
(1987) 07 PAT CK 0017

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No's. 1316, 1395, 1424, 1437, 1485, 1501, 1564, 1603, 1617, 1786, 1787 and 1788 of 1987

Janardan Paswan and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-07-1987

Acts Referred:

Constitution of India, 1950 — Article 14, 14, 15, 15, 15(1)
Penal Code, 1860 (IPC) — Section 21

Citation : (1987) PLJR 875

Hon'ble Judges : S.S. Sandhawalia, C.J.; L.M. Sharma, J.; B.P. Sinha, J

Bench : Full Bench

Advocate : Shivaji Singh, Shivendra Narain Sinha, S.P. Sharma in CWJC 1316/87; B.C. Ghose, Yogendra Mishra, Pakanaj Kant Thakur, Mithilesh Kumar Khare in CWJC 1395/87; Uma Shankar Verma, Tej Narain Singh and Gopal Krishna Prasad in CWJC 1424/87; Shyama Prasad Mukherjee, Satish Kumar Agrawal, Shanti Swarup, A.K. Singh Chauhan and Ashok Kr. Ojha in CWJC 1437/87; Rash Bihari Singh, Ram Suresh Roy, Prabhakar Tekriwal, Binod Bihari Singh, Rajeeva Roy in CWJC 1485/87; Ravi Shankar Prasad in CWJC 1501/87; K.P. Verma, R.N. Roy, P.K. Verma in CWJC 1564/87; P.N. Singh, Arun Kumar Singh No. 2 in CWJC 1603/87; Busudeva Prasad, Anil Kumar, Sunil Kumar, Aseem Krishna Prasad in CWJC 1617/87; Uma Shankar Singh No. 2, Arjun Pd. Keshari in CWJC 1786/87; Surendra Kumar Singh in CWJC 1787/87; and Uday Bhanu Roy in CWJC 1788/87, for the Appellant; Ram Balak Mahto, A.G. with Mahesh Prasad (J.C. to A.G.); J.N.P. Sinha, G.A., with Alakh Niranjana, Subodh Prasad, R.N. Choudhary, N.K. Sinha, A.K. Mishra (J.Cs. to G.A.); J.N. Pandey (G.P. II) with Mr. Nishinath Ojha (J.C. to G.P. II) and Mr. Basant Kumar Choudhary (in CWJC 1395/87) for the Intervenor, for the Respondent

Final Decision : Allowed

Judgement

S.S. Sandhawalia, C.J.—Issues of seminal significance reaching out to the fundamental case of the republic and the democratic process itself have come to the fore in this set of 12 connected writ petitions referred for an authoritative decision to the Full Bench. These des(sic)rve a somewhat precise formulation

which might well be done at the very outset in the terms following:-

(1) Does the equality clause of Article 14 of the Constitution equally mandate an equality of franchise for the citizen in the context of elections generally and in particular with regard to the elections at the grass root level of village Panchayats?

(2) Does the prohibition of discrimination on grounds of race or caste enshrined in Article 15(1) permeate the electoral rights of franchise as well?

(3) Is the larger constitutional scheme indicative of a clear prohibition against all discrimination either for or against any citizen in the field of franchise and electoral rights?

(4) Would clause (1) of Article 15 warrant or protect State Legislation discriminating in favour of scheduled castes and scheduled tribes in the field of franchise rights to village Panchayats?

(5) Assuming entirely for the sake of argument that Article 15(4) is applicable, then would the reservation of the solitary post of a Mukhiya (in the self-contained unit of a Panchayat) exclusively for scheduled castes and scheduled tribes be excessive, unreasonable and violative of rule of equality?

(6) Whether sections 2 and 3 of the amending Ordinance No. 3 of 1987 to the Bihar Panchayat Raj Act suffer from the vice of unconstitutionality?

The representative matrix of basal facts may be noticed from Civil Writ Jurisdiction Case No. 1617 of 1987 (Kali Charan Singh and others v. State of Bihar and others). Of the six petitioners, Kali Charan Singh Yadav, petitioner No. 1, is the Pramukh of the Panchayat Samiti of Bodh Gaya whilst petitioner nos. 2 to 6 are all Mukhiyas of five different Panchayats in the district of Gaya. The petitioners are primarily aggrieved by the promulgation of the Bihar Panchayat Raj Ordinance, 1987 (Bihar Ordinance No. 3 of 1987) and in particular sections 2 and 3 thereof. It is averred that hardly a few days before the issuance of the impugned Ordinance, both the Houses of the State Legislature were in session but the State Government did not put the matter of reserving the seats of Mukhiyas in favour of scheduled castes and scheduled tribes before either the Legislative Assembly or the Legislative Council, even though they were contemplating since long to make an amendment in the Act and as early as in the month of September, 1986 had asked all the District Magistrates to prepare a report of the Harijan population in their districts for making provision of representation of scheduled castes and scheduled tribes in the Panchayat Raj system. However, almost immediately after the adjournment or prorogation of the two Houses, the State Government through the indirect method of issuing the impugned Ordinance has sought to reserve the (sic) of the Mukhiya of a number of panchayats to serve political ends of the Ruling Party through undemocratic, hasty and malafide legislation. The impugned sections 2 and 3 of the Ordinance purport to reserve a number of the seats of Mukhiyas in the village

Panchayats for scheduled castes and scheduled tribes on the alleged basis of the percentage of the scheduled castes and scheduled tribes in the total population of the districts according to the last census and authorised the Collector to issue an order to the same effect. In the purported exercise of the said power, the Collector-cum-District Magistrate of Gaya issued the impugned order dated 12th April, 1987 (Annexure 1) whereby as many as 83 seats of Mukhiyas in all have been reserved for scheduled castes including the Panchayats of the petitioners arbitrarily and without giving them any opportunity of being heard.

2. By way of analogy it is pointed out that even under Articles 330 and 332 read with Articles 81 and 171 of the Constitution, there is a complete and adequate provision for hearing by virtue of sections 6, 7 and 8 of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 and other Acts. These provisions mandate the Election Commission to publish the proposal of declaring certain seats in the House of the People and the State Legislative Assembly as reserved for scheduled castes and scheduled tribes. The proposals are required to be published in the official gazette and the Election Commission is required to specify the date on or after which said proposals will be further considered by it. The said Commission is also enjoined to consider all objections of citizens which have been received by it before the dates so specified and thereafter make the necessary amendments in the order. In essence, there are thus provisions to provide sufficient and adequate opportunities to the people concerned before making reservations of seats for scheduled castes and scheduled tribes even as regards the composition of House of People as well as in the State Legislative Assemblies. In short, in contrast thereto, the Ordinance makes no provision for the publication of any draft proposals for reservations or filing of any claim or objections against the same or providing any opportunity of hearing to the persons affected by such reservations. It is alleged that there is no guideline or criterion to determine the seat of a Mukhiya of a Panchayat reserved for scheduled castes or scheduled tribes and it is otherwise violative of the principle of natural justice.

3. It is then sought to be pointed out that even the Constitution does not provide for the reservation of seats in the Rajya Sabha and Legislative Councils of the States and admittedly there is no such reservation therein in the whole of the country. Nevertheless, the impugned Ordinance without any constitutional warrant or authority provides for the reservation of the seats of Mukhiyas of the Gram Panchayats for scheduled castes and scheduled tribes and this contravenes and goes beyond the constitutional mandate itself.

4. It is then the case that even in the context of the constitutional reservation for the scheduled castes in the House of the People and the State Assemblies an elector can contest from any constituency and is thus not debarred to represent the people despite such reservations. However, in the case of an election of a Mukhiya of a Gram Panchayat, an elector not belonging to the scheduled castes/scheduled tribes will be for ever debarred from contesting the election of Mukhiya

if in his home Panchayat the Mukhiya's seat is thus reserved under the impugned Ordinance. Reliance is placed on Article 40 of the Constitution which makes the panchayats as instruments of self-Government and independent units in themselves.

5. Against the backdrop of the aforesaid factual background provisions of the Ordinance have then been assailed on wide variety of grounds to which detailed reference hereinafter will inevitably follow.

6. In the counter-affidavit filed on behalf of the respondent-State and its officers, a somewhat highflown stand is sought to be rested first on the words of the preamble of the Constitution itself. It is averred that these disclose the basic goals and objects of the Constitution which are, inter alia, to secure to all citizens, justice, social, economic and political as also equality of status and opportunity. The directive principles of State policy contained in Part IV of the Constitution are then sought to be relied upon as indicative of the path and the direction in which the State has to proceed in the legislative field and it is averred that these directive principles cast an obligation upon the State to promote the welfare of the people by securing and protecting as faithfully as it may be a social order in which justice, social, economic and political in all sectors of national life is ensured. The directive principles, according to the respondents, further direct the promotion of the educational and economic interest of the weaker sections of the people particularly of the scheduled castes and scheduled tribes so that they are liberated from social injustice and all forms of exploitation. It is the respondents' claim that the impugned provisions in the Ordinance for the reservation of seats of Mukhiyas for the members of the scheduled castes and scheduled tribes have been enacted in order to achieve the aforesaid goals and objectives of the preamble and the directive principles.

7. It is fairly conceded that the Constitution of India does not contain any provision with regard to reservation of constituencies for scheduled castes and scheduled tribes in elections to the local bodies. However, it is the claim that the State Legislature is fully competent to enact laws for making such reservations of constituencies for members of the scheduled castes and scheduled tribes by virtue of Entry 5 of List II of the Seventh Schedule. It is the stand that reservation of constituencies for scheduled castes and scheduled tribes to the post of Mukhiya was considered necessary because the Gram Panchayat constitutes the grass-root of local administration and unless reservation is made for socially and economically backward class people at the very grass-root, the object of securing social, economic and political justice cannot be achieved. It is sought to be pointed out that in the last elections in about 11378 Gram Panchayats in the State of Bihar, the number of Mukhiyas belonging to scheduled caste and scheduled tribes was only 1 per cent. This, according to the respondents, was indicative of the fact that these classes have not yet achieved an adequate place in political bodies which could provide economic and political justice to the members.

8. The somewhat radical and doctrinaire stand then taken on behalf of the respondents is that there cannot be social justice unless it is coupled with economic and political justice as well. Social justice has its roots in the economic conditions of the people of the societies and these economic conditions in turn can improve only by political measures by preventing their exploitation. In order to secure economic justice of backward classes, such as scheduled castes and scheduled tribes, it is thus necessary to create social conditions by political measures in order to liberate them from social, economic and political exploitation to which they have fallen prey.

9. In reply to the petitioners' grievance that non-scheduled castes and scheduled tribes voters are debarred and excluded from the office of the Mukhiya in the villages where such reservation is made, it is the stand that the analogy of the provisions with regard to election for the Assembly or Parliament is misplaced and misconceived. It is reiterated that the residential qualification providing that a person must have resided in the Panchayat for a minimum of 180 days in one calendar year immediately preceding is based on sound principle. Therefore, candidates seeking election to the Gram Panchayat has to be a voter from that Panchayat and a resident of the same. However, if the particular constituency is reserved for scheduled castes and scheduled tribes, persons belonging to the general category cannot make any grievance of the deprivation of the so called right to contest the office of Mukhiya.

10. It is then sought to be highlighted that right to contest an election is not a fundamental right but is a right created by statute and it is open to the legislature to create restrictions and to circumscribe this right by laying down conditions and restrictions on such rights by special laws thus according to the respondent, the validity of the impugned provision making reservations and restricting the right to contest the post of a Mukhiya cannot be challenged if it has been enacted with the object of securing the goals enshrined in the preamble or the directive principles of State policy merely on the ground of the alleged violation of the statutory or common law rights of the citizen as a voter. It is thus reiterated that the impugned provisions of reservation do not violate any provision of the Constitution as also do not suffer from any legislative incompetence under the Seventh Schedule of the Constitution of India.

11. It is sought to be pointed out that the Ordinance provides for reservation only in the limited sphere of the executive wing of the Gram Panchayat which is responsible for taking measures of the social, economic and political development at the grass-root level and it is at that level that the reservation is necessary so that the socially, politically and economically backward sections of the people may get adequate opportunity to come abreast of the other sections and be liberated from the field of the evil of social, political and economic exploitation. It is the stand that the Ordinance gives firm guidelines to identify the constituency which should be reserved for the scheduled castes and scheduled tribes and the allegation that the impugned provisions confer

unbridled unguided or arbitrary powers upon the Collector is clearly misconceived.

12. Controverting some of the factual averments it is lastly the stand that the policy of reservation on the post of Mukhiya for scheduled castes and scheduled tribes is always open to review and revision by the State within whose legislative competence it falls according to the respondents.

13. Having noticed the rival stand of the parties, one must now inevitably turn to the basically impugned provisions of sections 2 and 3 of the Bihar Panchayat Raj (Amendment) Ordinance, 1987 (hereinafter called "the Ordinance") which substitute or amend sections 10 and 11 of the Bihar Panchayat Raj Act, 1947 (hereinafter called "the Act"). It seems further apt to juxtapose the relevant parts of the original and the amended provisions of the aforesaid sections for facility of reference :--

Original provisions

10. Election of Mukhiya --As soon as may be after its establishment, every Gram Panchayat shall, in the prescribed manner, elect from among its own members, a Mukhiya.

