
(2005) 07 AHC CK 0146

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3963 (M/B) of 2005 Connected with Civil Miscellaneous Writ Petition No. 3845 (M/B) of 2005 Civil Miscellaneous Writ Petition No. 4106 (M/B) of 2005 Civil Miscellaneous Writ Petition No. 4073 (M/B) of 2005 Civil Miscel

Krishna Dutt Mishra and Maroof Ali and others APPELLANT
Vs

State of U.P. and others RESPONDENT

Date of Decision : 18-07-2005

Acts Referred:

Uttar Pradesh Panchayat Raj (Reservation and Allotment of Seats and Offices) Rules, 1994 — Rule 4, 5
Uttar Pradesh Panchayat Raj Act, 1947 — Section 11A, 12(5)

Citation : (2005) 07 AHC CK 0146

Hon'ble Judges : Jagdish Bhalla, J and M.A.Khan, J

Final Decision : Dismissed

Judgement

M. A. Khan, J.—All the above writ petitions since were on the same subject matter involving common question of law, hence all the writ petitions were heard together and are being decided by a common judgment.

2. Petitioners have filed these writ petitions for issue of a direction in the nature of certiorari quashing the Clause 3 and Clause 7 of the G.O. dated 6.6.2005 and further a direction that the provision of Section 11A (1) third proviso and Section 12 (5) (a) second proviso of U.P. Panchayat Raj Act, 1948; Section 6A (1) second proviso and Section 7A (1) third proviso of U.P. Kshetriya Panchayat and Zila Panchayat Act, 1961 being beyond the Legislative competence of the State Legislature/Opposite party No. 1; for further, direction that the provisions of U.P. Panchayats (Determination and Publication of the number of persons belonging to Backward Classes) Rules, 1994 being ultra vires to the provisions of the Constitution of India and further a direction that the provisions of Rule 5 (2) second proviso, third proviso, fourth proviso, fifth proviso and Rule 5 (4) proviso of the U.P. Panchayat Raj (Reservation and Allotment of Seats and Offices) Rules, 1994 being ultra vires to the provisions of Article 243D of the Constitution of

India as well as Section 11A of the U.P. Panchayat Raj Act, 1947. Petitioners have further prayed for a direction for withholding and declaring that the provisions of Rule 5 (2) first proviso, second proviso and third proviso and Rule 5 (4) of the U.P. Kshetriya Panchayat and Zila Panchayat (Reservation and Allotment of Seats and Offices) Rules, 1994 being ultra vires of the provisions of Article 243D of the Constitution of India as well as Sections 6A and 7A of the U.P. Kshetriya Panchayat and Zilaj"anchayat Act, 1961; and for further direction that record be summoned pertalrnnngToTherapkL survey conducted for determination of the number of persons belonging to Backward Classes and the Family Register records of various villages maintained under the U.P. Panchayat Raj (Maintenance of Family Registers) Rules, 1970. It has also interalia been prayed to declare the Survey, 2005 as null and void and restrain the Government from acting upon the same for the purpose of Reservation and Allotment of Seats and Offices for Backward Classes for Panchayat Elections. In one of the writ petitions it has also been prayed that a direction be issued to the Central Bureau of Investigation to conduct a thorough investigation into the rapid survey of aforementioned officers and politicians who have manipulated the records and prosecute and punish them in accordance with law and further directions to the Central Government to conduct the survey of the persons belonging to the Backward Classes under Section 17A of the Census Act, 1948 in the State of Uttar Pradesh.

3. The petitioners in these writ petitions have challenged the G.O. No. 1941/331200571/2000, dated 6.6.2005 issued under the Uttar Pradesh Panchayat Raj (Reservation and Allotment of Seats and Posts) Rules, 1994 and Uttar Pradesh Kshettra Panchayat and Zila Panchayat (Reservation and Allotment of Seats and Posts) Rules, 1994 and in particular Clauses 3 and 7 thereof. By proviso to the said Clause 3 it is provided that the Gram Panchayat where Scheduled Castes, Scheduled Tribes or Backward Classes population is more than 50%, reservation for the post of the Pradhan as it will be rotated amongst the Schedule Castes, Schedule Tribes and all Backward Classes persons or Scheduled Castes, Scheduled Tribes and Backward Classes women. According to the petitioners, the reservation and rotation thereof is not only contrary to the main provision of Clause 3 but also in violation of Article 243D of the Constitution of India. Further Clause 7 of the said G.O. provides that while calculating the posts and seats reserved for Scheduled Caste, Scheduled Tribe and Backward Classes where calculation of the population comes to more than 0.5 it will be read as an added seat and if it is less than 0.5, it will be ignored although there is limit of 27% but in effect this method leads to more than 27%. These provisions of this G.O. are, therefore, violative of provisions of Article 243D of the Constitution of India; provisions of Clause 3 of the said G.O. and also violative of Articles 14 and 21 of the Constitution of India. Further, Rule 5 (2) of the U.P. Panchayat Raj (Reservation and Allotment of Scats and Offices) Rules, 1994 second proviso, third proviso, fourth proviso and fifth proviso and Rule 5 (4) proviso which are reiteration of G.O. dated 6.6.2005 with further decoration thereof is in violation of Rule 5 (2) and Rule 5 (4) respectively of the Uttar Pradesh Panchayat Raj

(Reservation and Allotment of Seats and Offices) Rules, 1994 as well as Article 243D, Articles 14 and 21 of the Constitution of India. Further the provision of Rule 5 (2) first proviso, second proviso and third proviso and Rule 5 (4) proviso of Uttar Pradesh Kshetriya Panchayat and Zila Panchayat (Reservation and Allotment of Seats and Offices) Rules, 1994 which are again paramateria to Clause 3 proviso of G.P. dated 6.6.2005 are also violative of the provision of Article 243D, Articles 14 and 21 of the Constitution of India. Further the provisions of Section 11A (1) third proviso, and Section 12 (5) (a) second proviso of the U.P. Panchayat Raj Act, 1947 and Section 6A (1) second proviso and 7A (1) third proviso of the Uttar Pradesh Kshetra Panchayat and Zila Panchayat Act, 1961 is bad in law being beyond the Legislative competence of the State Legislature as the law relating to "Census" can be legislated by the Parliament of India alone as "census" is the subject matter of Entry 69 of the List 1 of the Seventh Schedule to the Constitution of India, similarly the Uttar Pradesh Panchayat (Determination and Publication of the Number of Persons belonging to the Backward Classes) Rules, 1994 are also beyond the Legislative competence of the respondent No. 1. The Panchayat Raj in India is an age old institution of local self governance in villages, mention of this institution is found in ancient history of our country. In Part IV of the Constitution, the Directive Principle of the State Policy (Article 40) provides that the State shall take steps to organise village Panchayat and endow them with such power and authority as may be necessary to enable them to function as units of self Government; that the 73rd Amendment to the Constitution in the year 1993 added Part IX giving effect to the Directive Principles of State Policy. By Part IX Parliament had sought to provide a self contained code for the Constitution, reservation of seats, powers, authority, responsibilities and elections to the Panchayat. Article 243D says that reservation of seats should be made in every Panchayat and posts thereof. The said provision also provides that the seats so reserved shall be rotated through different constituencies in a Panchayat area. Article 243D reads as under :

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

(a) the Scheduled Castes; and

(b) the Scheduled Tribes.

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

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

(3) Not less than one third (including the number of seats reserved for women

belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

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

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

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

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

(5) The reservation of seats under Clauses 1 and 2 and the reservation of offices of Chairpersons (other than the reservation for women) under Clause 4 shall cease to have effect on the expiration of the period specified in Article 334.

(6) Nothing in this part shall prevent the Legislature of a State from making any provisions for reservation of seats in any Panchayat or Offices of Chairpersons in the Panchayat at any level in favour of Backward Class of citizens."

4. In the State of Uttar Pradesh the reservations to the post of the Pradhan of a Gram Panchayat for Scheduled Castes, Scheduled Tribes and Backward Classes is to be made in accordance with Section 11A of the United Provinces Panchayat Raj Adhiniyam, 1947 (hereinafter referred to as U.P. Panchayat Raj Act). The said provision was introduced in the year 1994 after the 73rd Amendment of the Constitution. The said provision is reproduced as under :

"11A. Pradhan and UpPradhan of Gram Panchayat. (1) There shall be a Pradhan and a UpPradhan of the Gram Panchayat, who shall respectively be the Chairperson and Vice Chairperson thereof

(2) The State Government shall, by order reserve offices of Pradhans for the Scheduled Castes, the Scheduled Tribes and the Backward Classes :

Provided that the number of offices of Pradhans reserved for the Scheduled Castes, the Scheduled Tribes and the Backward Classes in the State shall bear as nearly as may be, the same proportion to the total number of such offices as the population of the Scheduled Castes in the state or of the Scheduled Tribes in the State or of the Backward Classes in the State bears to the total population of the State :

Provided that the reservation for the Backward Classes shall not exceed twenty seven per cent of the total number of offices of Pradhans :

Provided also that if the figures of population of the Backward Classes are not available their population may be determined by carrying out a survey in the prescribed manner.

(3) Not less than onethird of the total number of offices of Pradhans reserve under subsection (2) shall be reserved for women belonging to the Scheduled Castes, the Scheduled Tribes and the Backward Classes.

(4) Not less than onethird of the total number of offices of Pradhans, including the number of offices of Pradhans reserved under subsection (3), shall be reserved for women.

(5) The offices of the Pradhans reserved under this section shall be allotted by rotation to different Gram Panchayats in such order as may be prescribed.

(6) The reservation of the offices of Pradhans for the Scheduled Castes and the Scheduled Tribes under the section shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution.

Explanation. It is clarified that nothing in this section shall prevent persons belonging to the Scheduled Castes, the Scheduled Tribes, the Backward Classes and the women from contesting election to unreserved seats."

5. Further vide Section 12 of the U.P. Panchayat Raj Act, constitution of a Gram Panchayat has been provided for, vide subsection (5) thereof reservations for Scheduled Castes, Scheduled Tribes and Backward Classes have been provided for. Section 12, subsection (5) of the U.P. Act reads as under :

"12 (5) (a) In every Gram Panchayat, seats shall be reserved for the Scheduled Castes, the Scheduled Tribes and the Backward Classes and the number of seats so reserved shall, as nearly as may be, bear the same proportion to the total number of seats of the Gram Panchayat, as the population of the Scheduled Castes in the Panchayat area or of the Scheduled Tribes in the Panchayat area or of the Backward Classes in the Panchayat area bears to the total population of such area and such seats may be allotted by rotation to different territorial constituencies in a Gram Panchayat in such order as may be prescribed :

Provided that the reservation for the Backward Classes shall not exceed twenty seven percent of the total number of seats in the Gram Panchayat:

Provided further that if the figures of population of the Backward Classes are not available, their population may be determined by carrying out a survey in the prescribed manner.

(b) Not less than onethird of the seats reserved under clause (a) shall be reserved for the women belonging respectively to the Scheduled Castes, the Scheduled Tribes and the Backward Classes.

(c) Not less than onethird of the total number of seats in the Gram Panchayat, including the number of seats reserved for women under clause (b), shall be reserved for women and such seats may be allotted by rotation to different territorial constituencies in a Gram Panchayat in such order as may be prescribed.

(d) The reservation of seats for the Scheduled Castes and the Scheduled Tribes shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution.

Explanation. It is clarified that nothing in this section shall prevent the persons belonging to the Scheduled Castes, the Scheduled Tribes and the Backward Classes and the women from contesting election to unreserved seats. Pradhan shall be deemed to be a member of the Gram Panchayat."

