with local self-Government and organisation of industries in a State. (para 16)

30. It is also worthy to notice that the right to elect is neither a fundamental right nor a common law right, it is pure and simple a statutory right, being creation of statute is also subject to statutory limitation.

31. In the case of Jagan Nath Vs. Jaswant Singh and Others, and Jyoti Basu and Ors. v. Debi Ghoshal and Ors. (supra) the following observations of the Hon''bie Apex Court virtually negates the contention of the petitioner raised in the present case: -

Right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a Statute. At the most, in view of Part IX having been added in the Constitution, a right to contest election for an office in Panchayat may be said to be a constitutional right - a right originating in Constitution and given shape by statute. But even so it cannot be equated with a fundamental right. There is nothing wrong in the same Statute which confers the right to contest an election also to provide for the necessary qualifications without which a person cannot offer his candidature of an elective office and also to provide for disqualifications which would disable, a person from contesting for, or holding, an elective statutory office. (para 22)

32. In the case of Abdul Qayyum v. State of U.P. and Ors. (supra), relied upon by the learned counsel, this Court rejected a some what similar contention while upholding the provisions of Section 54 (2) of the U.P. Municipalities Act, 1960, which was on the anvil of Articles 243U, 243P, 243R(2) and 243ZF, a Division Bench of this Court rejecting the challenged observed as under: -

The election of Vice Chairman having not been provided in Part IX, by no stretch of imagination it can be said that the restriction of the tenure of office of Vice Chairman to one year offends any provision contained in Part IX-A and particularly Article 243U, which does not at all include the tenure of the office of the office bearers. Therefore, we are unable to agree with the first submission of Mr. Singh. (para 7)

33. The case relied upon by the learned counsel for the petitioner does not advance his case at all. In the case of Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. v. Custodian of Vested Forest, Palghat and Anr. (supra) the interpretation of the statute was regarding the word "Private Forest" and its meaning in the two enactments namely (Vesting and Assignment Act), 1971 and Kerala Land Reforms Act. It was laid down that judicial interpretation given to a word in one statute does not afford a guide to construction of the same word in another statute unless the statutes are *pari materia* legislations. In the said case the Apex Court had interpreted and had come to the conclusion that the definition of "private forest" in the Kerala Private Forest (Vesting and Assignment) Act, 1971 is not just the same as the definition of private forest in the Vesting Act. The Apex Court rejected the arguments on the ground that the object of the two Acts were not the same and since two separate definitions have been provided, it cannot be interpreted to have the same meaning.

34. Again, the case of Vijayalakshamma and Anr. v. B.T. Shanker (supra) relates to the Hindu Adoption and Maintenance Act, 1956. The challenge was regarding Sections 7, 8, 12 and 14 of the Hindu Adoption and Maintenance Act, 1956. The dispute in the said case was regarding adoption of a child by one of the two widows and question arose that after the death of the husband whether permission from the other widow was necessary or not and the Supreme Court as engaged in deciding the issue as to whether it is obligatory to obtain consent of the junior widow before adopting a son. The challenge was regarding effect of adoption after the death of the adoptive father and their respective share in the property.

35. We are not able to relate the present dispute with the decisions cited by the learned counsel for the petitioner. In the case of Oxford University Press v. C./T. (supra) the question that came up before the Apex Court was that Section 10(22) of the University Grants Commission Act, 1956 was applicable to Indian University alone or also to the other educational institutions meant solely for educational purpose and not for the purpose to make profit. The definition of the word University as defined in Section 2 (F) of the aforesaid Act was examined and the Court came to the conclusion that the University claiming benefit of exemption u/s 10(22) has not to be necessarily of Indian origin, setting up of University or other institution in India was held also to be entitled to the exemption and benefit provided u/s 10(22) of the said Act. It is thus argued that since the Apex Court extended the benefit of exemption to the educational institution, which was a branch of a foreign university, in the said case.

36. In *Krishi Utpadan Mandi Samiti and Ors. v. Pilibhit Pant Nagar Herj Limited and Anr.* (supra) the question, which arose before the Apex Court in the said decision, was that the terms and conditions stipulated in Appendix XIII of Rule 40 (3) of the Rules framed under the Act. It was held that a cannot of statutory interpretation "expressio unius est exclusio alterius", what is specially mentioned in one place but not in another must be taken to have been deliberately omitted. On the aforesaid analysis, the argument was dispelled by the Apex Court and held that it is not correct interpretation. The lease was cancelled for violating the lease conditions. A condition was imposed that leased land should be used only for construction of residential purpose.