11. Constitution of the Executive Committee

(1) The Executive Committee shall consist of--

(i) the Mukhiya:

(ii) four members to be elected by the Gram Panchayat in such manner as may be prescribed :

Provided that for the purpose of electing members of the Executive Committee the Gram Panchayat shall be divided into four wards and one member shall be elected from each ward; and

(iii) four members to be appointed in the prescribed manner by the Mukhiya :

Provided that for the purpose of giving due representation in the Executive Committee to the members of the Scheduled Castes, Scheduled Tribes, females and such other classes as may be prescribed, the Mukhiya shall, while appointing the members of the Executive Committee, take into consideration the claims of the said classes as far as practicable.

(2) The term of office of the Executive Committee, in the case of Pratham Varga Gram Panchayat, Dwitiya Varga Gram Panchayat and Tritiya Varga Gram Panchayat shall be for five years, four years and three years respectively, with effect from the date of the election of Mukhiya unless earlier determined under the provisions of section 13 or section 79-B and shall include any further period which may elapse between the expiration of the said five years, four years or three years, as the case may be, and the date on which the next Mukhiya assumes charge of his office.

Attended provisions

10. Election of Mukhia--Every Gram Panchayat shall, as SOON as may be after its establishment, elect in the prescribed manner from amongst its own members, a Mukhia : Provided that-

(a) Out of the total number of seats of Mukhia in the district such per cent of the seats shall, by the order of the Collector, be reserved for the members of S.C. and S.T. as is the percentage of S.C. and S.T. in the total population of the district. This number shall be worked out to the nearest integer and the Gram Panchayats so reserved shall be those Gram Panchayat which have relatively higher percentage of such Scheduled Castes and Scheduled Tribes population-in the district.

(b) The data of the last census shall be deemed as the basis for computation of population for fixation of percentage for reservation of seats.

(c) No election/co-opt ion of Mukhiya and the members of the Executive Committee shall be invalid on the ground of reservation resulting from the change in the population on account of alteration in the local limits of the jurisdiction of any Gram Panchayat.

(d)...

(e)...

11. Constitution of the Executive Committee--

(1) The Executive Committee shall consist of-

(i) the Mukhiya:

(ii) four members to be elected by the Gram Panchayat in such manner as may be prescribed:

Provided that for the purpose of electing members of the Executive Committee the Gram Panchayat shall be divided into four wards and one member shall be elected from each ward;

Provided further that, out of four seats of members to be elected by the Gram Panchayat in the prescribed manner or out of four seats of Panches to be elected u/s 49 one seat shall be reserved for women;

Provided further also that in a Gram Panchayat in which the combined population of scheduled castes and scheduled tribes is more than ten per cent of the total population of Panchayat, one such ward of the Panchayat having the maximum combined population of the scheduled castes and scheduled tribes shall, by order of the Collector be reserved, for the election of one out of four members of the Executive Committee. The members to be elected on the post from the aforesaid two castes shall be from the castes which has the larger population in the said ward.

(iii) four members co-opted in the prescribed manner by a joint meeting of Mukhiya and the elected members of the Executive Committee [Four members elected under clause (ii).]

Provided that-

(a) out of four seats to be co-opted in the Executive Committee of Gram Panchayat or out of four Panches to be co-opted u/s 49 one seat shall be reserved for such women, who have interest in rural development works;

(b) If the population of the scheduled castes/scheduled tribes in a Gram Panchayat is more than ten per cent of the total population of Gram/Panchayat and if a member of the scheduled caste is elected from reserved ward and if the population of the scheduled tribes is fifty or more than fifty, then one seat out of 4 seats of members, to be co-opted in the same Panchayat shall be reserved for scheduled tribe. In the same manner if a member of scheduled tribe is elected from the reserved ward and if the population of the scheduled castes is fifty or more than, fifty, then the co-option of the one member of the scheduled caste shall be necessary.

(c) If the combined population of the scheduled castes and scheduled tribes is more than twenty-five per cent of the population of Gram Panchayat, then one seat to be filled by co-option, shall be reserved by the order of the Collector for members of the said communities.

(2) The term of office of the Mukhiya or a member of the Executive Committee shall be for five years with effect from the date of election of the Mukhiya unless determined under section 13 or section 79-B. In no case, the term shall be extended, and immediately after the expiry of the fourth year of the term of office, the State Government shall start the process of election and ensure that the election is completed by the end of the term of existing office bearers of the Panchayat:

Provided that this provision shall not apply to the Mukhiya or a member of the Executive Committee who are continuing as Mukhiya or a member of the Executive Committee on the date of this Ordinance.

14. Now, it seems manifest from the formulation of the basic questions at the very outset that the variegated attack on the aforesaid provisions ultimately focusses on the issue of discrimination. Whilst the petitioners from one angle or another projected to highlight that the reservations for the scheduled caste and scheduled tribes were discriminatory and violative of the guaranteed right of equality of franchise, the learned Advocate General on behalf of the respondent-State was firm on stand that the Constitution was not indicative of any right of franchise and in any case, it was argued, that it does not spell out any equality of franchise as such. The threshold question, therefore, is inevitably question No. 1 and the issue whether Article 14 with its mandate of equality before law is attracted in the context of electoral rights or not? Needless to say one must first

address onself to this primal issue.

Question No. 1--Does the equality clause of Art. 14 of the Constitution equally mandates an equality of franchise for the citizen in the context of elections generally and in particular with regard to the elections at the grass-root level of village Panchayats?

15. Perhaps, at the very outset it is necessary to notice that there is an acute paucity, if not a total absence, of the precedents of our own Supreme Court and High Courts directly covering the question. There is, however, a plethora of precedent under the American Constitution relevant to the point. However, before one adverts to them and tackles the question of their applicability, it is necessary to examine the question on first principles and on the touchstone of the provisions of our own Constitution. Indeed, it appears to my mind that the detailed and exhaustive provisions of our own Constitution take into their ken a tight of franchise and its equality even in clearer and sharper terms than those which seem to flow from the somewhat briefer provisions of the American Constitution. Indeed, it seems to me that the equality of franchise is the silent premise underlying not in one but innumerable Articles of our Constitution and is equally conferred in express terms as well by other Articles. In this context, reference may first be made to relevant parts of Article 81 which is in the following terms:--

81. (1) Subject to the provisions of article 331, the House of the people shall consist of--

(a) not more than five hundred and twenty-five members chosen by direct election from territorial constituencies in the States, and

(2) For the purpose of sub-clause (a) of clause (1),--

(a) there shall be allotted to each State a number of seats in the House of the people in such manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States; and

(b) each State 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, so far as practicable, the same throughout the State.

(3) In this article, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

The aforequoted provisions providing for the composition of the House of the People mandate in express terms that the members thereof must be chosen by direct election. Thus, (as the name "House of the People" itself signifies), the Constitution requires primarily elected representatives to this House of Parliament and correspondingly confers a right of franchise on the people, i.e., the citizens, of course, subject to other qualifications prescribed for participating

in the direct election. Similarly, reference may be made to Chapter III pertaining to the State Legislature and therein to Article 170, expressly mandating that the members of the State Assembly in each State shall be chosen by direct election from the territorial constituencies in the State. Equally instructive it is to refer to Article 84 and Article 173 respectively which provide in detail for the qualification for the membership of Parliament and of the State Legislature. Reference hereinafter would follow to both constitutional and legal provisions which spell out the qualifications for the citizens who are entitled to vote, thus making it plain that the Constitution itself seeks to spell out the necessary qualifications of both the electors as also of the persons to be elected to the Legislatures. It is undeniable that the Constitution mandates direct election, both to the House of the People in Parliament and to the Legislative Assemblies of the States and inevitably confers a corresponding constitutional right on the citizens to participate in the said direct election on the basis of equality of franchise.

16. Part XV of the Constitution then mandates as to how these direct elections (as also the other elections) are to be effectuated in actual practice. The whole of this Part is devoted to elections, as the heading clearly indicates and herein pride of place must be given to Article 326, which is in the following terms:--

326. The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than twenty-one years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

It would be plain that this Article places the concept of adult suffrage on the pedestal of a constitutional right, and further proceeds to elaborate the same. It confers this constitutional right on every citizen who is twenty-one or more years of age on the prescribed date to be registered as a voter, barring disqualifications on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, which may be precisely prescribed by law. This Article would leave no manner of doubt that the right of franchise on the basis of adult suffrage is a(sic) integral part of our Constitution and the exceptions thereto are also to be made expressly by law and on the limited grounds indicated in the Constitution itself. Equally significant in this context, if not more, are then the provisions of Article 325 in the terms following:--

325. No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex -- There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of

religion, race, caste, sex or any of them.

To my mind, the provision aforesaid is meticulous in its application to exclude discrimination in the electoral field on the ground of religion, race, caste or sex. In a proper context these provisions would be highlighted later along with the fundamental right under Article 15. It suffices to mention that Article 325 bars any ineligibility for inclusion in the roll on the grounds specified and bars equally any claim to be so included in any special electoral roll on such grounds as well. Apart from the general fundamental bar against discrimination, Article 325 is indicative of the intent of the founding fathers to exclude every form of discrimination in the field of electoral rights on ground of religion, race, caste or sex. Articles 327 and 328 confer express power on Parliament directly and in the absence of such legislation on the State Legislature to make laws in respect to all matters relating to election, preparation of electoral rolls, the delimitation of constituencies specifically, and generally for all other matters necessary for securing the due constitution of such Legislatures. Yet again, to stand as a sentinel to the citadel of the equality of franchise, the Constitution itself provides in Article 324 for a perpetual Election Commission with a Chief Election Commissioner, who is removable from the office only on the ground or grounds required for the removal of a Judge of the Supreme Court. The conduct of election is thus placed in an independent and impartial body to ensure both the right of franchise and its application with even and equal hand.

17. In the light of the aforesaid detailed provisions of our Constitution, there hardly can remain any doubt that the founding fathers were not only deeply solicitous of the right of franchise, but equally guaranteed the same by constitutional protection. Equality of franchise thus lies at the heart of a free democratic system of Government. To ensure the same, the scheme of the provisions of the Constitution first guarantees the larger right of franchise and its equality as also provides in considerable detail for the exercise thereof. It provides in express terms firstly for direct election to the House of the People in Parliament and to the Legislative Assemblies in the States. Secondly, it mandates that the said direct election is on the basis of adult suffrage with a constitutional right for citizens above twenty-one years to be registered as voters barring limited grounds of disqualification, if expressly prescribed by law within the prescribed parameters. Thirdly, it provides a constitutional guarantee that the right of franchise is not to be denied by any law on the basis of race, religion, caste or sex or any one of them.

18. Having noticed the somewhat detailed provisions of our Constitution on electoral franchise, one may now hearken back to the fundamental right enshrined in Article 14 and its celebrated equality clause. As is well-known, the first part of Article 14 of the Constitution mandating equality before law stands adopted from the Weimar Constitution and the Irish Constitution (Article 40 (i)). This enjoins a declaration of equality of civil rights on all persons within the territory of India. It enshrines the basic principles of republicanism. The second

part of Article 14 is derived from the celebrated 14th Amendment of the American Constitution. Thus, it would appear that Article 14, in a way, is wider in its sweep than section 1 of the 14th Amendment of the American Constitution. It draws upon both a declaration of equality before law as also on the equal protection of laws. As would be noticed hereinafter, not only the dimension of Article 14 is intrinsically wide, but the same has been made even wider by authoritative precedents of our final Court in its subsequent and even recent interpretation.

19. Having examined the matter on principle and the language of the various Articles of our Constitution, one must now inevitably turn to authoritative precedents. As was noticed earlier, there is an acute paucity of our own judgments on the point and ground has, therefore, to be prepared for the applicability of the precedents of the American Supreme Court. The basic question herein is the similarity or identity of our Article 14 with that of equal protection clause of the 14th Amendment of the American Constitution. It becomes necessary at the very outset to notice its similarity and at some point the virtual identity of the 14th Amendment with our Article 14. This is best done by juxtaposing Article 16 against section 1 of the 14th Amendment to the American Constitution as under:--

Section 1 of the 14th Amendment.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article 14

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Now, the identity of the language of the second part of Article 14 of our Constitution and the last clause of section 1 of the 14th Amendment of the American Constitution is in no way accidental. As is known and well established, the second part of Article 14 is indeed based upon and derived on the pattern of the relative part of the Nth Amendment of the American Constitution. This enjoins that equal protection shall be secured to all such persons without discrimination or favouritism. It is a pledge to the protection of equal law, that is, the law shall operate alike on all persons under like circumstances. It is thus plain that the guarantee of right of equal protection of the law is common to and identical in both the American and the Indian Constitutions. This has been authoritatively recognised by the final Court way back in AIR 1960 Supreme Court 1125 (State of Uttar Pradesh v. Deoman Upadhyaya) wherein the Constitution Bench observed as follows :-

Article 14 of the Constitution of India is adopted from the last clause of S. 1 of the 14th Amendment of the Constitution of the United States of America and it may reasonably be assumed that our Constituent Assembly when it enshrined the guarantee of equal protection of the laws in our Constitution, was aware of its content delimited by judicial interpretation in the United States of America. In considering the authorities of the superior courts in the United States, we would not therefore be incorporating principles foreign to our Constitution, or be proceeding upon the slippery ground of apparent similarity of expressions or concepts in an alien jurisprudence developed by a society whose approach to similar problems differ from ours.