6. A perusal of subclauses (a) and (c) of subsection (5) of Section 12 clearly shows that the seats reserved for Scheduled Castes and the Scheduled Tribes and the Backward Classes are to be rotated to different territorial constituencies. In exercise of powers under Section 110 of the U.P. Panchayat Raj Act read with subsection (5) of Section 11A and clause (c) of subsection (5) of Section 12, U.P. Panchayat Raj (Reservation and Allotment of Seats and Offices) Rules, 1994 were framed on 24th August, 1994 and were published in the U.P. Gazette. Rule 4 of the said rules provided that a seat reserved in a Gram Panchayat shall be allotted to different territorial constituencies in the Gram Panchayat in the following order :

- (a) women belonging to the Scheduled Tribes;
- (b) the Scheduled Tribes;
- (c) women belonging to the Scheduled Castes;
- (d) the Scheduled Castes;
- (e) women belonging to the backward classes;
- (f) the backward classes; and
- (g) women.

7. Rule 5 of the said rules provides that the number of offices of the Pradhans provided in Rule 3 for Scheduled Castes/Scheduled Tribes and Backward Classes shall be distributed block wise for being allotted to the constituent Gram Panchayat. Subrule (2) of the said Rules provides that the Gram Panchayat allotted in the previous election to Scheduled Tribes shall not be allotted to Scheduled Tribes, Gram Panchayat allotted to Scheduled Castes shall not be allotted to Scheduled Castes, Gram Panchayat allotted to Backward Classes shall not be allotted to Backward Classes. The Rule 5 of the Rules is quoted below :

"Rule 5. Allotment of offices of rotation. (1) The number of offices of Pradhans as provided in Rule 3 for the Scheduled Tribes, the Scheduled Castes and the Backward Classes shall be distributed Khand wise for being allotted to the

constituent Gram Panchayats so, however, that the number of offices of Pradhans for the Scheduled Tribes, the Scheduled Castes and the Backward Classes for the constituent Gram Panchayat shall bear, as nearly as may be, the same proportion to the number of offices of Pradhans as provided in Rule 3 as the population of the Scheduled Tribes in Khand or of the Scheduled Castes in the Khand or of the Backward Classes in the Khand bears to the total population of the Scheduled Tribes in the State or to the total population of the Scheduled Castes in the State or to the population of the Backward Classes in the State, as the case may be :

(i) The number of offices of Pradhans for the Scheduled Tribes, the Scheduled Castes and the Backward Classes as determined under subrule (1) shall be allotted to different Gram Panchayats in the Khand on the basis of the ratio of their population in the Panchayat area, in the descending order, that is from amongst the Gram Panchayats in the Khand, the Gram Panchayat in whose territorial area the ratio of population of the Scheduled Tribes is highest shall be allotted to them, and the Gram Panchayat in whose territorial area the ratio of population of the Backward Classes is highest shall be allotted to them and in the subsequent election the allotment shall be made in the aforesaid manner. So, however, that the Gram Panchayat allotted in the previous election to the Scheduled Tribes and the Gram Panchayat allotted to the Scheduled Castes shall not be allotted to the Scheduled Castes and the Gram Panchayat allotted to the Backward Classes shall not be allotted to the Backward Classes :

Provided that if the population of the Scheduled Tribes or the Scheduled Castes or Backward Classes in the Panchayat area is less than two, the office of Pradhan of the Gram Panchayat for such Panchayat area shall not be allotted to the Scheduled Tribes, the Scheduled Castes or the Backward Classes, as the case may be."

8. The elections for the years 1995 and 2000 were held in accordance with Rule 5 of the Panchayat Raj Reservation Rules and the reservation of the seats was carried out and rotated as per the said Rules. But in mala fide exercise of power for illegal and extraneous consideration referred to hereinafter, firstly the State Government came out with the G.O. dated 6.6.2005 restricting the rotation of the seats in violation of the provision of Article 243D (4) of the Constitution of India when the same was challenged by a writ petition before this Court and this Court admitted the writ petition on 17.6.2005. Subsequently, the Rule 5 (2) was amended on 18.6.2005. The amended Rule 5 of the Rules reads as under :

"5 (1) The number of offices of Pradhans as computed in Rule 3 for the Scheduled Tribes, the Scheduled Castes and Other Backward Classes of citizens shall be distributed Khand wise for being allotted to the constituent Gram Panchayats in the following manner :

(a) The number of offices of Pradhans for the Scheduled Tribes in the Khand shall bear, as nearly as may be, the same proportion to the number of offices of Pradhans as computed in Rule 3 as their population in the Khand bears to their

total population in the State.

(b) The number of offices of Pradhans for the Scheduled Castes in the Khand shall bear as nearly as may be, the same proportion to the total number of offices of Pradhans in the Khand as their population in the Khand bears to the total population of the Khand, subject to the maximum of the ratio of their population in the State to the total population of the State :

Provided that in the case of undistributed numbers of offices of Pradhans as computed in Rule 3 shall be redistributed amongst only those Khands, where the proportion of their population in the total population of the Khand exceeds the proportion of their population in the total population of the State, in the descending order of the ratio of their population in the total population of the Khand.

(c) The number of offices of Pradhans for Other Backward Classes of citizens in the Khand shall bear as nearly as may be, the same proportion to the total number of offices of Pradhans in the Khand as their population in the Khand bears to the total population of the Khand:

Provided that the number of offices of Pradhans reserved for other Backward Classes in a Khand shall not exceed twenty seven per cent of the total number of offices of Pradhans in the Khand :

Provided further that in the case of undistributed numbers of offices of Pradhans as computed in Rule 3 shall be redistributed amongst only those Khands, where the proportion of their population in the total population of the Khand exceeds the proportion of their population in the total population of the State in the descending order of the ratio of their population in the total population of the Khand.

(2) The number of offices of Pradhans for the Scheduled Tribes, the Scheduled Castes and the Backward Classes as determined under subrule (1) shall be allotted to different Gram Panchayats in the Khand on the basis of the ratio of their population in the Panchayat area, in the descending order, that is, from amongst the Gram Panchayats in the Khand, the Gram Panchayat in whose territorial area the ratio of population of the Scheduled Tribes is highest shall be allotted to them, and the Gram Panchayat in whose territorial area the ratio of population of the Backward Classes is highest shall be allotted to them and in the subsequent election the allotment shall be made in the aforesaid manner. So, however, that the Gram Panchayat allotted in the previous election to the Scheduled Tribes and the Gram Panchayat allotted to the Scheduled Castes shall not be allotted to the Scheduled Castes and the Gram Panchayat allotted to the Backward Classes shall not be allotted to the Backward Classes :

Provided that if the population of the Scheduled Tribes or the Scheduled Castes or Backward Classes in the Panchayat area is less than two, the office of Pradhan of the Gram Panchayat for such Panchayat area shall not be allotted to the

Scheduled Tribes, the Scheduled Castes or the Backward Classes, as the case may be :

Provided further that in the Gram Panchayats where the ratio of the population of the Scheduled Tribes or the Scheduled Castes or the Backward Classes is more than 50 per cent of the total population of the Gram Panchayat, the reservation for the offices of Pradhan shall be rotated among the persons of the Scheduled Tribes or the Scheduled Castes or the Backward Classes and the women of Scheduled Tribes or the Scheduled Castes or the Backward Classes, as the case may be :

Provided also that in the Gram Panchayats where the ratio of the population of the Scheduled Tribes or the Scheduled Castes or the Backward Classes is more than 50 per cent of the total population of the Gram Panchayat and in the previous election the offices of Pradhan thereof were reserved for the Scheduled Tribes or the Scheduled Castes or the Backward Classes and in which the rotation as stated above is not possible, then the reservation for the offices of Pradhan shall be rotated among the persons and the women :

Provided also that out of the Gram Panchayats referred to above in the second proviso the Gram Panchayats in which in the previous election the offices of Pradhan were not reserved for the Scheduled Tribes or the Scheduled Castes or the Backward Classes, then the reservation for the office of Pradhan shall be rotated among the persons and the women :

Provided also that if it is not possible to allot the offices of Pradhan reserved for the Scheduled Tribes or the Scheduled Castes as determined under subrule (1) due to the provisions of the second, third and fourth proviso, then the unallotted offices of Pradhan reserved for Scheduled Tribes or the Scheduled Castes shall be allotted to the Scheduled Tribes or the Scheduled Castes in descending order of the percentage of population of the Scheduled Tribes or the Scheduled Castes, as the case may be, amongst the Gram Panchayats remained after allotting Gram Panchayats to Backward Classes out of the Gram Panchayats having more than 50 per cent population of Backward Classes and be rotated among the persons of the Scheduled Tribes or the Scheduled Castes and the women of the Scheduled Tribes or the Scheduled Castes.

(3) Not less than one third of the Gram Panchayats allotted to the Scheduled Tribes, the Scheduled Castes or the Backward Classes under subrule (2) shall be allotted to the women belonging to the Scheduled Tribes, the Scheduled Castes or the Backward Classes, as the case may be.

(4) Not less than onethird of the total number of the offices of Pradhans reserved for women under subrule (3) shall be allotted to women so, however, that the territorial areas of the Gram Panchayats allotted to them have the largest population, excluding the population of the Scheduled Tribes, the Scheduled Castes and the Backward Classes shall be allotted to them and in the subsequent election, the allotment shall be made in the aforesaid manner so however that,

as far as may be, the Gram Panchayats allotted to women in the previous election shall not be allotted to women :

Provided that in the Panchayats where the ratio of population of the Scheduled Tribes or the Scheduled Castes or the Backward Classes is more than 50 per cent of the total population of the Gram Panchayat, the reservation for the offices of Pradhan shall be rotated among the persons of the Scheduled Tribes or the Scheduled Castes or the Backward Classes and the women of Scheduled Tribes or the Scheduled Castes or the Backward Classes, as the case may be."

9. The Constitution and functioning of the Kshetriya Panchayat (intermediate level Panchayat contemplated by Article 243 of the Constitution of India) and Zila Panchayats (District level Panchayats contemplated by Article 243D of the Constitution of India) in the State of Uttar Pradesh is governed by the Uttar Pradesh Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961. Section 6A of the said Act provides for reservation of seats for Scheduled Castes, Scheduled Tribes, Backward Classes and women. The said Section further provides that the seats so allotted for reservation, to be rotated to different territorial constituencies in a Kshetriya Panchayat. Section 6A is reproduced below :

"6A. Reservation of Seats. (1) In every Kshettra Panchayats seats shall be reserved for the persons belonging to the Scheduled Castes, the Scheduled Tribes and the Backward Classes and the number of seats so reserved shall, as nearly as may be, bear the same proportion to the total number of seats to be filled by direct election in the Kshettra Panchayat as the population of the Scheduled Castes in the Khand, or of, the Scheduled Tribes in the Khand or of the Backward Classes in the Khand bears to the, total population of such Khand and such seats may be allotted by rotation to different territorial constituencies in a Kshettra Panchayat in such order as may be prescribed :

Provided that the reservation for the Backward Classes shall not exceed twenty seven per cent of the total number of seats in the Kshettra Panchayat:

Provided further that if the figures of population of the Backward Classes are not available, their population may be determined by carrying out a survey in the prescribed manner.

(2) Not less than onethird of the seats reserved under subsection (1) shall be reserved for the women belonging to the Scheduled Castes, Scheduled Tribes and the Backward Classes, as the case may be.

(3) Not less than onethird of the total number of seats including the number of seats reserved under subsection (2) shall be reserved for the women and such seats may be allotted by rotation to different territorial constituencies in a Kshettra Panchayat in such order as may be prescribed.

(4) The reservation of seats for the Scheduled Castes and Scheduled Tribes shall cease to have effect on the expiry of the period specified in Article 334 of the Constitution of India.

Explanation. It. is clarified that nothing in this section shall prevent the persons belonging to the Scheduled Castes, the Scheduled Tribes and the Backward Classes and the women from contesting election to unreserved seats."

