

(2000) 08 AHC CK 0012

In the Allahabad High Court

Case No : Writ Petition No. 3777 (M/B) of 2000 with 9 other Writ Petitions

Lakhan Singh

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 04-08-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 172(1), 174, 176, 226
Income Tax Act, 1961 — Section 23(5), 26A, 28(2)
Representation of the People Act, 1951 — Section 153, 30, 66, 67, 68
Road Transport Corporations Act, 1950 — Section 53
Uttar Pradesh General Clauses Act, 1904 — Section 23A(1)
Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 — Section 12(3), 17, 17(6), 18, 18(1)
Uttar Pradesh Panchayat Raj Act, 1947 — Section 12(3), 95

Citation : (2000) 4 AWC 2625 : (2000) 3 UPLBEC 2641

Hon'ble Judges : S.H.A. Raza, J; R.P. Nigam, J

Bench : Division Bench

Advocate : Vinod Kumar Singh and Smt. Nalini Jain, for the Appellant; C.S.C., for the Respondent

Judgement

S.H.A. Raza, J.—The aforementioned writ petitions to the election of Zila Panchayats of different districts. The Writ Petition bearing No. 3777 (M/B) of 2000 has been taken up as a leading one. The writ petitions, which deal with different questions, shall be dealt separately.

2. The factual matrix of the case as set out in the Writ Petition bearing No. 3777 (M/B) of 2000, in short compass, appears to be is that the election of the members of Zila Panchayat in District Hamirpur, U. P. was held on 22.4.1995. After the said election, new district Mahoba was carved out from district Hamirpur. It was submitted that till 5.8.1996, the election of Adhyaksha of Hamirpur was not held. On 18.4.1996, the State Government issued notification u/s 272 of the U. P. Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 (hereinafter referred to as the "Adhiniyam, 1961") removing certain difficulties due to creation of the new district Mahoba, which was earlier part of district

Hamirpur, which reads as under :

"272. Powers to remove difficulties.--(1) If any difficulty arises in giving effect to the provisions of this Act, or by, reason of anything contained in this Act to any other enactment for the time being in force, the State Government may, as occasion requires, by notified order direct that this Act shall have effect, subject to such adaptations, whether by way of modification, addition or omission, as it may deem to be necessary and expedient.

(2) No order under subsection (1), shall be made after the expiration of the period of two years from the date of commencement of the Uttar Pradesh Panchayat Laws (Amendment) Act, 1994.

(3) The provisions made by any order under sub-section (1) shall have effect as if enacted in this Act and any such order may be made so as to be retrospective to any date not earlier than the date of commencement of the Uttar Pradesh Panchayat Laws (Amendment) Act, 1994.

(4) Every order made under sub-section (1) shall be laid, as soon as may be, before both the Houses of the State Legislature and the provisions of sub-section (1) of Section 23A of the Uttar Pradesh General Clauses Act, 1904, shall apply as they apply in respect of rules made by the State Government under any Uttar Pradesh Act."

3. The State Government in exercise of the power under the above provision, has issued a Government order on April 18th, 1996, which reads as under :

"In exercise of powers conferred u/s 272 of the Uttar Pradesh Kshettra Panchayats and Zila Panchayats Act. 1961 (U. P. Act No. 33 of 1961), the Governor, for the purposes of removing difficulties in giving effect to the provisions of the said Act, is pleased to direct that the provision of Section 18 of the said Act shall apply with the adoption that where as a result of creation of a new district a territorial constituency of a Zila Panchayat to which election of the member has been held, is divided and any area of such territorial constituency is included in newly created district, the elected member from such constituency shall be deemed to be the elected member of that Zila Panchayat in the electoral rolls of which he is included as an elector.