In the aforesaid case, their Lordships after sanctifying reliance on American precedents, further proceeded to cite and quote with approval three decisions of the United States Supreme Court. Much water has flown down the bridges in more than a quarter of a century since the aforesaid observations were made and consistently therewith in innumerable cases, the American precedent under the equal protection clause has not only been repeatedly referred to approvingly, but has been a sound source of interpretation of our Article 14. As I said earlier, later precedents of our final Court have given a larger dimension of Article 14. In *Maneka Gandhi v. Union of India* (A.I.R. 1978 S.C. 597), *R.D. Shetty v. Airport Authority* (A.I.R. 1979 S.C. 1628) and *Ajay Hasia v. Khalid Mujib* (A.I.R. 1981 S.C. 487). In the last mentioned case, it was observed.--

It was for the first time in *E.P. Royappa v. State of Tamil Nadu* that this Court laid bare a new dimension of Article 14 and pointed out that that Article has highly activist magnitude and it embodies a guarantee against arbitrariness... We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14..

In the light of the above, it would not be an idle claim to say that the precedents of our final Court have in a way gone far a field in this realm of equality before the law and the equal protection of laws. Consequently I am of the view that the American precedents on the equal protection clause would not only be directly attracted under Article 14, but the later may go on the side of liberality well beyond the parameters laid down by the American precedents

20. Now, the development of American case laws in this field of the application of the equal protection clause to strike down discrimination in the exercise of the right of franchise as also in the election laws or in their administration, makes an exhilarating reading. They appear to be a classic example of freedom slowly

broadening down from precedent to precedent. It would appear that even in America till the dawn of Sixties, all constitutional attempts to assail discriminations in the election law and the exercise of the right of franchise met with virtual failure. In *Colegrove v. Green* (328 U.S. 549), the Supreme Court of America (Justice Black, Douglas and Murphy dissenting on the ground that the equal protection clause was violated) by a narrow majority refused to interfere to prevent the election of Representatives in Congress from unequally apportioned districts in Illinois. The broad grounds for non-intervention by the Courts seem to be that the matters were non-justiciable as they were basically political questions. However, in 1962, in the landmark case of *Baker v. Carr* (369 U.S. 186), the ice seems to have been broken. Therein the challenge was laid to the Tennessee Apportionment Act, 1901(sic), as being unconstitutional on the ground that after the passage of nearly sixty years, there had occurred a grave disparity in the population of the apportioned districts which reflected gross disproportion of the representation to the voting population and was consequently hit by the equal protection clause of the 14th Amendment. The District Court dismissed the action on the ground of lack of jurisdiction of the subject matter and that the complainant failed to state a claim upon which relief could be granted. The Supreme Court of United States reversed the judgment and in a strong opinion Justice Brennan for the majority held that the plaintiffs had standing to challenge the Tennessee Apportionment Act and observed as under:-

We conclude that the complaint's allegation of a denial of equal protection present a justiciable constitutional cause of action upon which appellants are entitled to a trial and a decision. The right asserted is within the reach of judicial protection under the Fourteenth Amendment.

In fairness, it must be noticed that there were distinguished dissenters to this development and extension of law and both Justice Frankfurter and Justice Harlan recorded dissenting opinions.

21. Once the basic inhibition against the very justiciability of the right of franchise and the applicability of the equal protection clause thereto were crossed, there has been strong advancement of the law in the succeeding precedents of the American Supreme Court. In *Gray v. Sanders* (372 U.S. 368) 9 L. Ed. 2d. page 821, a challenge was laid to the use of the Georgia county unit system as a basis for counting votes for the nomination of a United States Senator as also of statewide officers, basically on the ground of violation of equal protection clause of the 14th Amendment. Justice Douglas delivering the opinion of the Court concluded as follows:--

The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth and Nineteenth Amendments can mean only one thing --one person, one vote.

Justice Stewart and Justice Clark in their concurring judgment observed as under:--

Within a given constituency, there can be room for but a single constitutional rule-one voter, one vote.

In the wake of the above, followed the case of *James Wesberry v. Carl E. Sanders* (376 U.S. 1) 11 L. Ed. 2 d. 481. Therein two citizens and qualified voters challenged the Georgia congressional districting statute primarily on the factual ground of grave disparity of population in the creation of congressional districts and the consequent violation of the equal protection clause in the particular context of the right of franchise. The District Court dismissed the case for non-justiciability and want of equity. The Supreme Court of the United States reversed the decision and Justice Black rendering the opinion of the Court held that the right to vote is too important in a free society to be stripped of judicial protection and then observed :--

A single Congressman represents from two to three times as many Fifth district voters as are represented by each of the Congressmen from the other Georgia congressional districts. The apportionment statute thus contracts the value of some votes and expands that of others. If the Federal Constitution intends that when qualified voters elect members of Congress each vote be given as much weight as any other vote, then this statute cannot stand.....

We do not believe that the Framers of the Constitution intended to permit the same vote-diluting discrimination to be accomplished through the device of districts containing widely varied numbers of inhabitants. To say that a vote is worth more in one district than in another would not only run counter to our fundamental ideas of democratic government. It would cast aside the principle of a House of Representative? elected "by the People", a principle tenaciously fought for and established at the Constitutional Convention.....

.....No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right.

22. In the later case of *Reynolds v. Sims* (337 U.S. 533) 12 L. Ed. 2 d. 506, issues of even greater significance arose when the challenge was laid to the apportionment legislation to the Alabama Legislature, which created a 35-member State senate elected from 35 districts varying in population, and a 106-member state house of representatives with disparity of population in the respective districts ranging from 6, 731 to 104, 767 Chief Justice Warren delivering the opinion of the Court firmly entrenched the rule of equality of franchise and set his face squarely against a debasement or dilating of the equality of vote. Resting himself basically on the equal protection clause, he held-

And history has seen a continuing expansion of the scope of the right of suffrage in this country. The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the

heart of representative government And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.....

.....We are told that the matter of apportioning representation in a state legislature is a complex and many-faceted one. We are advised that States can rationally consider factors other than population in apportioning legislative representation. We are admonished not to restrict the power of the States to impose differing views as to political philosophy on their citizens. We are cautioned about the dangers of entering into political thickets and mathematical quagmires. Our answer is this a denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us.

..... A citizen, a qualified voter, is no more no less so because he lives in the city or on the farm. This is the clear and strong command of our Constitution's Equal Protection Clause. This is an essential part of the concept of a Government of laws and not men. This is at the heart of Lincoln's vision of "government of the people, by the people and for the people". The Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens, of all places as well as of all races.

And lastly, it was observed :

But neither history alone, nor economic or other sorts of group interests, are permissible factors in attempting to justify disparities from population-based representation. Citizens, not history or economic interests, cast votes. Considerations of area alone provide an insufficient justification for deviations from the equal population principle. Again, people, not land or trees or pastures, vote. Modern developments and improvements in transportation and communications make rather hollow, in the mid 1960's, most claims that deviations from population-based representation can validly be based-solely on geographical considerations.

23. The last case that comes to my notice which might be termed as the crowning culmination of the rule of equality of franchise under the equal protection clause of the American Constitution is *Della Hadley v. The Junior College District of Metropolitan Kansas City Missouri, et. al.* (397 U.S. 50) 25 L. Ed. 2 d. 45. Therein, Justice Black, while delivering the opinion of the Court re-affirmed, what by that time had become a long line of consistent precedents in that final Court, in the following words :

this Court has consistently held in a long series of cases, that in the situations involving elections, the States are required to insure that each person's vote counts as much, in so far as it is practicable, as any other person's. We have applied this principle in congressional elections, state legislative elections, and local elections. The consistent theme of those decisions is that the right to vote in an election is protected by the United States-Constitution against dilution or debasement. While the particular offices involved in these cases have varied, in

each case a constant factor is the decision of the government to have citizens participate individually by ballot in the selection of certain people who carry out governmental functions.....

If one person's vote is given less weight through unequal apportionment, his right to equal voting participation is impaired just as much when he votes for a school board member as when he votes for a state legislator. While there are differences in the powers of different officials, the crucial consideration is the right of each qualified voter to participate on an equal footing in the election process. It should be remembered that in cases like this one we are asked by voters to insure that they are given equal treatment, and from their perspective the harm from unequal treatment is the same in any election, regardless of the officials selected.

24. From a conspectus of the American precedents resting on the foundational premise of the equal protection clause of the 14th Amendment (which in turn is virtually mathematically equivalent to the later part of our own Article 14), it is now well settled that-

- (i) an elector or a citizen has locus standi to challenge either the denial or a debasement of his right of franchise :
- (ii) such denial or debasement presents a justiciable cause of action which is within the judicial protection under the 14th Amendment;
- (iii) the right of franchise lies at the heart of the representative government and in a free democratic country, and it is too important and precious to be stripped of judicial protection;
- (iv) one person one vote is the fundamental premise of the democratic system and is an inflexible single constitutional rule Which cannot be allowed to be abridged;
- (v) any debasement or dilution of the equality of the right of vote is not to be countenanced either directly or by any sophisticated methodology;
- (vi) the equal population principle in electoral districts is basic to the equality of franchise because it is the citizens who cast their vote and not history, geography, economic interests, or landscape; and
- (vii) the principle aforesaid are applicable to the elections of the Federal and the State Legislatures and down the line to the level of Municipal election and the election of officials like County Commissioners and School Board Trustees.

25. As has been highlighted earlier, the aforesaid seven authoritative propositions have been derived basically from the equal protection clause of the 14th Amendment of the American Constitution. They would, therefore, be equally and, indeed, more strongly applicable in the context of Article 14 of our own Constitution which, as pointed out earlier, is wider in its import and embraces in its sweep both as regards the equal protection of laws as also the equality before

the Jaw;

26. On behalf of the respondent-State, Mr. Ram Balak Mahto, the learned Advocate General, made a tenuous but vain attempt to distinguish the stone-wall of the long line of American precedents against his stand. It was sought to be argued that apart from the 14th Amendment of the American Constitution, its other provisions were materially different from the Constitution of India. It was feebly suggested that the Indian Constitution does not spell out any right of franchise as such as perhaps the American Constitution does.

27. The somewhat half-hearted contentions aforesaid have only to be noticed and rejected. As has already been demonstrated earlier, the detailed and exhaustive provisions of our Constitution envisage a right to franchise and its equality even in clearer and sharper terms than those which may seem to flow from the provisions of the relatively very brief American Constitution. As has been pointed out above, adult suffrage has been placed on the pedestal of a constitutional right in our Constitution. It is, therefore, idle to contend that the Indian Constitution is oblivious of the right of franchise which has been rightly and authoritatively held to lie at the heart of the representative government in a free democratic country. Indeed, our precedent has gone further to hold in *Keshvanand Bharti v. State of Kerala* (A.I.R. 1973 S.C. 1461) that the democratic form of Government forms the basic structure of the Constitution which is even beyond the pale of amendment and tinkering with. The right of franchise which is the corner stone of democratic form of Government is thus too important and too precious a principle to be beyond the pale of judicial protection. It is true that every electoral right is not a constitutional right, but it is truer that all electoral laws have to withstand the acid test and the equality rule enshrined in Article 14. It seems heretical to contend that electoral laws have not to conform to the fundamental rights of our Constitution. As has already been shown somewhat exhaustively, all American precedents on the point spring from the fountain-head of the equal protection clause of the 14th Amendment which principle is as much part of our Constitution as theirs. The final hair-splitting attempted on behalf of the respondent-State to distinguish American precedents appears to me as an attempt to point out distinctions without any material difference. I am of the view that the American precedent in this context is as much relevant and attracted to our Article 14 as it is to the equal protection clause of the 14th Amendment of the American Constitution.

28. In the light of the above, it would be somewhat manifest that the equality clause of Article 14 is equally attracted to the right of franchise and in electoral laws and elections generally. What remains to be briefly examined is whether the same principle would be equally attracted to local elections as well. Herein again, reference may be first made to American precedent before adverting to the particular provisions of our own Constitution and the electoral laws. In *Hank Avery v. Midland County, Texas, et. al.* (390 U.S. 474) 20 L. Ed. 2 d. 45, the issue of extending the principle of the equal protection clause of the 14th

Amendment to local elections as well came up for pointed consideration before the United States Supreme Court. The particular point was whether the elections to the Midland Country Commissioners in Texas were also subject to the one man one vote rule and consequently apportionment among single-member district of substantially unequal population was contrary to the Constitution. Rendering an answer categorically in the affirmative, Justice White, whilst delivering the opinion of the Court, observed unhesitatingly:--

The question now before us is whether the Fourteenth Amendment likewise forbids the election of local government officials from districts of disparate population. As has almost every court which has addressed itself to this question, we hold that it does. The Equal Protection Clause reaches the exercise of state power however manifested, whether exercised directly or through subdivisions of the State..... Although the forms and functions of local government and the relationships among the various units are matters of state concern, it is now beyond question that a State's political sub-divisions must comply with the Fourteenth Amendment. A city, town or county may no more deny the equal protection of the laws than it may abridge freedom of speech, establish an official religion, arrest without probable cause, or deny due process of law..... Our decision today is only that the Constitution imposes one ground rule for the development of arrangements of local government; a requirement that units with general governmental powers over an entire geographic area not be apportioned among single-member districts of substantially unequal population.