10. Section 7A of the said Act provides for reservation of the office of the Pramukhs. The said section further provides that the offices so reserved may be allotted to the persons belonging to the reserve categories and women may be allotted by rotation to different Kshetriya Panchayats. Section 7A reads as under:

"7A. Reservation of the offices of Pramukhs. (1) The offices of the Pramukhs of Kshettra Panchayats in the State shall be reserved for the persons belonging to Scheduled Castes, the Scheduled Tribes and the Backward Classes.

Provided that the number of office of the Pramukhs so reserved shall bear, as nearly as may be, the same proportion to the total number of such offices in the State as the population of the Scheduled Castes in the State or of Scheduled Tribes in the State or of the Backward Classes in the State bears to the total population of the State and the offices so reserved may be allotted by rotation to different Kshettra Panchayats in the State in such order as may be prescribed :

Provided further that the reservation for the Backward Classes shall not exceed twentyseven per cent of total number of offices of Pramukhs in the State :

Provided also that if the figures of population of the Backward Classes are not available, their population may be determined by carrying out a survey in the prescribed manner.

(2) Not less than onethird of the total number of offices reserved under subsection (1), shall be reserved for the women belonging to the Scheduled Castes, the Scheduled Tribes and the Backward Classes, as the case may be.

(3) Not less than onethird of the total number of offices of Pramukhs, including the number of offices reserved under subsection (2), shall be reserved for women and such offices may be allotted by rotation to different Kshettra Panchayats in the State in such order as may be prescribed.

(4) The reservation of the offices of Pramukhs for the Scheduled Castes, the Scheduled Tribes under this section shall cease to have effect on expiration of the period specified in Article 224 of the Constitution.

Explanation. It is clarified that nothing in this section shall prevent the persons belonging to the Scheduled Castes, the Scheduled Tribes and the Backward Classes and the women from contesting election to unreserved offices."

11. In exercise of powers under Section 237 of the U.P. Kshettra Panchayat and Zila Panchayat Act, the U.P. Kshettra Panchayat and Zila Panchayat (Reservation and Allotment of Seats and Offices) Rules, 1994 were framed and published in U.P. Gazette on 24th August, 1994. Subrule (4) of the said Rules provides for allotment of seats by rotation forewomen belonging to Scheduled Tribes; Scheduled Tribes, Women belonging to Scheduled Castes; Scheduled Castes,

Women belonging to Backward Class; Backward Class and Women. Subrule (4) of the said Rules provides that the seats allotted in the previous election to any one of the reserved categories shall not be allotted to same category. Rule 4 reads as under :

"4. Allotment of Seats by Rotation. (1) Subsection to the provisions of the other subrules, the seats reserved in a Kshettra Panchayat or a Zila Panchayat shall be allotted to different territorial constituencies in that Kshettra Panchayat or Zila Panchayat as the case may be, in the following order :

- (a) Women belonging to the Scheduled Tribes;
- (b) The Scheduled Tribes;
- (c) Women belonging to the Scheduled Castes;
- (d) The Scheduled Castes;
- (e) Women belonging to Backward Classes;
- (f) Backward Class; and
- (g) Women.

(2) If on the basis of population of the Scheduled Tribes or of the Scheduled Castes or of the Backward Classes in a Panchayat area, only one seat can be reserved for the Scheduled Tribes or for the Scheduled Castes or for the Backward Classes, as the case may be, such seat shall go to a woman belonging to the Scheduled Tribes or to the Scheduled Castes or to the Backward Classes, as the case may be.

(3) If on the basis of population in a Panchayat area, a seat cannot be reserved for the Scheduled Tribes or for the Scheduled Castes or for the Backward Classes, the order mentioned in subrule (1) shall be so adhered to as if there was no reference in it to the Scheduled Tribes or to the Scheduled Castes or to the Backward Classes, as the case may be.

(4) The Number of seats as provided in Rule 3 shall be allotted to different territorial constituencies on the basis of population in the descending order, that is, from amongst the territorial constituencies in a Kshettra Panchayat or in a Zila Panchayat, the territorial constituency having the largest population of the Scheduled Tribes shall be allotted to them, the territorial constituency having the largest population of the Scheduled Castes shall be allotted to them and the territorial constituency having the largest population of the Backward Classes shall be allotted to them, and in the subsequent election the allotment shall be made in the aforesaid manner so however that, as far as may be, the territorial constituency allotted in the previous election to the Scheduled Tribes shall not be allotted to the Scheduled Tribes and the territorial constituency allotted to the Scheduled Castes shall not be allotted to the Scheduled Castes and the territorial constituency allotted to the Backward Classes shall not be allotted to the

Backward Classes :

Provided that if in any election, the population of the Scheduled Tribes or of the Scheduled Castes or of the Backward Classes, cannot be ascertained territorial constituency wise the descending order may be determined on the basis of number of families in the territorial constituencies of the Scheduled Tribes or of the Scheduled Castes or of the Backward Classes, as the case may be.

(5) Not less than onethird of the territorial constituencies allotted to the Scheduled Tribes, the Scheduled Castes or the Backward Classes under subrule (4) shall be allotted to the women belonging to the Scheduled Tribes, the Scheduled Castes or the Backward Classes as the case may be.

(6) Not less than onethird of the territorial constituencies remaining after allotment under subrule (4) shall be allotted to women so however, that the territorial constituencies having the largest population excluding the population of the Scheduled Tribes, the Scheduled Castes and the Backward Classes, shall be allotted to them and in the subsequent election the allotment shall be done in the aforesaid manner so however that the territorial constituencies allotted to women in the previous election shall not be allotted to women."

12. Rule 5 of the U. P. Kshettra Panchayat and Zila Panchayat Rules provides for allotment of offices by rotation. The subrule (2) of the said Rule lays down that the office for the Pramukhs allotted to any one of the reserved categories shall not be allotted to any other category. Rule 5 reads as under :

"Rule 5. Allotment of offices by rotation. (1) The number of offices of Pramukhs of Kshettra Panchayats as provided in Rule 3 for the Scheduled Tribes, the Scheduled Castes and the Backward Classes shall be distributed districtwise for being allotted to different Kshettra Panchayats in the district, so however, that the number of offices of Pramukhs for the Scheduled Tribes, the Scheduled Castes and the Backward Classes for the Kshettra Panchayats in a district shall bear, as nearly as may be, the same proportion to the number of offices of Pramukhs as provided in Rule 3, as the population of the Scheduled Tribes in the district or of the Scheduled Castes in the district or of the Backward Classes in the district bears to the total population of the Scheduled Tribes in the State or to the total population of the Scheduled Castes in the State or to the total population of the Backward Classes in the State, as the case may be.

(2) The number of offices of Pramukhs for the Scheduled Tribes, the Scheduled Castes and the Backward Classes as determined under subrule (1) shall be allotted to different Kshettra Panchayats in the district on the basis of the ratio of their population in the Panchayat area in the descending order, that is, from amongst the Kshettra Panchayats in the district, the Kshettra Panchayat in whose territorial area the ratio of population of the Scheduled Castes is highest shall be allotted to them, and the Kshettra Panchayats in whose territorial area the ratio of population of the Backward Classes is highest shall be allotted to them, and in the subsequent election the allotment shall be made in the aforesaid manner so

however that, as far as may be, the Kshettra Panchayats allotted in the previous election to the Scheduled Tribes and the Gram Panchayat allotted to the Scheduled Tribes, shall not be allotted to the Scheduled Tribes and the Kshettra Panchayat allotted to the Scheduled Castes and the Kshettra Panchayat allotted to the Backward Classes, shall not be allotted to the Backward Classes.

(3) Not less than onethird of the Kshettra Panchayats allotted to the Scheduled Tribes, the Scheduled Castes or the Backward Classes under subrule (2) shall be allotted to the women belonging to the Scheduled Tribes, the Scheduled Castes or the Backward Classes, as the case may be.

(4) Not less than onethird of the Kshettra Panchayats remaining after allotment under subrule (2) shall be allotted to women so, however, that the territorial area of the Kshettra Panchayats allotted to them have the largest population, excluding the population of the Scheduled Tribes, the Scheduled Castes and the Backward Classes shall be allotted to them and in the subsequent election, the allotment shall be made in the aforesaid manner so however that the Kshettra Panchayats allotted to women in the previous election shall not be allotted to women.

(5) The number of Adhyakshas for the Scheduled Castes and the Backward Classes as provided in Rule 3 shall be allotted to different Zila Panchayats in the State on the basis of the ratio of their population in the Panchayat area to the total population of the Panchayat area in the descending order, that is, from amongst the Zila Panchayats in the State, the Zila Panchayat in whose territorial area the ratio of population of the Scheduled Castes is highest shall be allotted to them, and the Zila Panchayat in whose territorial area the ratio of population of the Backward Classes is highest shall be allotted to them, and in the subsequent election the allotment shall be made in the aforesaid manner so however that, as far as may be, the Zila Panchayat allotted in the previous election to the Scheduled Castes shall not be allotted to the Scheduled Castes and the Zila Panchayat allotted to the Backward Classes shall not be allotted to the Backward Classes.

(6) Not less than onethird of the Zila Panchayats allotted to the Scheduled Castes or the Backward Classes under subrule (5) shall be allotted to women belonging to the Scheduled Castes or the Backward Classes, as the case may be.

(7) Not less than onethird of the Zila Panchayats remaining after allotment under subrule (5) shall be allotted to women so, however, that the territorial area of the Zila Panchayats allotted to them have the largest population, excluding the population of the Scheduled Castes and the Backward Classes and in the subsequent election, the allotment shall be made in the aforesaid manner so however that the Zila Panchayats allotted to women in the previous election shall not be allotted to women.

(8) The offices of Adhyakshas shall be allotted in the following order :

- (a) Women belonging to the Scheduled Castes;
- (b) The Scheduled Castes;
- (c) Women belonging to Backward Classes;
- (d) Backward Class;
- (e) Women. .

(9) The Provisions of subrule (2) of Rule 4 shall mutatis mutandis apply to allotment of offices under Rule 5."

13. Learned Counsel for the petitioners have argued with vehemence that Rule 5 of the U.P. Kshettra Panchayat and Zila Panchayat Reservations Rules, 1994, which was in consonance with Article 243D of the Constitution of India was duly followed in providing reservation in the year 1995 and in the year 2000 elections of the Kshettra Panchayat as well as Zila Panchayats. However, for illegal and extraneous consideration and in utter violation of provisions of Article 243D of the Constitution of India, the said rule was amended on 10.6.2005, whereby proviso to subrules (2) and (4) were added. It would be apt to reproduce the amended Rule 5, which as under :

"5 (1) The number of offices of Pramukhs as computed in Rule 3 for the Scheduled Tribes, the Scheduled Castes and Other Backward Classes of citizens shall be distributed district wise for being allotted to the constituent Kshettra Panchayats in the following manner :

(a) The number of offices of Pramukhs for the Scheduled Tribes in the district shall bear, as nearly as may be, the same proportionate the number of offices of Pramukhs as computed in Rule 3 as their population in the district bears to their total population in the State.

(b) The number of offices of Pramukhs for the Scheduled Castes in the district shall bear as nearly as may be, the same

A proportion to the total number of offices of Pramukhs in the district as their population in the Zila Panchayat bears to the total population of the Zila Panchayat. Subject to the maximum of the ratio of their population in the State to the total population of the State :

Provided that in the case of undistributed numbers of offices of Pramukhs as computed in Rule 3 shall be redistributed amongst only those Zila Panchayats, where the proportion of their population in the total population of the Zila Panchayats exceeds the proportion of their population in the total population of the State, in the descending order of the ratio of their population in the total population of the Zila Panchayat.

(c) The number of offices of Pramukhs for the Other Backward Classes of citizens in the District shall bear as nearly as may be, the same proportion to the total number of offices of Pramukhs in the district as their population in the Zila

Panchayat bears to the total population of the Zila Panchayat:

Provided that the number of offices of Pramukhs reserved for other Backward Classes in the district shall not exceed twenty seven per cent of the total number of offices of Pramukhs in the district:

Provided further that in the case of undistributed numbers of offices of Pramukhs as computed in Rule 3 shall be redistributed amongst only those Zila Panchayats, where the proportion of their population in the total population of the Zila Panchayat exceeds the proportion of their population in the total population of the State in the descending order of the ratio of their population in the total population of the Zila Panchayat.