37. In *Union of India v. Shiv Dayal Soin and Sons (P) Limited and Ors.* (supra) a three storied house was constructed but subsequently let out to the L.I.C. for a non-residential purpose. The Hon"ble Apex Court held that basically a residential house was constructed and only because it was let out for commercial purpose, does not entitle the lesser to cancel the lease however it was kept open for the lesser to take such action as may be permissible under other provisions.

38. In *Orissa State Ware Housing Corporation v. C.I.T.* (supra) learned counsel for the petitioner relied upon the following paragraph of the judgment: -

The above excerpts go to show that the Tribunal has proceeded on the basis, as if the deposits are totally exempt in terms of Sections 10(29) of the Act but unfortunately there is neither any factual support nor any sanction in law. Section 10(29) is categorical in its language and this exemption is applicable only in the circumstances as envisaged under the section as noticed hereinbefore. Needless to say that the words: "any income" as appearing in the body of the statute are restrictive in their application by reason of the user of the expression "derived from". In the event the intent of the legislature was otherwise, there was no embargo or restraint to use and express in clear and unequivocal language as has been so expressed in Section 10(20-A) or 10(21) or 10(22-B) or 10(23-BB) or Section 27. These statutory provisions go to show that wherever as a matter of fact the legislature wanted an unrestrictive exemption the same has used "any income" without any restriction so as to make it explicit that the entire income of the assessee would be exempted. The factum of the Corporation (sic Corporation" moneys) being put into funds by itself cannot be termed to be a fund to facilitate the marketing of the commodities, as such question of interest income accruing therefrom being exempt from tax as has been held by the Tribunal does not and cannot arise.

39. However, we do not find that the same helps him in any manner in advancing his submissions, as the controversy involved in the present case is totally different.

40. In *Buddhan Chowdhary v. State of Bihar* (supra), *Bar Council of U.P. v. State of U.P.* (supra), *Abdul Quayyum v. State of U.P.* (supra) and *State of U.P. and Ors. v. Pradhan Sangh Kshettra Samiti and Ors.* (supra) the provisions of U.P.

Municipalities Act and various provisions of U.P. Panchayat Raj Act, 1947 was challenged on the ground of being inconsistent with the provisions of Chapter IX of the Constitution. The contentions of the petitioner were not accepted and it was held that the provisions of Municipalities Act as well as U.P. Panchayat Raj Act were not violative of Chapter IX of the Constitution. The Hon"ble Apex Court upheld the validity of Gujarat Municipalities Act while interpreting Section 40 in the case of Bipin Chandra Purshottam Das Patel v. State of Gujarat and Ors. (supra).

41. It is well settled that when vires of an enactment is challenged then every attempt should be made to interpret various provisions by putting a liberal construction upon a relevant legislative entry and effort should be made to extend the meaning of the relevant words to their reasonable connotation to preserve the power of legislature. In the circumstances, we come to a conclusion that the legislature has the power to legislate and provisions of Section 27-A (1) (b) of the U.P. Kshetriya Panchayat and Zila Panchayats Adhiniyam is not in any way violative of any fundamental rights. The member of Chairperson of Zila Panchayat is a creature of statute and they are governed by various provisions of stature. The maxim "expressio unis est exclusio alterius" is not applicable to the facts of the present case. The language of the statute is plain, simple and meaning is very clear. The enactment of Section 27-A (1)(b) of the Act is not ultra vires of the Constitution. We are of the view that the provisions of the Act are consistent with the policy and object of the Constitution. Any other interpretation will only amount to shifting the State legislature from its power to legislate.

42. For the reasons already discussed, we hold that Section 27-A (1)(b) is not ultra vires of the Constitution. It is valid enactment and cannot be struck down. The enactment is neither violative of the fundamental rights or Part IX of the Constitution, we hold that the provisions of Section 27-A (1)(b) is enacted in exercise of powers given to the State by virtue of Articles 245 and 246 read with Entry 5 List II as well as Article 243C(3) of the Constitution of India. The petitioner has no right to hold the office of the Adhyaksh of Zila Panchayat after his election to the office, as a M.L.A. after the result was declared and published in the official gazette.

43. In the result, the writ petition fails and is, accordingly, dismissed. There shall, however, be no order as to costs.