29. In our own particular background it deserves highlighting and recalling that a modicum of self-government particularly at the grass-root level of village Panchayats is an instrument of hallowed antiquity in our country. Indeed, the dream and vision of the Father of the Nation, Mahatma Gandhi, with regard to the democratic form of government, and Swaraj visualised the village Panchayat as a base of the pyramid of self government. This was so well accepted that the founding fathers in the recognition of this principle had expressly added Article 40 in the Directive Principle of the Constitution. In the later part of this judgment I would revert to this Article for elaborating the concept of village Panchayat as an autonomous unit of self government providing foundational base of the pyramid of the democratic form of government of our republic. Indeed, it appears" to me that this aspect is so axiomatic to call for any overly exhaustive elaboration. It would, perhaps, suffice to refer to the Division Bench judgment in *Bhopalsingh v. State of Rajasthan and others* (A.I.R. 1958 Rajasthan 41). Therein, a challenge was laid to sections 4 and 5 of the Rajasthan Panchayat Act of 1953 and to the delimitation of the constituencies thereunder which were formed on the basis of caste considerations on the ground of the violation of Articles 14 and 15. Wanchoo, C.J., speaking for the Division Bench, categorically envisaged the applicability of Article 14 in the context of Panchayat elections as under:--

We have scrutinised the facts alleged by the applicant and have now to see

whether S. 4 or S. 5 can be struck down under Art. 14 of the Constitution on the ground of denial of equality before the law. As we have already mentioned, such wide discretion has to be given to the State Government for administrative purposes. At the same time, the legislature expects that this discretion will be fairly exercised on well recognised principles. It is well settled that Art. 14 can be used to strike down the law as well as executive acts performed under the colour of law if there is discrimination. We may in this connection refer to the recent decision of the Supreme Court in *Messrs. Pannalal Binjraj v. Union of India* (S) AIR 1957 SC 397 (A).

We, therefore, first propose to consider whether the abuses that have been pointed out above are such as to lead to the conclusion that Ss. 4 and 5 should be struck down on the ground that they have been used with an "evil eye and an unequal hand" Vide *Yick Wo v. Hopkins*, (1885) 118 U.S. 356 : 30 Law Ed. 220.

In the light of the above, it seems manifest that no distinction can possibly be drawn in this context betwixt elections generally and local or village panchayat elections in the eye of law.

30; To conclude on this aspect, on the firm foundation of Article 14 and the other constitutional provision, referred to above also on principle and the applicable precedents of the American Supreme Court, the answer to question No. 1 posed at the outset is rendered in the affirmative. It is held that the equality clause of Article 14 of the Constitution equally mandates an equality of franchise for the citizen in the context of elections generally and in particular with regard to the elections at the grass-root level of village Panchayats.

Question No. 2.-Does the prohibition of discrimination on grounds of race or caste enshrined in Article 15 permeates the electoral rights of franchise as well?

31. "Liberty, Equality and Fraternity" was the clarion call of the French Revolution and the war-cry of Republicanism. Once liberty has been achieved, the equality of the citizen before the law is the corner stone of the republican and democratic system of Government. The right to equality has been expressly enshrined in our Constitution in Part-III of the Constitution as a fundamental right under a subheading of that title and including within it Articles 14 to 18 therein. It has been rightly and authoritatively said that Articles 14, 15 and 16 are merely different faces of the same coin. They are the manifestations in varying hues of the principle of the equality of the citizen before the law and equally the consecrated right to the equal protection of the laws of the State.

32. Whilst Article 14 mandating the twin concept of the equality before the law and the equal protection of laws exhibits the positive aspect of the equality rule the succeeding Article 15 by prohibiting discrimination on the grounds specified therein manifest the opposite or the negative aspect of ensuring the same principle of equality. It is well settled beyond cavil that under Article 14 there may be a reasonable classification and if such classification has a nexus to the valid and rightful object to be achieved then such a classification is protected and

Article 14 is not violated. However, Article 15 bars any classification and thus prohibits any discrimination on the ground of religion, race, caste, sex or place of birth. As has been said earlier, the twin Articles, therefore, become the two faces of the same hallowed principle of the right of equality of the citizen. Now, once it has been held, as above, that the rule of equality before the law and equal protection of laws envisages within its sweep the electoral and franchise rights as well, it seems necessarily to follow that the negative prohibition against discrimination on ground of religion, race, caste, sex or place of birth in clause (1) of Article 15 would equally extend to electoral and franchise rights also. Consequently any discrimination either in favour of or against the citizens on the prohibited grounds aforesaid is constitutionally and fundamentally barred. Without being dogmatic or exhaustive it seems somewhat elementary that ordinarily any discrimination in favour of a class necessarily implies a discrimination against the rest. To take a leaf from the law of physics any favourable class discrimination would necessarily lead to an equal and opposite reaction of reverse discrimination against the others. A reservation in favour of one class thus necessarily involves a deviation from the rule of equality and merit and a discrimination against the rest of the citizenry. Consequently to my mind it is untenable to hold that Article 15(1) would permit discrimination in favour of any person or class on the prohibited grounds even though it in terms lays down that no such discrimination can be made against any citizen. Though couched in terms negative Article 15(1) has both a negative and positive content as well. To my mind, it prohibits both a discrimination against any citizen and equally one in favour of any citizen on the specified prohibited grounds.

33. The principle that discrimination in favour of a citizen or class is hit by the rule of equal protection of laws and equality before the law is perhaps authoritatively well illustrated by what the American jurisprudence conveniently labels as reverse discrimination. This has been highlighted by the celebrated case of *Regents of the University of California v. Allan Bakke* (438 U.S. 265 : 57 L. E. 2 d. 750). In the said case Allan Bakke, a white male had been denied admission to the medical school of the University of California at Davis for two consecutive years. He challenged the medical school's special admissions programme which made a reservation for the disadvantaged members of certain minority races. Thereby out of 100 seats in each year's class, 16 were reserved for Negroes and other minority races, whereas members of any race could qualify under the school's general admission programme for the other 84 places in the class. Allan Bakke having been denied admission to the school under the general admissions programme for 84 seats even though applicants with substantially lower entrance examination scores had been admitted under the special admissions programme to the 16 seats challenged the reservations primarily on the basis of the violation of the equal protection clause of the American Constitution. The Supreme Court of California affirming the Trial Court's judgment held that the special admissions programme in favour of Negroes and other minority races was invalid under the equal protection clause. The United States Supreme Court affirming the Court

below held categorically that the medical school's special admissions programme was unlawful and violative of the rule of equality and directed that Allan Bakke be admitted to the medical school. The American Supreme Court thus held that a reservation or discrimination on the basis of race both in favour of or against a citizen is barred by the equality rule.

34. Mr. Justice Powell rendering the majority judgment of the Court observed:--

The concept of "discrimination" like the phrase "equal protection of the laws", is susceptible of varying interpretations for as Mr. Justice Holmes declared, "a word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used" ____

The guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection then it is not equal.

In summary, it is evident that the Davis Special admissions programme involves the use of an explicit racial classification never before countenanced by this Court.

It tells applicants who are not Negro, Asian or Chicano that they are totally excluded from a specific percentage of the seats in an entering class. No matter how strong their qualifications, quantitative and extracurricular, including their own potential for contribution to educational diversity, they are never afforded the chance to compete with applicants from the preferred groups for the special admissions seats. At the same time, the preferred applicants have the opportunity to compete for every seat in the class.

The fatal flaw in petitioner's preferential program is its disregard of individual rights as guaranteed by the Fourteenth Amendment.

35. I am firmly of the view that the afore(sic) said authoritative enunciation and the large principle of Bakke's case is equally attracted to Article 15(1) as well.

36. Leaving American precedent apart even independently also it seems clear to my mind that in the mosaic of our own Articles 14, 15 and 16 prohibition of discrimination on grounds of religion, race, caste and sex mandated by clause (1) of Article 15 extends and permeates the electoral and franchise field as well. Even a clearer indication of this principle is then illustrated by Article 325 of our Constitution. It is apt to juxtapose Articles 15(1) and 325 against each other:--

Article 15(1)

The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

Article 325

There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House of the Legislature of a

State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex, or any of them.

To my mind, a combined reading of the afore-quoted prohibition indicate that whilst the fundamental protection against a discrimination even in the electoral field was already implicit in clause (1) of Article 15, the founding fathers left the issue in no doubt by making the same explicit in the specific field of elections in Part XV of the Constitution. It is significant that this part provided for elections to the Parliament and the Legislative Assemblies of the States and, therefore, the elaboration of the rule of equality of franchise and a prohibition against discrimination in Article 325 was inevitably applicable to the general electoral roll for the Houses of Parliament and other Houses of the State Legislatures. Nevertheless the language employed and the solicitude of founding fathers to bar any discrimination in the electoral field on the grounds of religion, race, caste or sex is well highlighted in Article 325. Not only does it provide that no person shall be negatively ineligible for inclusion in such a roll on the grounds specified, but further took care to bar any special electoral rolls in which inclusion may be claimed on t(sic)tabooed grounds of religion, race, caste or (sic) or any one of them. A reading of Articles 15(1) and 325 together can leave little doubt that the Framers of the Constitution spelt out both a fundamental and Constitutional prohibition against any discrimination in the electoral field on the grounds of religion, race, caste or sEx.

37. As was noticed earlier, in this context also there appears as yet a relative paucity of precedent within our own country. However, the issue cannot be said to be wholly *res integra*. Way back in AIR 1953 S.C. 384 (Nain Sukh Das & ors v. State of U.P. & ors.), the Constitution Bench virtually took the issue as axiomatic and without much elaboration held that Article 15(1) barring discrimination extends to political as well as other rights in the following terms:--

(3) Now, it cannot be seriously disputed that any law providing for elections on the basis of separate electorates for members of different religious communities offends against Art 15(1) of the Constitution which runs thus t

15(1). The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them."

(4) This constitutional mandate to the State not to discriminate against any citizen on the ground, "inter alia", of religion clearly extends to political as well as to other rights, and any election held after the Constitution in pursuance of such a law, subject to Cl. (4), must be held void as being repugnant to the Constitution.....

The afore-quoted dictum was then elaborated and followed by a strong Bench presided over by Chief Justice Wanchoo (as his Lordship then was) in Bhopalsingh v. State of Rajasthan & others (A.I.R. 1958 Rajasthan 41). It is unnecessary to recall the facts. It is significant to note that this case also

pertained not only to local government generally but specifically to the Rajasthan Panchayat Act, 1953. Therein the Division Bench invoked and basically relied on Article 15(1) for striking down the delimitation of wards in the Panchayat Election. It was observed as follows:--.

(46). We now come to the application of Art. 15 of the Constitution. That article lays down that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. The contention of the applicant is that so far as two Panchayats are concerned, namely Jetpura and Jalsu Nanag, there has been discrimination on the ground of castes in the delimitation of wards.

That discrimination, in our opinion, is writ large in the manner in which wards have been formed in these two Panchayats, as has been shown by us when dealing with the allegations contained in paragraph 8 (c) of the application. So far, therefore, as these two Panchayats are concerned, the wards in them has been clearly formed against the provision of Art. 15 of the Constitution. Vide *Nain Sukh Das. v. State of U.P.* 1953-16 SC 546: AIR 1953 SC 354 (C). This delimitation must, therefore, be struck down as discriminatory on the ground of caste.

These two Panchayats are also not before us, but in these cases, their presence or absence makes no difference, for the discrimination is writ large in the manner in which constituencies have been delimited in these two Panchayats. We are, therefore, of opinion that the delimitation in these two Panchayat circles, namely, Jetpura and Jalsu Nanag being against the provision of Art. 15 of the Constitution must be struck down, with the result that the existing Panchayats in these two circles must cease to exist.

38. It is manifest from the above that the Division Bench was in no manner of doubt that the principled prohibition under Article 15(1) permeated the political and electoral field of franchise rights in Panchayat Elections as well.

39. The learned Advocate General for the respondent State was unable to meaningfully distinguish the aforesaid judgments nor any one contrary thereto was cited before us. On this issue the petitioners are thus on a equally strong footing precedentially.

40. To conclude on this aspect, the answer to question No. 2 is rendered in the affirmative and it is held that the prohibition of discrimination on grounds of race or caste enshrined in Article 15(1) permeates the electoral rights of franchise as well.

Question No. 3. -- Is the larger constitutional scheme indicative of a clear prohibition against ail discrimination either for or against any citizen in the field of franchise and electoral rights?

41. Herein, it is the Constitution we are called upon to expound. It is best to bear in mind that it is intended to endure for ages to come and is not to be myopically

construed in the context of matters and issues merely of the moment. The seminal issues before us are thus not to be narrowly viewed or interpreted in isolation of a single article of the Constitution as if it were in a vacuum. Indeed, the larger questions have to be construed in the wider mosaic of the whole Constitution itself. The root issue, therefore, is--whether the larger scheme of the many relevant constitutional provisions is a pointer to a patent prohibition of any discrimination in the field of franchise and electoral rights betwixt citizen and citizen, or do they permit reservation or discrimination in favour of any class on the basis of race, caste, creed or other parochial considerations?

42. In the field of the franchise and electoral rights the larger constitutional scheme can, perhaps, be well understood only against the backdrop of the pre-constitutional era. It is not the scope of this judgment to trace the chequered and long history of the freedom struggle against British rule. It suffices to mention that like all large colonial empires, the foreign rulers employed the hallowed principle of colonialism of divide et impera. Therein the British were well aided by the wide diversities in the Indian polity ranging, as it did, from Leh of Ladakh in the north to Kanya Kumari in the south and then what was then known as North Eastern Frontier Agency in the east and what is now part of Pakistan in the far west. Perhaps, the most potent political weapon to effectuate the principle of divide and rule in later years of the British rule came to be the pernicious principles of separate electorates and reservation of seats for the minorities. It is unnecessary to delve too deep into history and it will suffice to mention that in the first Minto-Morley reforms, the then Viceroy of India, recommended to the Secretary of State in 1908 that Muslims should be granted separate electorates in the following words:--

The Indian Muhammadans are much more than a religious body. They form in fact an absolutely separate community, distinct by marriage, food and custom, and claiming in many cases to belong to a race different from the Hindus.