(2) The number of offices of Pramukhs for the Scheduled Tribes, the Scheduled Castes and the Backward Classes, as determined under subrule (1) shall be allotted to different Kshettra Panchayats in the Zila Panchayat on the basis of the ratio of their population in the Panchayat area, in the descending order, that is, from amongst the Kshettra Panchayats in the Zila Panchayat, the Kshettra Panchayat in whose territorial area the ratio of population of the Scheduled Tribes is highest shall be allotted to them, and the Kshettra Panchayat in whose territorial area the ratio of population of the Scheduled Castes is highest shall be allotted to them and the Kshettra Panchayat in whose territorial area the ratio of population of the Backward Classes is highest shall be allotted to them and in the subsequent election the allotment shall be made in the aforesaid manner, so, however, that as far as may, the Kshettra Panchayat allotted in the previous election to the Scheduled Tribes shall not be allotted to the Scheduled Tribes and the Kshettra Panchayat allotted to the Scheduled Castes shall not be allotted to the Scheduled Castes and the Kshettra Panchayat allotted to the Backward Classes shall not be allotted to the Backward Classes :

Provided that in the Kshettra Panchayats where the ratio of the population of the Scheduled Tribes or the Scheduled Castes or the Backward Classes is more than 50 per cent of the total population of the Kshettra Panchayat, the reservation for the offices of Pramukh shall be rotated among the persons of the Scheduled Tribes or the Scheduled Castes or the Backward Classes and the women of Scheduled Tribes or the Scheduled Castes or the Backward Classes, as the case may be :

Provided further that in the Kshettra Panchayats where the ratio of the population of the Scheduled Tribes or the Scheduled Castes or the Backward Classes is more than 50 per cent of the total population of the Kshettra Panchayat and in the previous election the offices of Pramukh thereof were reserved for the Scheduled Tribes or the Scheduled Castes or the Backward Classes and in which the rotation as stated above is not possible, then the reservation for the offices of Pramukh shall be rotated among the persons and the women :

Provided also that out of the Kshettra Panchayats referred to above in the first

proviso the Kshettra Panchayats in which in the previous election the offices of Pramukh were not reserved for the Scheduled Tribes or the Scheduled Castes or the Backward Classes, then the reservation for the office of Pramukh shall be rotated among the persons and the women.

(3) Not less than onethird of the Kshettra Panchayats allotted to the Scheduled Tribes, the Scheduled Castes or the Backward Classes under subrule (2) shall be allotted to the women belonging to the Scheduled Tribes, the Scheduled Castes or the Backward Classes, as the case may be.

(4) Not less than onethird of the total number of the offices of Pramukh reserved for women under subrule (3) shall be allotted to women so, however, that the territorial areas of the Kshettra Panchayats allotted to them have the largest population, excluding the population of the Scheduled Tribes, the Scheduled Castes and the Backward Classes shall be allotted to them and in the subsequent election, the allotment shall be made in the aforesaid manner so however that, as far as maybe, the Kshettra Panchayats allotted to women in the previous election shall not be allotted to women :

Provided that in the Kshettra Panchayats where the ratio of the population of the Scheduled Tribes or the Scheduled Castes or the Backward Classes is more than 50 per cent of the total population of the Kshettra Panchayat, the reservation for the offices of Pramukh shall be rotated among the persons of the Scheduled Tribes or the Scheduled Castes or the Backward Classes and the women of Scheduled Tribes or the Scheduled Castes or the Backward Classes, as the case may be."

14. After the 73rd Amendment of the Constitution, the State of U.P. framed Uttar Pradesh Panchayat Raj (Reservation and Allotment of Seats and Posts) Rules, 1994 and Uttar Pradesh Kshettra Panchayat and Zila Panchayat (Reservation of Seats and Post) Rules, 1994. Under the said Rules, the State of U.P. issued G.O. No. 5661/331984281/94, dated 14th November, 1994; 5661/33/194281/94, dated 21st November, 1994; 5769/33194440/94, dated 21st November, 1994, 1011/331200071/2000, dated 10.4.2000. The Panchayat elections after the 73rd Amendment of the Constitution were held in the State of U.P. in the year 1995. For the said elections, the State of U.P. decided to provide reservations for Backward Classes to the extent of an upper limit of 27%. Besides that the reservation for Scheduled Castes and Scheduled Tribes is to the extent of 21.15%. The reservation of seats was done as per the Government Order referred to above. It was provided in the said G,O that the seats which will be reserved for Scheduled Castes/Scheduled Tribes or Backward Classes will be rotated and that the reserved seats will not be repeated in the following elections; that the Government of India conducted the general census in the country in the year 1991. In the General Census the population of the country was counted under two categories, i.e., general and Scheduled Castes/Scheduled Tribes. The Backward Class people were counted along with the general category; that Article 243 (f) of the Constitution of India provides the definition

of population to mean as the one ascertained at the last preceding census of which the relevant figures have been published. The said clause of Article 243 (f) reads as under :

"243 (f) Population mean the population as ascertained at the last preceding census of which the relevant figures have been published."

15. Article 243D (1) lays down that seats shall be reserved for Scheduled Castes, Scheduled Tribes in proportion to their population of that area and such seats may be allotted by rotation to different constituency in a Panchayat. According to subclause (6) of the said Article, Legislature of a State can make provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayat's at any level in favour of Backward Class of citizen. It is thus abundantly clear that the reservation of seats has to be done on the basis of population as ascertained at the last preceding census of which the relevant figures have been published; that the Census in the country are taken under the Census Act, 1948. Preamble of the said Act is reproduced as under :

"An Act to provide for certain matters in connection with the taking of census."

Further the opening portion of the Act after the preamble reads as under :

"Whereas, it is expedient to provide for the taking of census in India or any part thereof whenever necessary or desirable and to provide for certain matters in connection with the taking of such census."

It is hereby enacted as follows :

"Section 3 of the Census Act, 1948, prescribes that the Central Government alone can take census. The State Government cannot take census. Section 3 of the said Act reads as under :

"The Central Government to take census. The Central Government may, by notification in the Official Gazette, declares its intention of taking a census in the whole or any part of territories to which this Act extends, whenever it may consider it necessary or desirable, so to do and thereupon the census shall be taken."

16. Further under Section 8 of the Census Act, the Census Officer may ask all such questions of all persons within the limit of the local area for which he is appointed as, by instructions issued in this behalf by the Central Government and published in the Official Gazette, he may be directed to ask. Section 8 reads as under:

"8. Asking of the question and obligation to answer. (1) A Census Officer may ask all such questions of all persons within the limit of local area for which he is appointed as, by instructions issued in this behalf by the Central Government and published in the Official Gazette, he may be directed to ask.

(2) Every person of whom any question is asked under subsection (1) shall be

legally bound to answer such question to the best of his knowledge or belief:

Provided that no person shall be bound to state the name of any female member of his house hold, and no women shall be bound to state the name of husband or deceased husband or of any other person whose name she is forbidden by custom to mention."

17. Under Section 17 Census Commissioner or any Director of Census operations may at the request and cause of any local authority or person cause abstracts to be prepared and supplied any such statistical information as can be derived from Census returns for India or any State, as the case may be, being the information which is not contained in any published report. Section 17 reads as under:

"17. Grant of Statistical obstructs. Subject to the provision of Section 15 in the Census Commissioner or any Director of Census operation may, if he so thinks fit at the request and cost (to be determined by him) of any local authority or person, cause obstructs to be prepared and supplied containing any such statistical information as can be derived from the Census return for (India or any State) as the case may be being information which is not contained in any published report and which in his opinion it is reasonable for that authority or person to require."

18. Under Section 17A, the Central Government has power to extend the provision of the Act to other operations also. Under this provision if a State Government or any other agency requires any additional information in the census it can ask the Central Government to do so and the Central Government can obtain the said information by extending the provision of this Act to the said other operation. Section 17A reads as under :

"17A. A power to extend the provision of Act to other operation.

The Central Government may, by notification in the Official Gazette, extend the provisions of this Act, with such restrictions and modifications as it thinks fit, to pretests, pilot studies census of houses which precede the population count and postenumeration check and evaluation studies or statistical surveys any other operation as may be deemed for the purpose of census."

19. Learned Counsel for the petitioners next argued that per Entry 69 of the First List of the 7th Schedule to the Constitution of India "Census" is in the union list. As such the Parliament of India alone has the power to make laws with respect to the Census. The State Legislature does not have the power and/or jurisdiction to legislate law with respect to census. The State of U.P. decided to hold elections to the Panchayat in 1994 and giving reservations to the Backward Classes. The State Government by the newly added proviso to Section 11A in U.P. Panchayat Raj Act, was given powers to determine the population of Backward Classes if the figures of their population were not available. Similar power was also given vide Section 6A (1) second proviso and 7A (1) second proviso of the U.P. Kshettra Panchayat and Zila Panchayat Act. Therefore, the newly added proviso to

aforesaid provisions were beyond the scope and jurisdiction of the State Legislature as the "Census" is covered under Entry 69 of the List 1 of the Seventh Schedule to the Constitution of India, and as such only the Parliament of India is entitled to enact the laws pertaining to "Census". The State Legislature does not have the competence to legislate the laws pertaining to "Census" in any form. The State of U.P. also framed U.P. Panchayats (Determination and Publication of Number of Persons belonging to Backward Classes) Rules, 1991 in exercise of powers under Section 110 of the U.P. Panchayat Raj Act. Therefore, framing of rules regarding determination of number of persons is beyond the competence of the State Government as the said subjectmatter is exclusively retained in the Union List, i.e., List 1 of the 7th Schedule to the Constitution of India. The said rules are therefore, ultra vires to the provisions of the Constitution of India. However, the State Government conducted rapid survey in the year 1994 and published the same. On the basis of figures of Scheduled Castes/Scheduled Tribes available from the general census and Backward Classes available from the rapid survey conducted by the State Government, reservations for Scheduled Castes/Scheduled Tribes, Backward Classes and Women were made; Even otherwise while introducing the above provision to provide power to determine the population of Backward Classes in the U.P. Panchayat Raj Act and U.P. Kshetriya Panchayat and Zila Panchayat Act, it has escaped the notice of the State Government that under the same Act the State Government has promulgated U.P. Panchayat Raj (Maintenance of Family Registers) Rules, 1970. The said Rules were framed while exercising the powers under Section 110 of the said Act. The said Rules are in operation since 5.6.1970. Under Rule 2 of the said Rules, it is mandatory for every Gram Panchayat to maintain a family register containing family wise names and particulars of all persons ordinarily residing in the village which is popularly known as Kutumb Register. Under Rule 4 at the beginning of every quarter starting April in each year, Secretary of the Gram Sabha shall make necessary changes in the family register consequent upon births and deaths, if any, occurring in the previous quarter in each family. Such changes shall be laid before the next meeting of the Gram Panchayat for its information. Rules 5 and 6 provide for coercion and inclusion of names. Rule 7 provides that the Secretary of the Gram Sabha shall be responsible for the safe custody of this Register. This Family Register which is a permanent record, cannot be tampered with, exaggerated or manipulated because firstly, under Rule 5 this register will be under constant surveillance of the Gram Panchayat and further any incorrect entry made in it can be got corrected at any point of time. Instead of carrying out the rapid survey at the cost of several hundred crores of rupees, the State Government could simply have called for the information from the Family registers of all the Gram Panchayats and complied them. In the year 1995 elections to the Gram Panchayats, Kshetriya Panchayats and Zila Panchayats were held on the basis of delimitations and reservation and allotment of seats to Scheduled Castes/Scheduled Tribes, Backward Classes, Women belonging to Scheduled Castes/Scheduled Tribes, Women belonging to Backward Classes and Woman. The next elections were held in the year 2000 on

the basis of the General Census, 1991 and rapid survey conducted by the State of U.P. in the year 1994. The seats reserved for Scheduled Castes/Scheduled Tribes and Backward Classes, Women from Scheduled Castes/Scheduled Tribes and Backward Classes and Women were sought to be rotated as per Article 243D of the Constitution of India, Sections 11A and 12 (5) of the U.P. Gram Panchayat Act, 1947 and Sections 6A and 7A of the U.P. Kshetriya Panchayat and Zila Panchayat Adhiniyam, 1961. The General Census in the country was again conducted by the Central Government in the year 2001. The State Government though was fully aware of the fact that it will have to conduct elections for Panchayats, Kshetriya Panchayats and Zila Panchayats in future, did not ask the Central Government to include a survey of the population of the Backward Classes. Neither did it make a separate survey coinciding with the census as is contemplated under Section 17A of the Census Act, 1948. In this census the population of Scheduled Castes has been 21.15% and the Scheduled Tribes is 0.06% in the State of U.P. In the year 2004 another rapid survey was conducted by the present Government. On 5th October, 2004, the Director, Panchayat Raj, U.P. vide Notification No. 3/350 issued directions to all the District Magistrates to undertake the work of survey of the persons belonging to Backward Classes and publish the same as per the schedule appended to the said notification. Vide this notification, the Director has issued direction that the counting shall take place as on 1.3.2001. The Chief Minister of the State declared that elections for Gram Panchayats will be held during June and August, 2005. On 4.5.2005 Government Orders were issued in which it was provided that wherever in the last election seats and offices were reserved for Scheduled Castes/Scheduled Tribes they will not be allotted to them and the same will be rotated as per rules. The State Government issued a time table for issuance of list of seats and offices reserved for Scheduled Castes/Scheduled Tribes, Backward Classes, Women Scheduled Castes/Scheduled Tribes, Backward Classes and Women according to which the said lists were to be published by 30.5.2005, but all of a sudden during the night of 18.5.2005, the Government issued a notification and suspended the work of publication of the list of reserved seats and offices. Though there was no reason available for stopping the publication work, but the pretext of bye-elections in four Assembly constituencies of the State was given as a reason. If this is correct, then the publication could have been stopped in those four assembly areas only and not in the whole State. Further, the Government was fully aware of the bye-elections, in that event, they should not have published the time table of publication by 30.5.2005 in the first place. This clearly shows that the ostensible reason for stopping the publication was other than the one indicated. On probing the matter, the petitioners have come to know of the facts, which are extremely unfortunate and violative of democratic norms. It is emphatically contended that the petitioners have come to know that the post of the Pradhan in the village Saifai, the village of the Chief Minister was in due course reserved for the Scheduled Caste category and as such all such exercises were done. It is in this background that the Clause 3 in the G.O. 3 has been added, whereby it has been provided that in those villages where the population of Scheduled Castes/

Scheduled Tribes and Backward Classes is more than 50% of the total population, the post of the Pradhan will be rotated only between the said category persons and Women belonging to the said category. The newly inserted proviso is not only contrary to the Clause 3 of the said G.O. but also contrary to the provisions of Section 11A of the U.P. Panchayat Raj Act, 1947 as well as Section 7A of the U.P. Kshetriya Panchayat and Zila Panchayat Adhiniyam, 1961. The Government Order dated 6.6.2005 and specially Clause 3 proviso aforesaid inserted at the instance of the Chief Minister is bad in law and ultra vires to the provisions of the Act and Rules under which the G.O. is issued as well as violative of Article 243D of the Constitution of India. On 10.6.2005 the State Government purported to have brought in Uttar Pradesh Kshetriya Panchayat's and Zila Panchayat's (Reservation and Allotment of Seats and Offices) (5th Amendment) Rules, 2005, vide this amendment in subrule (2) proviso 1 has been added whereby in the areas where population of Scheduled Castes/Scheduled Tribes and Backward Classes is more than 50% of the total population of the Kshetriya Panchayat, the reservation for the office of the Pramukh shall be rotated amongst the persons of Scheduled Tribes and Scheduled Castes or Backward Classes and the women of Scheduled Caste, Scheduled Tribe or the Backward Class as the case may be. Similarly, the second proviso has been inserted whereby it is provided that Kshetriya Panchayats where the ratio of the population of Scheduled Castes/Scheduled Tribes or Backward Class is more than 50% of the total population of the Kshetriya Panchayat, and in the previous election the office of the Pramukh thereof were reserved for Scheduled Castes/Scheduled Tribes or the Backward Classes and in which the rotation as stated in the first proviso is not possible then the reservation for the office of the Pramukh shall be rotated amongst other persons and the women. Further, third proviso has been added as per which if the office of Pramukh is a Kshetriya Panchayat was not reserved for Scheduled Castes/Scheduled Tribes or Backward Classes, then the reservation for the office of the people shall be rotated amongst the persons and the women. Likewise, the proviso to subrule (4) has also been added, providing that in that Kshetriya Panchayat where ratio of population of Scheduled Castes/Scheduled Tribes or Backward Classes is more than 50% of the total population of the Kshetriya Panchayat, the reservation for the office of Pramukh shall be rotated amongst the persons and women of the reserved category.

20. Besides the above, Clause 7 of the G.O. dated 6.6.2005 read with Rule 3 of the Uttar Pradesh Panchayati Raj (Reservation and Allotment of Offices and Seats) Rules, 1994 shows that provision made therein for treating the seats if it comes to more 0.5% population as an additional seat in the matter of calculating seats for Backward Classes is contrary to the provisions of Sections 11A and 12 of the said Act, which provides for reservation not exceeding 27%. By making the said provisions the total number of seats for Backward Classes get increased by a rough estimate, by 25,000 all over the State. This provision in the G.O. and the Rules are, therefore, ultra vires to the provisions of the said Act and the

Constitution of India. In the G.O. dated 6.6.2005, it has been provided that the Gram Panchayat having 9 wards will have 2 seats reserved for B.C. having 11 wards will have 3 seats reserved for B.C. having 13 wards will have 4 seats reserved for the B.C. and one having 15 wards will have 4 seats for B.C. As per the Rules, the condition of 27% upper limit is fulfilled in the case of 9 wards and 15 wards. However, providing 3 and 4 seats for B.Cs. in Gram Panchayats having 11 and 13 wards respectively is in violation of the upper limit of 27%. This wrong calculation has given benefit of almost 25,000 seats all over the State to the Backward Classes to which the Respondent No. 3 the Chief Minister of the State belongs to. That on 10th of June, 2005 the Respondent No. 1 notified U.P. Panchayat Raj (Reservation and Allotment of Seats and Offices) (6th Amendment) Rules, 2005. By this amendment subrule (4) of Rule 5 was amended amongst other and the proviso to that rule was added, providing that the Gram Panchayat where the ratio of population of Scheduled Tribes or Scheduled Castes or Backward Classes is more than 50% of the total population of the Gram Panchayat. The reservation for the office of the Pradhan shall be rotated amongst the person of that reserved category and their women. The amendment is contrary to the provisions of Article 243D of the Constitution of India and is also violative of the provisions of Articles 14 and 21 of the Constitution of India and is thus liable to be set aside.

On 8th of June, 2005 U.P. Panchayat Raj (Reservation and Allotment of Seats and Offices) (7th Amendment) Rules, 2005 was notified by the Respondent No. 1 in the Gazette, by this Amendment five provisos to subrule (2) of Rule 5 of the said rules have been added. Vide second proviso it has been provided that where ratio of population of Scheduled Castes/Scheduled Tribes or Backward Classes is more than 50% of the total population of the Gram Panchayat, reservation for the office of the Pradhan shall be rotated amongst the persons of Scheduled Tribes, Scheduled Castes or Backward Classes and their women as the case may be. The third proviso provides that in case of second proviso the rotation is not possible then the reservation of office of Pradhan shall be rotated amongst the other persons and women. It is further provided that if the office of the Pradhans were not reserved for Scheduled Tribes, Scheduled Castes or Backward Classes the reservation of the office of Pradhan be rotated amongst the man and women. These newly added proviso are also violative of the mandate of Article 243D of the Constitution of India as also Article 14 of the Constitution of India and are liable to be declared as ultra vires.

21. The opposite parties No. 1 and 2 contested the petition by filing counteraffidavit and have pleaded that the Chief Minister has been unnecessarily impleaded as a party by name and the allegations of mala fide against him are wholly unfounded and are politically motivated. It has further been pleaded that the Public Interest Litigation in the present shape is not maintainable and did not cover the parameters fixed by the Hon'ble Supreme Court in Balco's case reported in 2002 (2) SCC 333 and the relevant paragraph of the said law report is quoted below:

"While PIL initially was invoked mostly in cases connected with the relief to the people and the weaker sections of the society and in areas where there was violation of human rights under Article 21, but with the passage of time, petitions have been entertained in other spheres, Prof. S.B. Sathe has summarized the extent of the jurisdiction which has now been exercised in the following words :

"PIL may, therefore, be described as satisfying one or more of the following parameters. These are not exclusive but merely descriptive :

Where the concerns underlying a petition are not individualist but are shared widely by a large number of the people (bonded labour, undertrial prisoners, prison inmates).

Where judicial law making is necessary to avoid exploitation (intercountry adoption, the education of the children of the prostitutes).

Where judicial intervention is necessary for the protection of the sanctity of democratic institutions (independence of the judiciary, existence of grievances redressal forums).

Where administrative decisions related to development are harmful to the environment and jeopardize people's right to natural resources such as air or water."

22. It has further been pleaded that the Government Order No. 1941/331200571/2000, dated 6th June, 2005 was issued in conformity with the Uttar Pradesh Panchayat Raj (Reservation and Allotment of Seats and Offices) Rules, 1994 and Uttar Pradesh Kshettra Panchayat and Zila Panchayat (Reservation and Allotment of Seats and Offices) Rules, 1994 as amended upto date. It has further been pleaded that the aforesaid G.O. dated 6.6.2005 is not in violation of Article 243D of the Constitution of India and likewise the provision of Clause 7 of the Government Order is not in violation of the Constitution, U.P. Panchayat Raj Act, 1947 or Uttar Pradesh Panchayat Raj (Reservation and Allotment of Seats and Offices) Rules, 1994. Rule 3 of the aforesaid Rule is quoted below :

"3. Number of seats and offices to be reserved. In computing the number of seats or offices of Pradhans to be reserved for the Scheduled Tribes, the Scheduled Castes or the Backward Classes in accordance with the provisions of subsection (5) of Section 12 or subsections (2) and (4) of Section 11A of the Act, if the remainder is not less than half of the divisor, the quotient shall be increased by one, and if the remainder is less than half of the divisor, it shall be ignored, and the number so arrived at shall be the number of seats or offices of Pradhans to be reserved for the Scheduled Tribes or the Scheduled Castes or the Backward Classes, as the case may be :

Provided that the number of seats or offices of Pradhans reserved for the Backward Classes shall not exceed twentyseven per cent of the total number of seats or offices of Pradhans, as the case may be."