Later, as a prelude to the Government of India Act, 1935 when the delegates to the Round Table Conference in London were unable to reach an agreed solution, the British Prime Minister, Mr. Ramsay MacDonald, gave then what is known as the Communal Award in April, 1932. This award accorded representation through separate electorates to Muslims, Europeans, Sikhs, Indian Christians and Anglo-Indians. Seats were also reserved for the Marathas in selected general constituencies in Bombay and special seats were also reserved to women, labour, commerce and industry, mining and planting and landholders. The Government of India Act, 1935 which followed, with a mixture of shrewd calculation and pretended solicitude for the welfare of minority encouraged factions by giving them political recognition. The 1935 Act employed such constitutional devices as functional representation, separate electorates, reservation of seats and weightage. This, in effect, gave statutory basis to casteism and communalism and politically and emotionally divided the nation on communal and caste lines which ultimately led in 1947 to the partition of India into two separate countries

and the holocaust of the" transfer of population in Punjab and West Bangal which followed.

43. It requires no great erudition to recall that one of the main planks of the freedom struggle was directed against the separate electorates and reservation of seats and weightage which had injected the poison of divisiveness in the Indian polity. Since 1920 the Indian National Congress had demanded abolition of separate electorates and the reservation of seats and to substitute adult suffrage for the people of India. These demands had, in fact, been a sine QUA non of the Indian freedom struggle. When at long last it was achieved on the 15th of August, 1947 (though at the cost of partition of the country), the founding fathers met in the Constituent Assembly to give to the people the Constitution of India creating a sovereign socialist secular democratic republic. The members of the Constituent Assembly, by and large, (barring of course exceptions) were alive to the poison divisiveness injected by the pernicious principles of separate electorates, reservation of seats, weightage and other dubious methods of deviating from the rule of the equality of franchise, and one-man one-vote principle epitomized by the compendious phrase of adult suffrage. Nevertheless, in the long debates in the Constituent Assembly impassioned appeals and attempts were made afresh by some representatives of the minorities for either separate electorates or, in any case, for reservation of seats for Muslims, Christians, Sikhs and Anglo-Indians and other supposed electoral safeguards for the minorities. However, the founding fathers set their face firmly against any such reservation of seats, separate electorates or supposed safeguards contrary to the principle of the equality of electoral and franchise rights. In no uncertain terms the framers enshrined the rule of adult suffrage in the Constitution. It cannot possibly be the scope of this judgment to run through the gamut of the framing of the Constitution on this aspect, but reference may instructively be made to the chapter on minorities in the authoritative work *On the Framing of India's Constitution* edited by B. Shiva Rao. For our purposes, it suffices to mention that ultimately Pandit Jawaharlal Nehru described the rejection of the proposals to perpetuate separate electorates and reservation of seats on communal and caste grounds in the electoral field as a "historic turn in our destiny". He briefly elaborated it in the following memorable words:--

But where you are up against a full blooded democracy, if you seek to give safeguards to a minority, and a relatively small minority, you isolate it. May be you protect it to a slight extent, but at what cost? At the cost of isolating it and keeping it away from the main current in which the majority is going--I am talking on the political plane of course--at the cost of forfeiting that inner sympathy and fellow-feeling with the majority.

44. To my mind, it seems somewhat unnecessary to labour the point. The brief synopsis of the pre-constitution era and the history of the framing of the Constitution on franchise and electoral rights is a clear pointer that the founding fathers on principle firmly shut the door against all discriminations either in

favour of or against any of the citizens in the electoral field and adopted the hallowed principle of adult suffrage for all the citizens of the country. To this larger principle, the Constitution makers provided a solitary exception in Part XVI of the Constitution which they rightly elaborated as an exceptional and special provision relating to certain classes whereby reservations of seats were made for scheduled castes and scheduled tribes by express constitutional mandate with the clearest declaration that these shall cease to have effect on the expiration of the period of ten years from the commencement of the Constitution. Some detailed reference to the exceptional provisions of Part XVI would necessarily follow in its proper context.

45. Inevitably one must now advert to the direct or analogous relevant provisions of the Constitution which are equally, if not more, explicitly indicative of the larger constitutional scheme. Herein, the matter inevitably overlaps what has been somewhat exhaustively discussed already under question No. 1. To avoid repetition, it suffices to recall that detailed reference in that context has already been made to Articles 81, 170 and 173 of the Constitution. The positive bar against discrimination in the field of franchise on grounds of religion, race, caste, sex or any of them is then enshrined in Article 325 and the hallowed rule of adult suffrage has been incorporated in Article 326. It is, perhaps, unnecessary to overly elaborate the concept of adult suffrage which, as already noticed, was one of the main planks and demands of our freedom struggle. Undoubtedly, adult suffrage enshrines within it the one person one vote rule which is the fundamental premise of the democratic system, and in the words of the American Supreme Court, "is an inflexible constitutional rule which cannot be allowed to be abridged." Nor is there any gainsaying the fact that the electoral and franchise rights lie at the heart of our representative government in a free democratic country and any debasement or dilution of the equality of the right to vote is not to be countenanced either directly or by any sophisticated methodology. It has already been held above that Article 14 and Article 15(1) which are different facets of the same rule of equality inspire and permeate the electoral rights of franchise as well. It is thus somewhat manifest that equality of franchise and electoral rights is the silent premise underlying the democratic and republican form of government and this has been incorporated not in one but innumerable articles of our Constitution. The aforesaid equality of franchise in the converse bars a discrimination within this field or reservation in favour of one class of citizens against the others which necessarily involves reverse discriminations against the rest.

46. Now, it is significant to notice that barring Part XVI of the Constitution (to which fuller reference will follow) there is no other provision in the Constitution which either expressly or by necessary implication permits or suggests reservations in the field of franchise or electoral rights and consequently in the matter of political offices. If the founding fathers despite being at pains to guarantee the basic premise of the democratic form of the Government, namely, equality of franchise still contemplated such reservations, they would obviously

have provided therefor expressly. Undoubtedly they did not do so and the necessary inference is that they contemplated no such deviation from the fundamental rule.

47. The special and solitary exception which the founding fathers have made and that too by constitutional mandate alone is contained in Part XVI of the Constitution. Undoubtedly, they were more than fully conscious that reservation in the field of franchise is a poison which tends to perpetuate the division of society on caste and communal lines and is not desirable from the point of view of either national interest or the integrity of the country. The freedom struggle, the pre-constitutional era and the partition of the country were too close to Constitution makers to have lost its significance. It was only in the context of the very exceptional background of history (and within the Hindu polity the peculiar oppression of the scheduled castes and scheduled tribes) that the founding fathers, apparently on the strong bidding and advocacy of one of the architects of the Constitution, Dr. Ambedkar, agreed to a reservation for the scheduled castes and scheduled tribes expressly for a limited period of ten years and clearly as an exception to the enshrined principle of equality of franchise. It bears repetition that the Constituent Assembly rejected outright any reservation in this electoral field for any other minority or class of people. As has been noticed, earlier impassioned claims of this nature on behalf of Muslims, Christians, Anglo-Indians and Sikhs were expressly rejected and no provision in the Constitution was made for such reservation in the elective field for either women or acknowledged backward classes despite their peculiar position and admitted backwardness.

48. That Part XVI of the Constitution was to be an exceptional and special measure and that too of an ephemeral nature (in the context of the life of a nation) seems more than manifest on a close examination of the articles contained in the said part. Indeed, the very heading of Part XVI is itself indicative of the exceptional nature of this provision and is in the terms following-"Special provision relating to certain classes". This itself would leave no manner of doubt that the framers visualised the reservation in Part XVI as a special and an exceptional provision to the general rule of the equality of franchise and electoral rights and the bar against discrimination in that arena as also the guarantee of adult suffrage. It deserves recalling that there is not even a hint of any question of reservations in the elective field of franchise rights in the first fifteen parts of the Constitution right up to Article 329 A including Part XV on "Elections". It is then to be noticed that even in Part XVI what it provided is reservation in only one House of Parliament, namely, the House of the People and not in the Rajya Sabha and equally where there are bicameral chambers in the States, the reservation is only in the State Assemblies and not in the Legislative Councils. It necessarily follows that even under Part XVI no reservation is permissible either in the Rajya Sabha or in the Legislative Councils. What would next meet the eye is the fact that the Constitution did not empower or warrant either the Parliament or the State Assemblies of the State Legislature to make any such reservation. This was made by virtue of the constitutional mandate itself. The inference is

perhaps inescapable that the founding fathers were clear that by virtue of the earlier provisions of the Constitution such reservations would not be made by the ordinary legislative process of Parliamentary or State legislation. However, what next calls for pointed attention is the relevant Part of Article 334 as originally enacted:--

334. Reservation of seats and special representation to cease after ten years-Notwithstanding anything in the foregoing provisions of this Part, the provisions of this Constitution relating to --

(a) the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States; and

(b) the representation of the Anglo-Indian community in the House of the People and in the Legislative Assemblies of the States by nomination, shall cease to have effect on the expiration of a period of ten years from the commencement of this Constitution.

It is manifest from the above that though the framers of the Constitution made an exception to the rule in Part XVI, the same was to be entirely of a temporary and ephemeral nature of ten years. It was in terms stated that the reservations for the scheduled castes and scheduled tribes in the House of the people and in the Legislative Assemblies shall cease to have effect on the expiration of ten years from the commencement of the Constitution. The framers, therefore, never envisaged any permanent reservation of seats for scheduled castes and scheduled tribes or, for that matter, for any other minority group or class. Equality of franchise and electoral rights which is the corner stone of democracy and republicanism was the basic rule incorporated in the Constitution and the reservation of seats in a very limited field for a very limited period and for a very limited class was merely an exception engrafted by the Constitution makers themselves and mandated by them to disappear after the period specified and, If at all, could be extended by a constitutional amendment only.

49. It is true that the reservations have thereafter been extended from time to time till as of today. They are to expire after a period of forty years from the commencement of the Constitution, i. e., in the year 1990. However, these amendments made in Article 334 are yet again a pointer to the fact that the Constitution makers, and subsequently as well, it seems to have been the accepted position that reservation of this nature cannot be made by ordinary legislative process. The extension of the period of ten years whenever made has been done by an express constitutional amendment. Apparently if this was even remotely permissible or could be done by parliamentary legislation, the repeated unnecessary exercise of a constitutional amendment would be uncalled for. Indeed, the repeated constitutional amendments extending the period of ten years are thus indicative of the fact that reservations by way of an exception to the rule of equality of franchise and electoral rights can be done only by constitutional mandate and not even by parliamentary legislation far from this

being possible by State legislation.

50. In fairness to the Learned Counsel for the petitioners, it must be noticed that they forcefully and rightly contended, that a permanent reservation of seats for scheduled castes and scheduled tribes, as envisaged by the impugned Ordinance, is contrary both to the letter and spirit of the Constitution. It was highlighted that, by the Ordinance reservations have been made permanently without any Limitation of time. Under the Panchayat Raj Act the life of the Panchayat extends to five years and if elections as scheduled were to be held under the Ordinance after 1st March, 1987, the date of " the Ordinance, then such Panchayats would continue their existence till 1992 with the necessary reservations for the scheduled castes and scheduled tribes. This would even go beyond the constitutional reservation now provided by the amendments in Article 334 which are to expire in 1990. Thus, whilst the Constitution as of today itself would not permit any further reservation for scheduled castes and scheduled tribes even in the House of the People and Legislative Assemblies beyond that year, by an Ordinance reservation of seats for scheduled castes and scheduled tribes is sought to be made in perpetuity and, in any case, by virtue of this reservation, to extend till 1992 and beyond the period today mandated by Article 334 of the Constitution itself.

51. Learned Counsel for the petitioners also contended that there was no analogous provision to Articles 330 and 332 of the Constitution as regard; local bodies. Indeed, it was reiterated that even with regard to Parliament and State Legislatures the reservation is limited only to one house. As has already been noticed, whenever the reservation under Article 334 had to be extended, it could be done only by a constitutional amendment. On the contrary, there is no such warrant or even a loophole in the Constitution which, either expressly or by necessary implication, warrants any reservation of seats for scheduled castes and scheduled tribes in local bodies and that too permanently. It was submitted forcefully and rightly that the attempt of the respondent--State to rely ambivalently on the preamble of the Constitution or Entry 5 of List II as the source of such a power running as it does against the very spirit and letter of the Constitution is hardly well conceived

52. To conclude on this aspect, it has to be held that the larger constitutional scheme is clearly indicative of a prohibition against all discrimination for or against any citizen in the field of franchise and electoral right. The solitary exception thereto is the special provision in Part XVI for a limited period, in a limited field and for a very limited class by warrant of a constitutional mandate only and extended every time by constitutional amendment only. Question No. 4--Would clause (4) of Article 15 warrant or protect State Legislation discriminating in favour of scheduled castes and scheduled tribes in the field of franchise rights to village Panchayats?