23. It is said that by the method of calculation, the percentage of reservation fixed at 27% would increase, has not been substantiated by the petitioners in any manner and there is no breach of Article 14 of the Constitution of India. It has further been pleaded that the State Government is taking all necessary steps to organise Village Panchayats and endow them with the power and authority to enable them as a unit of self Government and by filing the writ petitions, the petitioners have tried to create hindrance in such exercise of the State. It has further been pleaded that the Constitution has left it to the State Legislature to make provisions in respect of the composition of Panchayats and reservation therein under Articles 243C and 243D respectively. It has further been pleaded that the provisions pertaining to rotation are enabling and discretionary and the nature of rotation would depend upon prescription by Rules and the reservation of the seats and offices is made in accordance with Section 11A of the U.P. Panchayat Raj Act and the Rules made thereunder. It is wrong to say that the opposite parties have concealed any facts. It has further been pleaded that in the election of 1995, 21.05% of seats and offices were reserved for Scheduled Castes and 0.02% of the seats and offices were reserved for Scheduled Tribes and the provision of rotation of seats was made in accordance with the then existing Rules. It is admitted that the population of the Backward Classes is not published in the census report and accordingly Census, 1991 did not contain the population of Backward Classes. Likewise, the Census Report, 2001 also did not contain the population of the Backward Classes as a separate category. It has further been pleaded that the survey was conducted in the year 1994 in accordance with statutory Rules known as Uttar Pradesh Panchayats (Determination and Publication of the Number of Persons belonging to the Backward Classes) Rules, 1994 and the said exercise was repeated for holding election of 2005. In the rapid survey of 1994 the base year was kept 1991 in line with 1991 Census and likewise the rapid survey of 2004/05 was based on year 2001 in line with Census, 2001. It has further been pleaded that the rapid census/survey has sanction of law as the same is done under Rules framed by the State Government viz. Uttar Pradesh Panchayats (Determination and Publication of the Number of Persons belonging to the Backward Classes) Rules, 1994. It has further been pleaded that the third provision of Section 11A (2) of the U.P. Panchayat Raj Act, read with Uttar Pradesh Panchayats (Determination and Publication of the Number of Persons belonging to the Backward Classes) Rules, 1994 give jurisdiction and power to the State Government to determine the population of the Backward Classes and the State Government accordingly proceeded to determine the population of Backward Classes. It has further been pleaded that under the law while determining the number of persons belonging to the Backward Classes, the population, which is ascertained in the last preceding census shall be the basis of survey and, therefore, while determining the number of persons belonging to Backward Classes in a particular area, the population shown in the last preceding census, i.e., of the year 2001 in the present situation, is fixed according to census report and, therefore, this figure of the population cannot be changed. It has further been pleaded that the list

prepared by the District Magistrate is published for seven days for the Panchayats and objections are invited for three days and the objections received are disposed of, but the petitioners did not indicate as to whether they filed any objection against the published list and the decision taken thereon by the District Magistrate. Nobody has raised any grievance or objection with respect to the rapid survey conducted in the districts. It is denied that the Government Order dated 6.6.2005 is violative of Article 243D of the Constitution of India. It has further been pleaded that transfers of Government servants are made in public interest and also on administrative grounds and no motive could be attributed for such transfers.

24. We have heard the learned Counsel for the parties at length and have gone through the record.

Learned Counsel for the petitioners has argued on the following substantial questions, which are said to be involved in the present writ petitions :

1. Whether rotation of seats and offices for Scheduled Castes/ Scheduled Tribes/ Backward Classes and women in Panchayats at village and each level is mandatory under Article 243D of the Constitution of India, U.P. Panchayati Raj Act and U.P. Kshetriya Panchayat and Zila Panchayat Act, 1961?
2. Whether the Uttar Pradesh State Legislature is competent to enact a law with respect to the "Census", a subjectmatter covered by Entry 69 of the List1 of the Seventh Schedule of the Constitution of India?
3. Whether the Rapid survey conducted to count the population of the persons belonging to Backward Class as on 1.3.2001 can include the Backward Class of persons, so declared subsequently by an ordinance dated 15th September, 2001?
4. Whether the Rapid survey conducted by the State Government for determining the number of person belonging to Backward Class which shows extinction of person belonging to general category at various places and substantial reduction in their number at many other places as well as even different figure of the total population that the one shown in the "Census", the basis of Rapid survey, shows totally distorted figure, and thus reflects manipulation and arbitrary exercise of powers in preparation thereof thus rendering them incorrect, which deserves thorough investigation by an independent investigating agency i.e., C.B.I.?
5. Whether reservation for Scheduled Caste, Scheduled Tribe, Backward Classes, and women, provide for vide Article 243D of the Constitution of India, put together can exceed 50%?
6. Whether in calculating the number of seats to be reserved for Backward Classes can additional seat be provided if the number is more than 0.5, violating the upper limit of 27%?

25. Article 243D of the Constitution of India provides for reservation of seats to Scheduled Castes and Scheduled Tribes and Backward Classes.

Subarticle (1) thereof provides for reservation of seats in every Panchayat in proportion to their population in that area visavis the total population of that area. The said proviso further contemplates that such seats may be allotted by rotation to different constituencies in a Panchayat. Subarticle (2) contemplates 1/3rd of the seats reserved for S.C./S.T. shall go to their women. Subarticle (3) provides for 1/3rd seats including the one for SC/ST women shall be reserved for women and may be allotted by rotation to different constituencies in a Panchayat. Subarticle (4) provides that the office of Chairperson in Panchayat at the village or any other level shall be reserved for SC/ST and women. Third proviso to the said subarticle requires the number of offices reserved should be allotted by rotation to different Panchayats at each level. Subarticle (6) of the said Article unable State Legislature for making provision for reservation of seats in any Panchayat or offices of Chairperson in the Panchayat at any level in favour of Backward Class of citizens.

26. It has been argued by the learned Counsel for the petitioner that a perusal of the Article 243D of the Constitution of India clearly reveals that reservation for SC/ST and women in every Panchayat is mandatory. These provisions contemplate allotment of seats to the various reserved category persons by rotation, wherever they are available. It has been submitted that the framers of the Constitution have cautiously used the words "may be" to deal with the situation where in a constituency SC/ST men or women is not available. In the event of availability of the men and women belonging to these reserved categories the words "may be" has to be read as "shall be". It has further been argued that any other interpretation of these provisions will lead to absurdity. It has been submitted that as per third proviso to subarticle (4) of Article 243D of the Constitution of India the allotment of the post of Chairperson of Panchayats at Village and any other level is mandatorily required to be rotated amongst the Scheduled Castes, Scheduled Tribes and women reserved categories.

27. It has been submitted that the provisions to be legislated by the State Legislature under subarticle (6) of Article 243D of the Constitution of India can in no way affect the mandatory reservation and rotation thereof for the various categories i.e., S.C./S.T. and women. In case any provision is legislated which is contrary to the mandate of Article 243D the same will be ultravires. The arguments of the learned Counsel for the petitioner have further been elaborated in the manner that in consonance with the provisions of Article 243D of the Constitution of India to provide for reservation and rotation thereof the State Legislature amended the provisions of U.P. Panchayat Raj Act, 1947 and inserted Section 11A (5) is paramateria to the third proviso to Article 243D (4). The said section also mandatorily provides for rotation of the posts of Pradhans to be allotted to reserve category of the S.C./S.T., backward class and women. Similarly Section 12 (5) (A) is paramateria to Article 243D (1), (2) and (3) of the Constitution of India. This section provides for reservation of seats in every Gram Panchayat for Scheduled Castes, Scheduled Tribes/Backward Classes and women, and the said Section carries similar words for rotation of the seats as is

contained in corresponding provision of the Article 243D of the Constitution of India. It is thus submitted that words "may be" uses in Article 243D was for the purposes of rotation of the seats are to be read as "shall be" where men/women of the said reserved category are available. It has further been submitted that similarly to give effect to the constitutional mandate U.P. State Legislature incorporated Sections 6A and 7A in the U.P. Kshettra Parishad and Zila Parishad, 1961 to provide for reservations of seats and the offices of Pramukhs. It has further been submitted that contrary to the mandatory provisions of Article 243D and Sections 11A and 12A of the U.P. Panchayat Raj Act and Sections 6A and 7A of the U.P. Kshettra Panchayat and Zila Panchayat Act the State Government issued G.O. dated 6.6.2005 and latter on also amended Rules 5 (2) and 5 (4) of the U.P. Panchayat Raj Act. Vide proviso to Clause 3 of the G.O. the State Government provided that if the population of S.C./S.T./Backward Class is more than 50% in an area then the posts of Pradhan will be rotated only between the man and woman of that category. It is, therefore, contended that the provision of proviso to Clause 3 of the G.O. dated 6.6.2005 and Rule 5 (2) second proviso, third proviso, fourth proviso and fifth proviso of U.P. Panchayat Raj Act (Reservation and Allotment of Seats and Offices) Rules, 1994 are ultravires and are liable to be quashed and similarly Rule 5 (2) first proviso, second proviso, third proviso and Rule 5 (4) proviso of the U.P. Kshettra Panchayat and Zila Panchayat (Reservation and Allotment of Seats and Post) are ultravires and are liable to be quashed.

28. As against it, Sri Rakesh Dwivedi, learned Senior Counsel for the respondents has submitted that framers of Constitution of India and Article 243D thereof have intentionally used words "shall be" and "may be" at appropriate places in the aforesaid Article.

29. Our attention has been drawn by the learned Counsel for the opposite parties to subarticle (1) of Article 243D and has submitted that in subarticle (1) there is provision of reservation of seats for Scheduled Castes and Scheduled Tribes and words used are "shall be". It, therefore, mandatorily says that there shall be reservation of seats for Scheduled Castes and Scheduled Tribes in every Panchayat and the number of seats so reserved shall, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat. Again in subarticle (2) of the Article 243D words "shall be" have been used for reservation of women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes and it has been directed that not less than onethird seats in respect of Scheduled Castes and Scheduled Tribes shall be reserved for women. Then subarticle (3) again deals for reservation of women and also rotation of their seats. Subarticle (4) of Article 243D also lays down that the offices of the Chairpersons in the Panchayats at the village or any other level "shall be" reserved for the Scheduled Castes, the Scheduled Tribes and women

in such manner as the Legislature of a State may, by law, provide,

30. In proviso to subarticle (4) of Article 243D of the Constitution of India there is provision for reservation of the offices of Chairpersons according to the population of Scheduled Castes and the Scheduled Tribes in the Panchayats and again the said proviso further lays down about the reservation for women which shall be not less than onethird of the total number of offices of Chairpersons in the Panchayats. It has further been provided that the number of offices reserved under this clause "shall be" allotted by rotation to different Panchayats at each level. Subarticle (6) deals with the powers of State Legislature from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of Backward Class of citizens. Section 11A of U.P. Panchayat Raj Act, 1947 lays down that the office of Pradhans reserved under this Section shall be allotted by rotation to different Gram Panchayat in such order as may be prescribed. The word "prescribed" has been defined in Section 2 (P) of the U.P. Panchayat Raj Act, 1947 to mean as prescribed by this Act or Rules made thereunder.

31. Thus, our attention has been drawn by Sri Rakesh Dwivedi, learned Senior Counsel to the report of National Commission to "Review of the working of the Constitution" (Decentralization and Devolution) and the Commission for review has observed as under :

"9.18.2. Article 243D and 243T contain identical provisions so far as reservation of seats in Panchayats and Municipalities for SCs/STs. and women are concerned. However, there are some ambiguities about the rotation of such reserved seats. The words used in both the Article are "may be allotted by rotation". However, in the third proviso to clause (4) of Article 243D regarding reservation of the offices of Chairpersons the words used are "shall be allotted by rotation". The Constitutional provisions also do not specify the frequency of rotation. Moreover, in clause (4) of Article 243T there is no stipulation for rotation. To remove ambiguities, Articles 243D and 243T should be suitably amended to provide for rotation and the changes only at the time of delimitation and not in between. State laws should provide the guidelines for the process of reservation which should ensure transparency and adequate opportunities for eliciting voters response."

32. A perusal of the aforesaid observation clearly shows that the word used in both the Articles viz. 243D and 243T are "may be" allotted by rotation. It has further been observed by the Commission that the Constitutional provision do not specify the frequency of rotation while considering the Constitution (SeventhSecond Amendment) Bill, 1991 inserted to new PartIX and addition of Eleventh Schedule. The Joint Committee found favour that the rotation of reserved seats should not be made mandatory and it should be left to the State Government to rotate such seats. It has further been observed that the Committee feels that it should be left to the Legislature of the State to make provision with respect to all matters relating to the elections of the Municipalities.

33. U.P. Panchayat Raj (Reservation and Allotment of Seats and Offices) (Sixth Amendment) Rules were published and notified on 10.6.2005. The 2nd, 3rd and 4th proviso to Rule 5 (2) of Panchayat Raj Act had been inserted. The Seventh Amendment Rules dated 18.6.2005 only added a fifth proviso related to Scheduled Castes and Scheduled Tribes. The impugned provisos apply where population of Scheduled Castes or Scheduled Tribes or Backward Classes is more than 50 percent of total population and for situation where the offices were either reserved or not reserved in the previous election. It envisages rotation between open category and women of Scheduled Castes/Scheduled Tribes/Other Backward Classes as the case may be, in the first instance and where it is not possible the rotation would be among the open seats and women of the open category. It, therefore, follows that where the population is less than 50% the old rule will continue to operate. The above reservation rules are made under Section 110 read with Section 11A of the U.P. Panchayat Raj Act. There are law relating to allotment of reserved seats and would be protected by Article 243O of the Constitution of India which lays down about the power for interference by Courts in electoral matters.

34. Article 243K of the Constitution of India deals with the elections of Panchayats and subarticle (4) of Article 243K lays down that subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.

35. Article 243O of the Constitution of India further lays down that notwithstanding anything in this Constitution, the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under Article 243K, shall not be called in question in any Court. Thus, reading together Articles 243D and 243K and 243O, read with the provisions of Sections 11A and 12 of the U.P. Panchayat Raj Act and Sections 6A and 6B of the U.P. Kshettra Panchayat and Zila Panchayat Manual it can be safely gathered that the State Legislature has the power in matters of reservation of seats, rotation of seats and the conduct of election under U.P. Panchayat Raj Act. The Uttar Pradesh Panchayat Raj (Reservation and Allotment of Seats and Offices) Rules, 1994 and its Rules 3, 4 and 5 are material for the correct decision of this case. Rule 3 deals with the number of seats and offices to be reserved and it lays down as under :

"In computing the number of seats and offices of Pradhans to be reserved for the Scheduled Tribes, the Scheduled Castes or the Backward Classes in accordance with the provisions of subsection (5) of Section 12 or subsections (2) and (4) of Section 11A of the Act, if the remainder is not less than half of the divisor, the quotient shall be increased by one, and if the remainder is less than half of the divisor, it shall be ignored, and the number so arrived at shall be the number of seats or offices of Pradhans to be reserved for the Scheduled Tribes or the Scheduled Castes or the Backward Classes as the case may be."

36. Rule 4 deals with the allotment of seats by rotation and Rule 5 deals with the allotment of seats of Pradhans by rotation.

37. As we have already observed above that Article 243D of the Constitution of India authorizes the State Legislature for making any provision for reservation of seats in Panchayat or offices of the Chairperson at any level in favour of Backward Class citizens. Thus, subarticle (6) of Article 243D of the Constitution of India does not say a word about rotation of seats for Backward Classes. The entire reading of subarticles (1) to (5) of Article 243D of the Constitution of India speak about rotation of seats in respect of Scheduled Castes and Scheduled Tribes only and the said subarticles of Article 243D of the Constitution of India do not deal with reservation of seats in respect of Backward Class. The only subarticle which deals with the reservation for Backward Classes in subarticle (6) and it says that the State Legislature, if it so makes and if there be any need may make any provision for reservation of seats in the Panchayat in favour of Backward Class citizens. Thus, Article 243D authorizes the State Legislature of every State in India to make provision for reservation of seats in Panchayat for Backward Classes. If there is power with the State Legislature for reservation of seats for Backward Classes, it has also the power to make suitable provision for rotation of those seats. It cannot be said that the State Government has the power to make Rules for reservation but does not have power to make Rules for rotation. Subarticle (6) of Article 243D of the Constitution of India cannot be applied conjointly with the subarticles (1) to (5), which deal with the reservation in respect of Scheduled Castes and Scheduled Tribes only. Thus, the State Government has the power to make rules for reservation and it has also power to make Rules for rotation. Section 11A of the U.P. Panchayat Raj Act and the Constitution of India do not prevent the State Government to allot the seats by rotation to different Panchayats in such manner as may be prescribed and the word "prescribed" is to mean as prescribed by the Act or Rules.

38. The U.P. Panchayat Raj (Reservation and Allotment of Seats and Offices) (Sixth Amendment) Rules were published and notified on 10.6.2005. The second, third and fourth provisos to Rule 5 (2) had been inserted and those rules were not challenged. The Seventh Amendment Rules dated 18.6.2005 only added a fifth proviso relating to Scheduled Castes and Scheduled Tribes. The impugned provisos apply where population of Scheduled Castes and Scheduled Tribes or Backward Classes is more than 50% of total population and for situation where the offices were either reserved or not reserved in the previous election. It envisages rotation between open category and women of Scheduled Castes/ Scheduled Tribes/Other Backward Classes as the case may be, in the first instance. Where this is not possible the rotation would be among the open seats and women of the open category. It follows that where the population is less than 50% the old rule will continue to operate. The above reservation rules are made under Section 110 read with Section 11A of the U.P. Panchayat Raj Act and they are law relating to allotment of reserved seats and would be protected by Article 243D,

39. Articles 243D (1) to (4) only relates to reservation of seats/offices of Chairpersons in Panchayat for Scheduled Castes/Scheduled Tribes/Women. The provisions are enabling. So far as reservation of seats is concerned, subarticles (1), (2) and (3) mandate reservation on proportional basis for Scheduled Castes/Scheduled Tribes and to the extent of the third of women. But for both Scheduled Castes/Scheduled Tribes and Women rotation is not envisaged mandatorily. The rotation is directory as indicted by the expression "may be allotted by rotation". In the bill submitted before Joint Committee of Parliament "mandatory" expression was used but later the constitutional amendment has used "directory" language. While there is mention of rotation of seats/offices and for offices the expression used is "shall be allotted by rotation", it is notable that Article 243D neither provides for frequency of rotation nor the nature and manner of rotation. Clearly this is left for the State Legislature to provide by law. In fact Article 243D (4) expressly empowers the State Legislature to provide for reservation of offices of Chairpersons for Scheduled Castes/Scheduled Tribes/Women. The expression "in such manner as the Legislature of State may, by law, provide" shows that the manner of reservation including rotation, is to be provided by law. The report of the National Commission for Review of Working of Constitution has emphasized the above aspect. The Commission on 9.18.1 observed as under :

"9.18.1. Reservation and rotation of reserved constituencies and division of responsibilities in this regard is another cause for delay in holding elections in time. If rotation takes place during every election, a person elected on the reserved seat does not get an opportunity of occupying the same seat for a second term. This proves to be a disincentive for members to work hard for their constituency. It is particularly disadvantageous to women and fresh entrants to build up their capacity and experience as elected representatives."

40. Similarly the observation by the Commission in respect of 9.18.2 runs as under:

"9.18.2. Article 243D and 243T contain identical provisions so far as reservation of seats in Panchayats and Municipalities for SCs/STs. and women are concerned. However, there are some ambiguities about the rotation of such reserved seats. The words used in both the Article are "may be allotted by rotation". However, in the third proviso to clause (4) of Article 243D regarding reservation of the offices of Chairpersons the words used are "shall be allotted by rotation". The Constitutional provisions also do not specify the frequency of rotation. Moreover, in clause (4)" of Articles 243T there is no stipulation for rotation. To remove ambiguities, Articles 243D and 243T should be suitably amended to provide for rotation and the changes only at the time of delimitation and not in between. State laws should provide the guidelines for the process of reservation which should ensure transparency and adequate opportunities for eliciting voters response."

41. Section 11A (5) prescribes that seats/offices shall be reserved by rotation. Though it uses word "shall" the same is qualified by expression "in such order as

may be prescribed". Section 12 (5), however, uses the word "may be allotted by rotation" and qualifies it by "in such order as may be prescribed". The provisions of U.P. Kshettra Panchayat and Zila Panchayat Act, are similar. Thus rotation depends upon the manner prescribed by Rules.

42. Article 243O uses the expression "in relation to" and Article 243K (4) uses the expression "in relation to, and in connection with". In the context of allotment of seats to constituencies it will cover allotment of seats by reservation, and hence provisions in the Act and rules will stand protected. The contention of the petitioners based on projection of rotation idea mentioned in subarticles (1) to (4) into subarticle (6) is based on the recognition is an enabling provision for making reservation in favour of Other Backward Classes and it does not expressly make it obligatory for the State to include the idea of rotation for Other Backward Classes. The entire aspect of reservation for Other Backward Classes is left to the choice of the State Government. Consequently, the petitioners want to inject the rotation idea into subarticle (6) on the basis of some notion of harmony and reasonableness, which is not expressed in the Constitution. The contention of the petitioners seeks the selective projection of rotation idea on the basis of what is contained in subarticles (1) to (4). If the said subarticles are analysed, one would discover at least three Central Ideas, namely.

(i) Compulsory reservation for Scheduled Castes/Scheduled Tribes/ Women.

(ii) Scheduled Castes/Scheduled Tribes reservation is based on proportion of population :

(a) For seats at Panchayat Area Level,

(b) For Chairpersons at each level in relation to State, and for Women it is not proportionately but stated to be "not less than 1/3".

(iii) Idea of rotation in different Constituencies.

43. The Scheme of the Constitution spelt out in Article 243D conceives reservation for Scheduled Castes/Scheduled Tribes/Women in a different way from reservation for Other Backward Classes. The idea of compulsory reservation of proportional reservation or reservation to the extent of not less than 1/3rd cannot be introduced into subarticle (6). The reservation for Other Backward Classes in the subarticle (6) is directory and optional. Further, if made proportional than the reservation will go up to the extent of over 55%, as that is their proportion to the total population. It would logically follow that even the 3rd idea of rotation cannot be projected into subarticle (6) so as to make it mandatory. It is upto the State Legislature to have the idea of rotation for Other Backward Classes and to select the particular kind of rotation for them. Subarticle (1) talks of rotation of "such seats", which means seats reserved for Scheduled Castes/Scheduled Tribes. The subarticle (3) talks of rotation of Women seats and subarticles (4) talks of rotation of office reservation "under this

Clause", which means office reserved for Scheduled Castes/Scheduled Tribes/Women. In view of the expression "such seats" and the expression "under this Clause" in subarticles (1) and (4), it is clear that the Construction is expressly confining the idea of rotation in these subarticles to Scheduled Castes/Scheduled Tribes/Women. Any judicial extension of this rotation idea for Other Backward Classes reservation under subarticle (6), as a Constitutional mandate, would be inconsonance with the constitutional prescription. The only rotation which applies to Other Backward Classes is the rotation mentioned for Women in subarticle (3). The reservation for women is universally applicable for all categories. Therefore, the seats reserved for Other Backward Classes women have to be rotated. Thus, the gender based rotation is compulsory for Other Backward Classes. The impugned Rules/GO envisages a gender based rotation for Other Backward Classes seats/offices also. Any compulsory projection of rotation idea in subarticle (1) and subarticle (4) into subarticle (6) would be inconsonance with the phraseology of Article 243D and its scheme. Not only subarticles (1) and (4) are confined to the reservation for Scheduled Castes/Scheduled Tribes/Women but in terms subarticle (6) of Article 243D enables the State Legislature for "making any provision for reservation....." and "in any Panchayat or office of Chairperson" and "at any level" in favour of Other Backward Classes. The width of discretion granted by the Constitution in express terms cannot be controlled by restriction imported from subarticles (1) and (4) which are not meant for Other Backward Classes and which are expressly confined to Scheduled Castes/ Scheduled Tribes/ Women.