53. In the ultimate analysis the sheet-anchor of the respondent. State had come to be clause (4) of Article 15 of the Constitution. The learned Advocate General,

Mr. Ram Balak Mahto, in an exhaustive and lucid argument, relied upon it if not solely but substantially, for his basic stance. It was his firm stand that clause (4) included within its sweep not merely social and educational advancement of scheduled castes and scheduled tribes but equally their political advancement through the medium of electoral discrimination in their favour. It was contended that the right to equality has both a negative and positive facet. Whilst it bars the State to treat equals as unequals, it equally bars it from treating unequals as equal in the eye of law. On this premise the learned Advocate General projected his concept of a protective discrimination in favour of unequals. In concrete terms, the submission was that if scheduled castes and scheduled tribes were constitutionally noticed as backward and thus unequal to the rest of the citizenry; then it was not only permissible but, indeed, the duty of the State to discriminate in their favour also in the electoral field under Article 15(4). It was further submitted that this provision permits not merely educational or social advancement but the more so the political and electoral advancement of the scheduled castes and scheduled tribes. The extreme length of the somewhat radical argument was that without political or electoral reservation, no meaningful educational and social advancement of these backward classes was possible in actual practice.

54. On the other hand, Learned Counsel for the petitioners were equally forceful and vehement in their submissions that Article 15(4) is in terms confined to the twin purpose of the social and educational advancement of the scheduled castes and scheduled tribes or other backward classes. The whole object and purpose thereof is limited to ameliorate the known and admitted social and educational backwardness of those classes as a matter of history. According to Learned Counsel for the petitioners, this provision is irrelevant and alien to the issue of franchise and electoral rights which are expressly governed by the other articles of the Constitution. According to them, any stretching and extending of clause (4) of Article 15 into this arena would be doing patent violence to its clear-cut language and its declared purpose and legislative history. Any such unwarranted extension would equally involve a gross deviation from the basic premise of the democratic form of the Government, namely, the equality of franchise, one man one vote rule and the larger principle of adult suffrage.

55. It is manifest from the afore-noticed rival stance that the core question herein is whether clause (4) of Article 15 either warrants or, in any case, protects discrimination in favour of scheduled castes and scheduled tribes in the electoral arena. Since the controversy here in rages around the language of Article 15, it is both apt and necessary to quote its relevant provisions at the very outset for the facility of reference-

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth --

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2).....

(3) Nothing in this article shall prevent the State from making any-special provision for women and children.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

56. Ere one comes to analyse the language and content of clause (4) above, it is not only desirable but, indeed, necessary to view it against the backdrop of its legislative history. This, to my mind, provides a sound clue to its interpretation though inevitably other decisive considerations of its content and language, as it stands today, are equally to be taken into consideration.

57. Now, it deserves recalling and, indeed, highlighting that when originally enacted in the Constitution, Article 15 consisted only of its first three clauses and the present provisions of clause (4) were conspicuous by their absence. However, soon after the promulgation of the Constitution, the Full Bench of the Madras High Court in AIR 1951 Madras 120 (Sm. Champakam Dorairajan and another v. The State of Madras) struck down a Government order fixing a communal proportion for Brahmins, non-Brahmins, backward Hindus, Harijans, Anglo-Indians, Indian Christians and Muslims for educational seats in the Medical and Engineering colleges in the State of Madras. On appeal their Lordships in AIR 1951 S.C. 226 (The State of Madras v. Sm. Champakam Dorairajan and another) upheld the Full Bench view and struck down the communal reservations as being inconsistent with the provisions of Article 29(2) and not being protected by any other provision. It was primarily as a result of these decisions that an amendment to the Constitution became necessary and it was sought to be effectuated by introducing in Article 15a provision for the specific purpose of enabling reservations to be made in educational institutions for the social and educational advancement of backward classes and scheduled castes and scheduled tribes. In the Bill which became the Constitution First Amendment Act, 1951, it was proposed to amend the existing Article 15(3) by adding thereto the words--"or for the educational, economic or social advancement of any backward class of citizens", The Statement of Objects and Reasons attached to the amending Bill in terms stated as under:--

It is laid down in Article 46 as a directive principle of State policy that the State should promote with special care the educational and economic interests of the weaker sections of the people and protect them from social injustice. In order that any special provision that the State may make for the educational, economic or social advancement of any backward class of citizens may not be challenged on the ground of being discriminatory, it is proposed that Article 15 (3) should be suitably amplified.

It is, however, significant to notice that When the proposed amendment Bill

passed through the crucible of the Select Committee and the parliamentary debates what ultimately emerged was not an amendment of clause (3) of Article 15 as originally proposed. Instead, a separate clause (4) couched in distinctly different language from Article 15(3) and with the express limitation that the advancement of backward classes, scheduled castes and scheduled tribes was to be limited to social and educational field was alone enacted in the Constitution. Even the word "economic" of the original draft in the amending Bill was designedly dropped and the provision was confined to educational and social advancement. Yet again, clause (4) was not cast in the language of the widest amplitude employed in the preceding clause (3) and designedly put in the procrustean bed of the social and educational advancement of the backward classes of citizens only. It would be somewhat manifest from the above that the history of clause (4) is a clear pointer that it was enacted to override Dorairajan's case (*supra*) which was clearly confined to reservations in educational institutions, and its language was pinned down to educational and social advancement alone. Legislative history is thus a clear pointer to the fact of the intendment of the framers of this clause as also of the parameters within which Article 15(4) was designed to operate and not beyond.

58. Adverting now to the specific language of clause (4), the very opening part makes reference to clause (2) of Article 29, the provisions whereof are meaningful and deserve quotation.

29. Protection of interest of minorities--

(1)...

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

When Article 15(4) is read in the context of Article 29(2), as it inevitably must be, it is more than plain that the purpose was in terms related to the denial or grant of admission into educational institutions. Neither the earlier three clauses of Article 15, nor Article 29(2), to which reference is made in the very beginning of clause (4), has the least reference or connection with electoral or franchise rights. Nor would they have any relevance to political advancement through the curious and dubious methodology of reservations therein. Thus, the very opening words of clause (4) militate against any extension of Article 15(4) beyond the educational and social field on which it was primarily and solely focussed.

59. Yet again, the rest of the language of clause (4) makes it plain that it only protects provisions for the social and educational advancement of classes which are accepted to be backward in these fields. Conversely, scheduled castes and scheduled tribes and other backward classes, as a matter of history, had fallen behind in the field of education and social ostracisation and it was in these fields that special provision for their advancement was sought to be protected by the insertion of clause (4). Thus, the particular and pointed thrust and the sole

purpose both in the context of history of this provision and the language designedly employed therein makes manifest that it was intended for reservation in educational or social institutions or any other methodology for promoting the same purpose.

60. Yet another refreshing angle for construing Article 15(4) is the designed difference in its language from the wider amplitude of the preceding clause (3). As has already been noticed, the original draft of the first amendment of the Constitution was to add the scheduled castes and scheduled tribes or backward classes in that very provision with the same widest amplitude. However, the framers of the Constitution rejected that draft and expressly overrode the earlier suggestion and incorporated a separate provision vide clause (4) which is limited by its language to the arena of social and educational backwardness. It is designedly not couched in the same wide language of clause (3) which permits any special provision for women and children and protects it from the bar against discrimination. It is thus somewhat patent that herein the Constitution makers were not in any way equating the backward classes and scheduled castes and scheduled tribes with the special favourites of the law, namely, women and children, for whom the widest latitude of making any special provision was expressly conferred by clause (3). The limitation in clause (4) is thus heightened and highlighted when contrasted with the preceding provision.

61. The view adumbrated by the learned Advocate General, to my mind, would do plain violence to the language designedly employed in Article 15(4). As has been already noticed, the Constitution makers, indeed, cut down, the original draft and excluded economic advancement from this provision even though originally proposed in the amending Bill. If the contentions of the learned Advocate General were to be accepted, in practical effect Article 15(4) would be virtually recast to read as under:--

Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any politically, electorally, socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Such a reading of Article 15(4), to my mind, would involve an unwarranted interpolation into clause (4) contrary both to its history, intent and import. It is a sound canon of construction that whilst no word in a statute is to be deemed otiose or devoid of meaning, equally words and phrases are not to be interpolated or injected into a provision when the legislature had itself not chosen to do so.

62. Lastly, it would call for pointed notice that once the founding fathers in the backdrop of pre-constitution history had expressly guaranteed the equality of franchise and enshrined the principle of adult suffrage in the Constitution for all citizens, there remains and arises no further question of any electoral backwardness of any one of the citizens. On behalf of the petitioners it was

rightly and forcefully advocated at the bar that in the matter of voting rights, the guarantee of equality which extends thereto, as also of the one man one vote rule, and the doctrine of adult suffrage, has now put equality of franchise not merely at a legislative but, indeed, on a constitutional pedestal. There is thus under the present Constitution no question of any electorally or politically backward class. To put it picturesquely the holiest of the Namboodri Brahmins and the lowliest amongst the scheduled caste are by virtue of the Constitution absolutely equals in the electoral and political field. That is the basic premise of democracy and the parliamentary system of Government which our Constitution has taken pains to guarantee, Thereafter there is no question of any class being labelled as either electorally backward or politically backward. The very premise that any group or class of citizens as such are electorally or politically backward has thus today no legs to stand upon after the abolition of separate electorates, reservation of seats, weightage and other such devices. Once that is so, there remains no question of any political or electoral advancement of any class. That is a matter which has been painstakingly taken care of by the provisions of the Constitution itself to which reference has already been made repeatedly. It is only the long standing educational and social backwardness of certain classes as a matter of history which could not be ameliorated instantly and it was to that purpose that Article 15(4) was directed. Indeed, it calls for notice that by the time clause (4) of Article 15 was introduced, the Constitution itself had already placed the scheduled castes and scheduled tribes on a favoured footing electorally by making reservations for them, though temporarily, for ten years in the House of the People and State Assemblies. In fact, in view of the provisions of Part XVI, politically and electorally the scheduled castes and scheduled tribes had an edge over the rest of the citizenry and thus very far from they being politically electorally and backward. All that deserves reiteration is that this could be and has always been done by a constitutional mandate.

63. Adverting now to precedent, it would appear from the whole conspectus of the mass of case law under clause (4) of Article 15 that it has been throughout construed and applied primarily in the educational field for reservation of seats in Institutions of higher education and for social advancement. It is unnecessary to refer to the plethora of High Court judgments and it perhaps suffices to refer as a beginning to the *Causa celebre* in *M.R. Balaji and others v. The State of Mysore and others* (A.I.R. 1963 S.C. 649). What would call for particular notice therein is the fact that their Lordships held therein that in order to attract Article 15(4), it is not enough to merely say that a class is socially backward or merely educationally backward, but it is necessary to establish that it is both socially and educationally backward. They forcefully took the view that a classification resting on caste alone under clause (4) may not be sustainable unless it is established that the twin tests of social and educational backwardness are satisfied. It was observed therein as under--

...The backwardness under Art. 15(4) must be social and educational. It is not either social or educational, but it is both social and educational; and that takes

us to the question as to how social and educational backwardness has to be determined.....We have considered both the orders in the light of the Report and their recommendations made by the Nagan Gowda Committee and we are satisfied that the classification of the socially backward classes of citizens made by the State proceeds on the consideration only of their castes without regard to the other factors which are undoubtedly relevant. If that be so, the social backwardness of the communities to whom the impugned order applies has been determined in a manner which is not permissible under Art. 15(4) and that itself would introduce an infirmity which is fatal to the validity of the said classification...

The aforesaid view has been authoritatively reiterated by the Constitution Bench in *R. Chitralkha v. State of Mysore and others* (A.I.R. 1964 S.C. 1823) and later by a Bench of seven Judges in *State of Kerala & another v. N.M. Thomas & others* (A.I.R. 1976 S.C. 490).

64. In view of the unbroken line of precedent of the final Court itself it seems unnecessary to refer to the plethora of High Court decisions, but it suffices to say that all of them pertain to and have applied Article 15(4) only in the field of educational and social advancement. Not a single precedent of the final Court., could be cited where their Lordships have in terms applied this clause either in the field of political, electoral or franchise rights.

65. Faced with the stone-wall of precedent of the final Court against him, the learned Advocate General with some ingenuity attempted to fall back on a passing observation in paragraph 16 of the judgment in *V.V. Giri v. D. Suri Dora and others* (A.I.R. 1959 S.C. 1318). To my mind, a reading thereof does not in the least advances the case of the respondent State. Therein, their Lordships in their own words noticed that an argument hardly pressed and faintly suggested was that section 54(4) is ultra vires because of its inconsistency with Articles 14 and 330 of the Constitution. Summarily rejecting the argument in a single sentence it was merely observed--

One has merely to recall the provisions of Art. 15(3) and (4) to reject the argument that S. 54(4) offends against Art. 14.

With respect, I am unable to see how this observation, in any way, aids or advances the stance of the learned Advocate General. Even otherwise, it is well to recall the hallowed rule in *Quinn v. Leathern* : (1901) Appeal Cases 495 that a judgment is only an authority for what it really decides and not for every passing observation therein. The aforesaid view has been repeatedly approved by their Lordships of the Supreme Court and, indeed, extended with a warning that it is an unprofitable task to build upon a solitary line or observation in a judgment. In my view, though it might bring some credit to the research and ingenuity of the learned Advocate General, the cryptic passing observation in para 16 of *V.V. Giri's* cue (supra) cannot by any stretch of imagination be read as a warrant that Article 15(4) warrants or sanctions reservation or discrimination in the field of

electoral rights and of franchise.