44. It is settled that the Court cannot rewrite the Rules or the Constitution. If the State Government acting under Section 110 read with Section 111A provides a particular kind of rotation for Other Backward Classes in Gram Panchayat, which are having more than 50% Other Backward Classes population then it is a matter of policy decision and since it conforms to the restriction in Article 243D (3) meant for women the same is perfectly constitutional. It is settled that while acting under Article 226, the High Court cannot sit in Appeal over the policy decision of the State Government.

45. From the above provisions of law it can be safely gathered that the matter of reservation of seats and Chairpersons in respect of Scheduled Castes/Scheduled Tribes is not left to the discretion of any State in India and the mandate of Article 243D in this regard is quite clear and it is also clear that out of these reserved seats for Scheduled Castes/Scheduled Tribes 1/3rd shall go to women. The matter of reservation for Backward Classes is left to the discretion of the State Government. Neither the reservation for Backward Classes is mandatory nor the rotation of seats for Backward Classes is mandatory. As regards rotation of seats and Chairpersons, it is left to the total discretion of the State Government. The seats by seat reservation and rotation is not made compulsory by the Constitution of India and Articles 243D, 243K and 243O of the Constitution of India and it is also not contained in any provision of U.P. Panchayat Raj Act or Rules made thereunder. When to rotate and how to rotate the seats, it is the

total discretion of the State Government. The rotation in fact is not classwise or categorywise. Thus, manner of reservation has to be provided by the State and rotation is part of reservation. Frequency of rotation is not provided by the Constitution and it is the State subject as to when and how it will rotate the seats of the Panchayat and Chairpersons thereof. Subarticle (6) of Article 243D clearly provides that the State Government may reserve seats in the Panchayat or Chairpersons thereof for Backward Classes. This subarticle further does not talk of rotation amongst the seats of Backward Classes. There is no question of constitutional disharmony in rotation as subarticle (6) of Article 243D is silent on the subject. The silence of the makers of the Constitution and particularly in Article 243D of the Constitution of India is particularly in view of the fact that in some States the population of the Backward Classes is almost negligible and in some other States this percentage comes to 43%. Therefore, the matter of reservation of Backward Classes is left to the discretion of the States and the State policy may decide as to what will be percentage of Backward Classes in a particular State or a particular area. Similarly, the matter of rotation for Backward Classes, Scheduled Castes/Scheduled Tribes and women is left to the discretion of the State Government. The Rules framed under the U.P. Panchayat Raj Act amended from time to time are not enforceable for all time to come. They have been changed and amended from time to time. At one point of time one particular seat is reserved for a general category candidate in a particular election. In subsequent election it may go to a Scheduled Castes candidate. Third time it may go to a Backward Class candidate and on fourth occasion it may be reserved for women. Some times a seat, which is reserved in a particular election for Backward Class may be reserved in the next election to some other class. It may be a rotation between men and women of the same category. It is the word "rotation" as used in Article 243D, but it does not provide the mode, manner and method of rotation and it is left to the total discretions the State, which may make law or Rules as to how it has to rotate the seats. For reservation according to its requirements or according to the wishes of the electorate of the citizen of a particular area.

46. The rationale behind providing rotation of seats in the elections, is that any seat is not held by any class, category or community permanently and that other categories or class of persons are not deprived of privilege to participate or to represent in the elections. Every citizen of India is supposed to get involved in the elections and particularly of lower level, viz., Panchayat Elections. Everybody can feel that he can be at the top irrespective of caste, creed and religion. This is in fact the basic fabric of our democratic system. However, rotation for a particular year or in the particular election or the mode and method thereof is to be provided by the State Government and the State Government is under a sacred duty that the rotation does not take place in order to benefit a particular class, community or category of persons. It has to frame Rules or to amend the same in the manner that every class, community or category gets a chance or opportunity. This is the duty of the State, which we supposed and expect that the

U.P. State Government shall discharge faithfully and conscientiously the policy of rotation and the rotation of seats shall not be made for any political mileage. We hope and trust that the State Election Commissioner or the District Election Officers (District Magistrates) in the State shall reserve and rotate all types of seats in every Panchayat, Block and District, in such manner that the reservation quota shall not be exceed 27% for Backward Classes, 21.15% for Scheduled Castes and 0.5% for Scheduled Tribes, if available, and not beyond 50% in all. The rotation of seats shall also be fair and impartial and the State Election Machinery should not be influenced by any political party in making reservation, rotation and conduct of elections.

47. To conclude thus we hold that the State Government is competent to make Rules or to amend the Rules in respect of the rotation of seats in between various categories and at various levels and Section 11A of U.P. Panchayat Raj Act and Section 12 of the U.P. Kshcttra Panchayat and Zila Panchayat Act are not violative of the Constitution of India and the Rules framed under the U.P. Panchayats (Determination and Publication of Number of Persons belong to Backward Classes) Rules, 1994 and other Rules framed and amended by the State Legislature are not violative of any provisions of the Constitution of India and the State Government is fully competent to frame Rules and to amend the same and provide rotation of seats of various categories in the manner as prescribed by law and Rules and there is no breach of any constitutional provision.

48. It has been argued before us by the learned Counsel for the petitioners that the reservation of seats has to be done on the basis of the population as ascertained at the last preceding census of which the relevant figures have been published and the Government of India has passed the Census Act in the year 1948.

49. Our attention has been drawn by the learned Counsel for the petitioners to Section 3 of the Census Act, 1948, which provides that the Central Government alone can take census and the State Government is not empowered to do so. Section 17 of the said Act deals with Census Commissioner or the Director of Census to prepare the statistics.

50. It has been submitted that as per Entry 69 of the First List of the 7th Scheduled to the Constitution of India "Census" is in the Union List and as such the Parliament of India alone has the power to make laws with respect to the Census. The State Government by the newly added proviso to Section 11A in U.P. Panchayat Raj Act was given powers to determine the population of Backward Classes if the figures of their population were not Available. It has been submitted that the newly added proviso is beyond the scope of jurisdiction of the State Legislature.

51. It may be mentioned here that Article 243 (f) defined "Population". It refers to preceding census. Since reservation of seats under Article 243D is based on

population, therefore, previous census is important. The last census is of 2001 with reference to 1.3.2001. However, the aforesaid census does not collect data of population of Other Backward Classes.

52. It has been argued by the learned Counsel for the opposite party Nos. 1 and 2 that under Articles 243C (1), 243D (4), (6) and 243K(4), the State Legislature is empowered to make law with respect to the composition of Panchayats, reservations and matters relating to elections. It has further been submitted that this is to read with Entry 5, ListII, Vth Schedule. Since there is no data regarding population of Other Backward Classes, Section 11A third proviso of U.P. Panchayat Raj Act, 1947 and Section 6A third proviso of U.P. Kshettra Panchayat and Zila Panchayat Act, 1961 expressly provide for survey to ascertain population of Other Backward Classes. Pursuant thereto U.P. Panchayats (Determination and Publication of Number of Persons belong to Backward Classes) Rules, 1994 have been made and the survey has thus been conducted according to law. The power to survey has been upheld by the Hon'ble Supreme Court in the cases reported in 1996 (6) SCC 303 and 1997 (4) SCC 168. Even in previous election held in 1995 rapid survey had been done based on the Census year 1991. The result of rapid survey was locally published and objections had been invited. The final decision and publication was made after decision of the objections, if any.

53. It has been submitted by the learned Counsel for the petitioners that the rapid survey shows an increase of Backward Classes and decrease of general categories in certain villages.

54. In this connection, it may be observed that the rapid survey so conducted by the State Government has a limited role to play in making reservations of Other Backward Classes and finding out villages of over 50% population. It has no bearing to voter list in which all who are major have been included to be voters.

55. It is again to be observed that whatever may be the figure of rapid survey, it may be increase of Backward Classes and it may be decrease of general classes, the reservation, which goes to the Backward Classes shall remain 27% only and not beyond it. The State Government is fully empowered to conduct a survey for knowing the population of the Backward Classes and all other classes and the Constitution of India nowhere prohibits for conducting such a survey.

56. It has next been argued by the learned Counsel for the petitioners that in calculating the number of seats to be reserved for Backward Classes, an additional seat cannot be provided if the number is more than 0.5% and if it is permitted it is violating the upper limit of 27%.

57. In this connection reference may be made to Rule 3 framed under the U.P. Panchayat Raj (Reservation and Allotment of Seats and Offices) Rules, 1994 and it runs thus :

"3. Number of seats and offices to be reserved. In computing the number of

seats or offices of Pradhans to be reserved for the Scheduled Tribes, the Scheduled Castes or the Backward Classes in accordance with the provisions of subsection (5) of Section 12 or subsections (2) and (4) of Section 11A of the Act, if the remainder is not less than half of the divisor, the quotient shall be increased by one, and if the remainder is less than half of the divisor, it shall be ignored, and the number so arrived at shall be the number of seats or offices of Pradhans to be reserved for the Scheduled Tribes or the Scheduled Castes or the Backward Classes as the case may be :

Provided that the number of seats or offices of Pradhans reserved for the Backward Classes shall not exceed twentyseven per cent of the total number of seats or offices of Pradhans, as the case may be."

58. This proviso clearly shows that whatever may be the division, the number of seats and offices of the Pradhans reserved for Backward Classes shall not exceed 27% of the total number of seats or offices of the Pradhans as the case may be. Thus, the rule itself makes it clear that irrespective of any arithmetic, the reservation to Backward Classes shall not exceed 27% at all costs and in any case. Therefore, even such provision is not violative of any provision of the Constitution of India.

59. To conclude thus, it is held that no provision of U.P. Panchayat Raj Act or U.P. Kshettra Panchayat and Zila Panchayat Act is violative of Article 243D of the Constitution of India. It is also held that the State Legislature is competent and has the power to amend the Rules under the U.P. Panchayat Raj Act and U.P. Kshettra Panchayat and Zila Panchayat Raj Act and the State Legislature is also competent to make Rules or to amend them as and when it deems proper for rotation of seats, the manner and mode thereto and also at appropriate time and it cannot be said that the aforesaid act of the State Legislature is ultra vires of any provisions of Constitution of India. It is further held that the State is fully empowered to carry rapid survey and to act upon this result so as to find out the population of Backward Classes and for reservation of seats for such classes. However, the said reservation shall not exceed 27% in any case and at all costs. It is further made clear that the reservation for women as directed by Article 243D of the Constitution of India will be 1/3 of the total seats of each category. In case of Backward Classes, out of 27% it "may" be reserved 1/3 for women of Backward category. For Scheduled Castes category and Scheduled Tribes category, the State "shall" reserve 1/3 of such seats to Scheduled Castes and Scheduled Tribes categories, as the case may be. However, this reservation shall not in any case exceed 50% as directed by the Hon'ble Supreme Court in Indra Sawhney's case reported in 1992 Supp (3) SCC 217, which settles the law finally for the reservation to such classes shall not exceed 50% in any case. Out of the remaining 50% seats shall go to general class and general category, who may, if they so like, reserve any number of seats to their women.

60. In various writ petitions pleas have been taken regarding preparation of electoral rolls and for the conduct of such election under the Panchayat Raj Act.

There are grievances regarding fixation and change of polling stations and polling booths and also regarding rotation and reservations of seats. All these matters are in the domain of the State Government or the State Election Commission and Article 243K clearly says that the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission. Article 243O clearly bars the jurisdiction of the Courts in electoral matters including the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under Article 243K. Before parting, we would also like to mention that though there is prayer in one of the writ petitions that the matter regarding rapid survey shall be investigated by the Central Bureau of Investigation but the same was not pressed as such we have not considered this aspect of the matter.

61. We hope and trust that if any such grievance arises or any complaint is made to the State authorities including District Magistrates and the State Election Commission, the same shall be disposed of immediately by a speaking order. We further hope and trust that the State Government shall get the Panchayat elections conducted in a fair and impartial manner and the reservations and rotations of seats to all categories shall be made in the manner that every citizen of the State feels represented and satisfied.

62. In the result, the petitions fail and are dismissed. Interim order dated 17.6.2005 is hereby discharged. Petitions dismissed.