66. In the field of precedents, the sheet-anchor of the learned Advocate General was rightly the recent unreported Full Bench decision of the Andhra Pradesh in Writ Petitions 17536 of 1986, 1081, 1082, 1085, 1109, 1996 and 1908 of 1987 dated 1st April, 1987. There is no gainsaying that the said judgment does, in a way, advance the stand taken on behalf of the respondent-State. Thereby the Full Bench by striking down the quantum of reservation in some field upheld the impugned provisions of the Andhra Pradesh Mandala Praja Parishads, Zilla Praja Parishads and Zilla Pranalika Abhivrudhi Mandals Act, 1986, whereby reservations in political offices were upheld by the Full Bench. With the deepest respect and deference to the learned Judges, however, I feel constrained to record a dissent from the somewhat vacillating view expounded therein. It would appear that the Learned Counsel for the petitioners were somewhat remiss in not presenting the matter in all the ramifications under which the issue has been discussed in the earlier part of this judgment. The basic concepts of the equality of franchise, the bar against discrimination on the basis of caste, race and creed, the larger scheme of the Constitution and the history and limitation of Article (sic) (4), appear to me, as not being adequately projected before the Full Bench. A matter of such seminal significance has been disposed of under question No. 1 briefly in hardly four single-space typed pages. Even then the provisions of reservations seem to have been primarily upheld on the ground of the same being temporary with observations indicative of great disapproval of such reservations. Indeed, it has been observed in the said Full Bench judgment itself as follows:--

.... I agree that such reservation should be a dwindling phenomenon--With the passage of time these features should disappear. I also recognise that the reservation in favour of backward classes and for women (on a much larger scale than before) is being provided 37 years after the Constitution. But, according to the Act, it is only a temporary phenomenon to be in force for a period of 10 years. Its continuation beyond that period may, however, invite judicial opprobrium.....7

..... It is also not possible to agree that such reservations will prove prejudicial to national integrity and unity. This is supposed to be a temporary phenomenon, and any attempt to perpetuate it would, no doubt, meet the disapproval of the courts.

With great respect, it appears to me that if such reservations were one which invited judicial opprobrium or disapproval of the courts, then how they would be sustainable as matter of law merely on the ground that they were somewhat temporary in nature. To my mind, either the law permits such reservations or it does not and the extraneous issue of the length of time for which reservation is made cannot effect the pristine issue of their validity or otherwise. It seems unnecessary to rebut every observation in the said judgment as I have already observed that material and salient aspects and angles of the case, appear to my

mind, as having missed consideration.

67. The learned Advocate General had then attempted to rely on the Division Bench judgment of the Bombay High Court in *Dattatraya Motiram More v. State of Bombay* (A.I.R. 1953 Bombay 311). It is plain that the said judgment was rendered under Article 15(3) and has not the least relevance to the question before us under clause (4) of Article 15. As has been already noticed, Article 15(3) has been deliberately cast in the terms of the widest amplitude in sharp contrast to Article 15(4). Consequently any reliance on the said judgment even by way of analogy in the present context appears to me as wholly inapt. Similarly, the learned Advocate General's reliance on the decision in *Smt. Manjuli v. Civil Judge, Senior Division, Wardha and others* (A.I.R. 1970 Bombay 1) is also not well merited at all. Therein the basic challenge was to rule 34 of the Bombay Village Panchayat Election Rules. With respect, I am unable to see any material connection with the validity of that provision and what falls for consideration before us. I deem it unnecessary to distinguish individually all the cases relied upon on behalf of the respondent State and would perhaps suffice to notice that reference on their behalf was made to the case *Rajendra Singh v. State of Madhya Pradesh* (A.I.R. 1979 Madhya Pradesh 1) *Basudev Kliadanda v. Union of India and others* (A.I.R. 1973 Orissa 136) and *Ram Sarup v. Samunder Singh and another* (A.I.R. 1972 Punjab 280).

68. Lastly in this context one cannot be oblivious to the anomalous and even mischievous results which may result from the acceptance of what appears to me as the pernicious principle of the reservation of political offices on the basis of race, caste or creed. Learned Counsel for the petitioners rightly submitted that the present reservation of the solitary post of a Mukhiya in the village Panchayat would well be the thin end of the wedge and once that pernicious principle of reservation of elective and political offices is approved under clause (4), it cannot but lead to deleterious State level and even national level ramifications, it was contended emotionally, but not implausibly, that if a reservation can be permitted for the executive head of a Gram Panchayat, then on an identical principle under Article 15(4), similar reservations of political and elective offices may be made in the Panchayat Samities and Zila Parishads. Equally such a poison may spread to other units of local self-government and a carte-blanche power would vest in the State to make reservations of the Chairman of the Municipal Committees or the Notified Area Committees and, for that matter, of the Mayors of the Corporation either on the supposed basis of population of the backward classes and the scheduled castes and scheduled tribes in the State and even as a matter of giving them weightage in order to theoretically advance them in the political and electoral field. Not only that, Learned Counsel for the petitioners contended, as a logical sequence it may be possible to say that the post of the executive heads of State may also be similarly reserved for scheduled castes and scheduled tribes on the basis of the population within the country or they may be directed to be held rotationally. Consequently it was pointed out that under Article 15(4) reservations need not necessarily be related to population and a weightage may

well be given to compensate for the long-standing backwardness of these classes. It is noticeable that in AIR 1976 S.C. 490 (Thomas's case) their Lordships ultimately upheld a reservation which in practical effect went as high as 68 per cent. Once this principle of reservation is extended to the electoral and franchise fields, then it may be possible to uphold reservation of political offices up to 60 per cent or more for scheduled castes and scheduled tribes and other backward classes. That, to my mind, would run counter to the basic concept of the one man-one vote rule and the larger scheme of the equality of franchise and the basic tenets underlying the democratic form of Government. Learned Counsel for the petitioners were not far wrong that once the pernicious principle of dividing the citizenry in the field of electoral rights and the franchise on the basis of caste, race or creed is injected at the grass root level of the village Panchayats, the poison is bound to spread to the whole of the body politic by slowly spreading malignant stages. It was highlighted on behalf of the petitioners that disastrous results culminating from separate electorates and reservation of seats led first to a divisiveness of the polity and then to a division of the country may well come to be repeated at a lower plane. Perhaps, the fears expressed on behalf of the petitioners maybe somewhat exaggerated but it cannot be said that they are wholly ill-founded. As I said earlier in this context, the anomalous and mischievous results which tend to flow from the stance advanced on behalf of the respondent State cannot be lost sight of. A small chink in the armour of equality rule if once allowed may lay the body politic open to a rash of discriminations.

69. To sum up in this context, it has to be held, for all the aforesaid reasons, that clause (4) of Article 15 neither warrants nor protects State legislation discriminating in favour of the scheduled castes and scheduled tribes in the field of franchise rights to village Panchayats.

Question No. 5--Assuming entirely for the sake of argument that Article 15(4) is applicable, then would the reservation of the solitary post of a Mukhiya (in the self-contained unit of a Panchayat exclusively for scheduled castes and scheduled tribes be excessive, unreasonable and violative of rule of equality?

70. Once it has been held as above on question nos. 1 to 4, it would be plain that the writ petitioners are entitled to succeed. However, this is not the final Court and in a question of such seminal significance, as the present one, it seems but inevitable that one or the other parties to the case would carry it to the higher forum in appeal. It, therefore, becomes not only apt but, indeed, necessary that the alternative argument on behalf of the petitioners that even assuming that Article 15(4) is attracted to the situation, still the reservation of the post of Mukhiya by sections 2 and 3 of the amending Ordinance is excessive and unreasonable has to be somewhat closely examined and adjudicated upon.

71. Mr. Basudeva Prasad, Learned Counsel for some of the petitioners eloquently highlighted primal thesis that under the Act a village Panchayat was integrally a self-contained unit or self government at the grass-root level. In need, he submitted that the underlying premise of Panchayati Raj was not merely an

elective or representative method of democracy but a direct democracy in which all the eligible members of the village polity were entitled to participate as of right. Reference was made to the dream of the Father of the Nation Mahatma Gandhi in his book "India of My Dreams" and the vision of the founding fathers of the Constitution and in particular Dr. Rajendra Prasad and Dr. Ambedkar who enshrined this concept in Article 40 of the Constitution. Counsel submitted more eloquently than perhaps legalistically that the founding fathers viewed the village Swaraj epitomised by the Panchayat as something analogous to Plato's or Aristotle's concept of the city State, being the source of the idea of a republic and democratic participation in its Government. According to counsel, once the village Panchayat was viewed as a unit in itself, then the reservation of the only post of Mukhiya therein for a particular caste or tribe was plainly discriminatory against the rest and, indeed, exclusionary of the majority of the electors and citizens.

72. Mr. K.P. Verma for another set of petitioners, pointed out that the post of Mukhiya is an office and if the village is a unit by itself, the same is the solitary post of its executive head. Once the said post in the specified number of villages is reserved for a particular caste or tribe, then this would, in the eye of law, amount to a 100% reservation which would be frontally hit by Article 14 as violative of the rule of equality and would be plainly excessive and unreasonable.

To my mind, there is a modicum of great merit in the aforesaid contention of Learned Counsel for the petitioners and all the others whose individual submissions cannot be noticed extensively for reasons of prolixity in a judgment, which already has tended to grow overly exhaustive. It needs no great erudition to notice (and perhaps would be wasteful to elaborate) that the institution of the village Panchayat is a hoary one in India. From times immemorial in a country primarily agricultural the village had always been a unit and the village Panchayats were traditional bodies whose lineage could be traced to antiquity. The concept of the village as a unit and its Panchayat is thus not a recent imposition from above but merely a recognition of an age old system which was prevalent (barring minor exceptions) through the whole of the length and breadth of India. The Panchayati Raj legislation in the country is thus in a way no more than a recognition and institutionalising a concept which is hoary from times immemorial. It is true that the methodology of choosing, electing or nominating village Panches may have been different but that is a matter of details which does not detract from the universality and the ancientness of the institution.

73. The vision of the Panchayati Raj in the mind of the Father of the Nation is perhaps epitomised by Chapter XXIV in "India of My Dreams" which is significantly headed as "Every village a republic". Therein it is observed by Mahatma Gandhi as under --

My idea of village Swaraj is that it is a complete republic, independent of its neighbours for its own vital wants and yet interdependent for many others in

which dependence is necessary_____The government of the village will be conducted by a panchayat of five persons annually elected by the adult villagers, male and female, possessing minimum prescribed qualifications. These will have all the authority and jurisdiction required. Since there will be no system of punishments in the accepted sense, this Panchayat will be the legislature, judiciary and executive combined to operate for its year of office.....

Independence must begin at the bottom. Thus, every village will be a Republic or Panchayat having full powers. It follows, therefore, that every village has to be self sustained and capable of managing its affairs even to the extent of defending itself against the whole world.....

74. There is concrete evidence in the debates of the Constituent Assembly that the founding fathers sought to constitute the aforesaid vision of the Father of the Nation though not in its extreme concept of the village republic but substantially to ensure that village Panchayats function as integral units of self government at the base of the pyramid of democracy of which the ultimate apex was the Union Government. This was secured by expressly inserting Article 40 in the Directive Principles of State Policy in the terms following:--

40. Organisation of village Panchayats--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.

It is true that Article 40 is not enforceable *stricto sensu* in a court of law, but it has now come to be well settled that the Directive Principles of State Policy are a pointer and an aid to a true perspective and construction of a constitutional provision. The language of Article 40 leaves no manner of doubt that the State has been enjoined to organise village Panchayats and to confer such powers and authority on them so that they function as integral units of self-government. In view of this provision there seems to be a constitutional pointer to the fact that the Panchayati Raj legislation and in particular, the Bihar Act, runs in consonance with the constitutional mandate and, as would be shown from its provisions hereinafter, it visualises and constitutes the village Panchayat as a self-contained unit.

75. In the gamut of the provisions of the Act, reference may first be made to the relevant part of section 4 which deserves notice in extenso -

4. Membership of the Gram Panchayat. --All those persons who are enrolled as electors in so much of the electoral roll or rolls of an Assembly Constituency of the State of Bihar for the time being in force, as relates to the local areas comprised within the limits of the Gram Panchayat, shall be members of the Gram Panchayat and as also those persons ordinarily residing in the Gram Panchayat who have attained the age of eighteen years or more on the qualifying date and who are not enrolled in the Assembly Constituency and for whom supplementary electoral roll shall be prepared in the prescribed manner under the Act.

Explanation. --"Qualifying date" means the first of January of that year in which the supplementary roll is prepared or revised. Section 16 of the Representation of People Act, 1950 shall apply mutatis mutandis for preparing the supplementary electoral roll of the Gram Panchayat.

It is manifest from the above that all eligible persons residing within the area are ipso facto members of the Gram Panchayat and constituted as such. Mr. Basudeva Prasad highlighted the fact that herein it was not even a question of representation through the medium of elective representative, but the basic rule of direct democracy in the sense of every eligible elector constituting the Gram Panchayat as a whole.

76. Reference may next be made to section 8 which, as its heading indicates, lays down the duties and functions of the Gram Panchayat. It is enjoined that every Gram Panchayat shall hold one annual general and one half-yearly general meeting whilst the Mukhiya may, on the requisition of the requisite number of members, call an extraordinary general meeting of the Gram Panchayat as a whole. Section 12 then mandatorily enjoins that the whole of the Gram Panchayat at the annual general meeting shall consider and pass the budget for the following year and at the half-yearly meeting consider the accounts of the preceding year. The solicitude of the legislature about these meetings of the Gram Panchayat as a body is then manifest from sub-section (2a) of section 12 which prescribes that if the Mukhiya fails to convene the annual or half-yearly meetings, the same would amount to a neglect of duty on the part of the Mukhiya and the members of the Executive Committee. Our attention was also drawn to rules 5 to 16 which provide in some detail with regard to the notice of the meeting of the Panchayat and the conduct of business in the meeting of the Gram Panchayat as such. On the basis of the aforesaid provisions counsel forcefully highlighted that the Gram Panchayat was a self-contained unit which enjoyed a rule of direct democracy in the sense of participation of every eligible elector therein. Apart from the above, reference to section 11 would indicate the methodology of the constitution of the Executive Committee, whilst section 10 provides for the election of the Mukhiya. Our attention was also drawn to section 13 and rule 4 which indicates that the Gram Panchayat has even the power to remove the Mukhiya by way of vote of no confidence which has again to be done by all the members of the Gram Panchayat under clauses (v) and (vi) thereof. Significant notice has to be taken of section 6 which requires that every Gram Panchayat shall be a body corporate by the name specified and shall have perpetual succession and a common seal and shall be capable of suing and be sued in the name specified in the notification. Equally such a body corporate would have power to acquire, hold, administer and transfer property movable or immovable or accept a gift and to contract and to do all other acts necessary for the purposes of the Act.

77. In the light of the above, it appears to me that in consonance with the constitutional scheme of Article 40, the provisions of the Bihar Panchayat Raj Act,

1947 would leave no manner of doubt that the village Gram Panchayat is a wholly independent, autonomous, and self-contained unit by itself and in a minuscule way the unit of self-government which provides the foundational base of the Indian Republic.

78. Once it is held as above, it is almost a logical consequence that under the Act the Mukhiya holds a post though elective and the same is the solitary post of its kind in the self-contained autonomous unit of a Panchayat. Statutory recognition of this fact is, indeed, manifest from the provisions of sections 2 (j), 9 and the unamended provisions of section 10 relevant parts whereof are in the following terms:--

2. Definitions--In this Act, unless there is anything repugnant in the subject or context --

XXX XXX XXX

(j) "mukhiya" means the head of the Executive Committee elected, u/s 10.

9. Mukhiya to be the head of the Executive Committee of Gram Panchayat. -- The executive functions of the Gram Panchayat shall be performed by an Executive Committee of which the head shall be known as the mukhiya.

10. Election of mukhiya.--As soon as may be after its establishment, every Gram Panchayat shall, in the prescribed manner, elect from among its own number, a mukhiya; provided on the recommendation of the Panchayat Samiti or Block Development Committee, having regard to the provisions of section 79, the Collector may nominate mukhiya for the newly constituted Panchayat and eight members of the Executive Committee under the provisions of section 79 and the proviso to clause (iii) of sub-section (1) of section 11, whose terms of office shall expire on the date of taking oath of the elected mukhiya.

79. The aforesaid provisions are too plain enough in their meaning and import to call for much elaboration yet they are further buttressed by rule 31 of the Bihar Conduct of Business of Panchayat and Appointment of Executive Committee Rules, 1960. Thereby, it is prescribed that the Mukhiya before entering upon his office shall make and subscribe an oath the form whereof has been duly incorporated in the said rule itself. It would appear that as a member of the Executive Committee he may also have to subscribe in the prescribed form an oath of secrecy as well. Reference may also be made to sections 31 and 83 of the Act which enjoin a duty on the Mukhiya to assist in the performance of duties of any officer of Central or State Government and further that a Mukhiya would be a public servant within the meaning of section 21 of the India Penal Code. To my mind, all these provisions can leave no manner of doubt that under the Act the Mukhiya holds an office which is elective and admittedly and undisputedly this office is the solitary and the only one of its kind in the Gram Panchayat as the head of the Executive Committee clothed with multifarious executive functions.

80. Now, once it is held as above that the Gram Panchayat is a wholly

independent, autonomous and a self-contained unit and therein the post of the Mukhiya is the solitary and only one as the head of its Executive Committee, then the submission of the Learned Counsel for the petitioners that the impugned provisions amount to an untenable 100% reservation seems to be patently unanswerable. By the amended provisions of the Ordinance in the respective villages where the office of the Mukhiya would, by the Collector, be reserved for scheduled castes and scheduled tribes only, then it would amount to the reservation of the single post of Mukhiya in that particular Gram Panchayat thus involving a 100% reservation in favour of the scheduled castes and scheduled tribes which would be frontally hit by Article 14 and apparently cannot be saved by clause (4) of Article 15 assuming that the same is applicable. It is settled law that barring exceptions a reservation even under Article 15(4) has to be reasonable and normally is not to exceed 50%. In any case, in exceptional and peculiar circumstances it may extend a little beyond that, but there is no manner of doubt that in the eye of law, even under the cloak of Article 15(4), a 100% reservation is not countenanced and is violative of the fundamental right of equality under Article 14. The legal position seems so undisputed that it is unnecessary and, indeed, wasteful to cite precedent therefor or to multiply authorities in this context.

81. The aforesaid conclusion and finding is amply adequate to ensure the success of the writ petitioners. Nevertheless, in all fairness, the stand of Learned Counsel for the petitioners that the impugned provisions will not only amount to an inevitable 100% reservations but, indeed, are exclusionary and offensively discriminatory against the general citizenry must be noticed in some detail. Mr. Basudeva Prasad had contended that the impugned provisions of the Ordinance in their true character are not merely one for reservation but, indeed, are a law of exclusion. In terms, they exclude all except the scheduled castes and scheduled tribes from being elected as a Mukhiya in the notified villages which was blatantly impermissible under the equality rule. Mr. K.P. Verma, Mr. Rash Bihari Singh and the other Learned Counsel for the petitioners rightly highlighted that even in the context of the constitutional reservations of seats in Parliament and Assemblies it was open to an elector to contest from any parliamentary seat or from any Assembly seat if the qualifications prescribed in Articles 84 and 173 along with the laws framed thereunder were satisfied. However, in so far as the election of the Mukhiya is concerned, an elector can contest only in the Panchayat within the limits of which he was resident. Once that Gram Panchayat was notified as reserved for scheduled castes and scheduled tribes no elector, not belonging to the said category, could possibly seek election either in that village as Mukhiya or in any other village and constituency if he aspires for that office. Thus, the impugned provisions created a permanent bar against all non-scheduled castes and non-scheduled tribes electors residing in the respective villages for ever to aspire for elective office of Mukhiya once a reservation has been made under the amending Ordinance. It was submitted that in a particular Gram Panchayat so reserved the population of the scheduled castes and

scheduled tribes may not at best exceed 30% or less, yet the reservation would be made in favour of the aforesaid categories to the perpetual exclusion of the rest of the electors who would for ever be debarred from contesting a much valued village office like that of the Mukhiya. Thus, the impugned provisions are not merely reservation in favour of the scheduled castes and scheduled tribes, but a permanent discriminatory exclusion of the rest of the electors and the members of the Gram Panchayat from the said office in perpetuity. In the reverse, counsel also contended that not only were electors excluded from the office, but virtually the basic right of the eligible electors to vote for a candidate of their choice is thus taken away. Mr. Basudeva Prasad contended that the true concept of a vote is an implied ability to select or elect a person of one's choice. If the very candidature or a person for whom an elector may wish to vote is thus barred, then the equality of franchise and the guaranteed right to vote becomes merely a teasing mirage which would be of no great meaning or purpose in its practical effect.

82. Yet again, it would seem that the deleterious effect of the impugned provisions does not merely stop at the Panchayat level alone. Mr. K.P. Verma rightly contended that this would further involve a series of hostile discrimination and exclusion on the basis of castes and tribes, in so far as the non-scheduled castes and non-scheduled tribes residents of all the notified villages would for ever be barred to become members of the Panchayat Samiti and of the Zila Parishads. It was rightly pointed out that the scheme of local self government in the State of Bihar is governed by the Act and the Panchayat Samiti and Zila Parishad Act is a pyramid the lowest whereof is the Gram Panchayat and the apex thereof is the Zila Parishad, Once a person is excluded for the foundational base of being elected as a Mukhiya in the Gram Panchayat (and residence being the basic qualification he cannot contest from a village other than the one of which he is a resident), he for ever loses the right to the middle and the apex rungs of becoming a member of either the Panchayat Samiti or later Zila Parishad. Our attention was drawn to sections 5 and 8 of the Panchayat Samiti and Zila Parishads Act whereby the Panchayat Samiti is constituted of the Mukhiyas and again to sections 35 and 36 of the said Act for pinpointing that the membership of the Zila Parishad stems from this office of Mukhiya and ultimately the Chairmanship of Zila Parishad thereunder would be perpetually barred to the electors of reserved villages. The impugned reservations by sections 2 and 3 of the amending Ordinance would, therefore, lead to a spiral of hostile discrimination starting from the base of the pyramid right to the apex of the local self-government which was so dear to the heart of the founding fathers.

83. In the context of the present question, the learned Advocate General found himself on his weakest wicket. He sought to contend tenuously that the independent and self-contained provisions of the Bihar Panchayat Raj Act, 1947 should not be read by themselves but should be construed in conjunction with Panchayat Samiti and Zila Parishad Act, 1961 enacted 14 years later. On that premises it was submitted that the Gram Panchayat should not be construed as a

unit, but collating both the statutes together the local self-government be viewed as a three-tier system with the Gram Panchayat at the village level, the Samiti at the Block level and the Zila Parishad at the district level. The learned Advocate General sought to advocate what appears to me as a patently untenable stance that the revenue district should be construed as a unit by amalgamating all the provisions of the Bihar Panchayat Raj Act with Panchayat Samiti and Zila Parishad Act. The question that the Gram Panchayat is a self-contained autonomous unit of self-government has already been discussed at length and it has been held to be so against the stance advocated by the respondent-State. The contention of the learned Advocate General in this context, to my mind, must necessarily fail.

84. To finally conclude, the answer to question No. 5 is rendered in the affirmative and it is held that even assuming entirely for the sake of argument that Article 15(4) is applicable (without in the least holding so) nevertheless the reservation of the solitary post of Mukhiya in the self-contained unit of a Panchayat exclusively for scheduled castes and scheduled tribes is patently excessive, unreasonable and violative of the rule of equality.

Question No. 6.--Whether sections 2 and 3 of the amending Ordinance No. 3 of 1987 to the Bihar Panchayat Raj Act suffer from the vice of unconstitutionality?

85. On the aforesaid findings and conclusion under question nos. 1 and 5 it is manifest that sections 2 and 3 of the amending Ordinance suffer patently from the vice of unconstitutionality. Once it is held that Article 14 mandates an equality of franchise and Article 15 bars a discrimination even in the electoral field on the basis of race and caste, it is plain that the very foundation of the reservations envisaged in sections 2 and 3 of the Ordinance infracts those provisions frontally. The larger constitutional scheme, to my mind, prohibits all discrimination either for or against any citizen in the field of franchise and electoral rights and the impugned sections 2 and 3 of the amending Ordinance are not saved by clause (4) of Article 15. As has been elaborated at considerable length, even placing the case of the respondent State at the highest that Article 15(4) may for argument sake be attracted, even then the reservation of the solitary post of Mukhiya is excessive, unreasonable and untenable and thus violative of the rule of equality. The reading of sections 2 and 3 of the Ordinance would plainly indicate that they form so integral a part of each other that the offending portions thereof cannot be separated from the rest. As a consequence, the whole of sections 2 and 3 of the amending Ordinance are hereby struck down as being violative and patently infractive of Article 14.

Conclusions :

In this judgment which necessarily has to be exhaustive because of the intrinsic significance of the far reaching issues which have national ramifications, it will perhaps be apt in the end to collate at one place the basic findings arrived at. It is held-

(1) That the equality clause of Article 14 of the Constitution equally mandates an equality of franchise for the citizen in the context of elections generally and in particular with regard to the elections at the grass root level of village Panchayats.

(2) That the prohibition of discrimination on grounds of race or caste enshrined in Article 15(1) permeates the electoral rights of franchise as well.

(3) That the larger constitutional scheme is clearly indicative of a prohibition against all discrimination for or against any citizen in the field of franchise and electoral rights. The solitary exception thereto is the special provision in Part XVI for a limited period, in a limited field and for a very limited class by warrant of a constitutional mandate only and extended every time by constitutional amendment only.

(4) That clause (a) of Article 15 neither warrants nor protects state legislation discriminating in favour of the scheduled castes and scheduled tribes in the field of franchise rights to village Panchayats.

(5) That even assuming entirely for the sake of argument that Article 15(1) is applicable (without in the least holding so), nevertheless the reservation of the solitary post of Mukhiya in the self-contained unit of a Panchayat exclusively for scheduled castes and scheduled tribes is patently excessive, unreasonable and violative of the rule of equality.

(6) That sections 2 and 3 of the Bihar Panchayat Raj (Amendment) Ordinance, 1987 (Bihar Ordinance No. 3 of 1987) substituting and amending sections 10 and 11 respectively of the Bihar Panchayat Raj Act, 1947 suffer from the vice of unconstitutionality and patently infract Article 14 and are hereby consequently struck down.

(7) All the writ applications are consequently hereby allowed. There will, however, be no order as to costs.

(8) Ere I part with his judgment, I must record my deep appreciation of the assistance rendered by all the Learned Counsel for the writ petitioners and the learned Advocate General as also the learned counsel for the intervenors.