4. On 2.7.1996, the election of Adhyaksha of district Mahoba was held and Lakhan Singh, who has knocked the door of this Court as a petitioner, was elected Adhyaksha of Zila Panchayat, Mahoba. According to the petitioner, on that date. Adhyaksha of district Hamirpur was also elected. After being elected as Adhyaksha of Zila Panchayat. Mahoba, the petitioner called the meeting of the Zila Panchayat on 13.7.1996. In the meantime, in pursuance of the direction of Hon"ble Supreme Court, three tier election process was issued on 18.5.2000 by the State Government as well as the State Election Commission for holding the election of Panchayat and Zila Panchayat, Accordingly, the election of Village Panchayat. members of Kshettriya Panchayat and Zila Panchayat, were held with

effect from 14.6.2000 to 23.6.2000 and the results were declared. Thereafter the impugned notification dated 21.7.2000 was issued by the State Government for holding the election of Adhyaksha, Zila Panchayat.

5. Taking a cue from the provisions of Article 243E of the Constitution of India, it was asserted by Sri H.S. Jain and Sri Vinod Singh, learned counsel for the petitioners that the term of Zila Panchayat starts from the date of first meeting and no longer, as according to the provisions contained in Section 18 of the Adhiniyam, 1961, read with Section 61 of the Adhiniyam, Adhyaksha is authorized for holding the first meeting of the Panchayat, hence Panchayat cannot be deemed to have been constituted till Adhyaksha is elected. In that regard, it is relevant to consider the provisions of Sections 17, 18 and 61 of the Adhiniyam, 1961. The aforesaid provisions of the Adhiniyam are reproduced below :

"17. Establishment and incorporation of Zila Panchayats. --(1) The State Government shall, by notification in the Gazette, establish for each district, a Zila Panchayat bearing the name of the district.

(2) The Zila Panchayat shall be a body corporate (Inserted by U. P. Act No. 21 of 1995 (dated August 25, 1995).

(2A) the Panchayat shall have its office at such place as may be determined by the State Government, and until so determined, at the place which it was situated immediately before the commencement of the Uttar Pradesh Kshettra Samitis and Zila Parishads (Sansodhan) Adhyadesh, 1955.

(3) where a new district is created, the Zila Panchayat having jurisdiction in any area therein immediately before the creation of new district shall continue to exercise such jurisdiction until a new Zila Panchayat is established in that district, and on the establishment of a new Panchayat :

(i) all taxes, fees, fines or penalties imposed or levied, and all licences or permits granted on the date immediately preceding the date on which such Panchayat is established (hereinafter called the said date), by the Zila Panchayat which had jurisdiction in the area of the new district, shall be deemed to have been imposed, levied or granted by the new Panchayat under and in accordance with the provisions of this Act and shall until abolished, modified or changed, continue to be so realizable or effective ; and

(ii) anything done or any action taken, including any appointment or delegation made, notification, order or direction issued. rule, regulation, form, bye-law or scheme framed, permit or licence granted or registration effected under the provisions of this Act by the Panchayat having jurisdiction in the area of the new district immediately preceding the said date, shall with respect to the new district be deemed to have been done or taken by the new Panchayat under the provision of this Act and shall continue in force accordingly unless and until superseded by anything done or any action taken under this Act.

(4) If at any time any area is newly included in any existing district and on the date immediately preceding the date of such inclusion a Zila Panchayat was exercising jurisdiction over such area, the provisions of sub-section (3) shall apply as if the area newly included were a new district and the Panchayat for the purpose of the sub-section.

(5) Any vacancy in any category of members referred to in clause (a) to (b) of sub-section (1) of Section 18 shall be no bar to the constitution or re constitution of a Zila Panchayat.

(6) The constitution of a Zila Panchayat shall be notified in the Gazette (Inserted by U. P. Act No. 29 of 1995 (dated August, 1995) :

18. Composition of Zila Panchayat.--(1) A Zila Panchayat shall consist of an Adhyaksha who shall be its Chairperson, and :

(a) Pramukhs of all the Kshettriya Panchayats in the district :

(b) Elected members, who shall be chosen by direct election from the territorial constituencies in the Panchayat area and for this purpose the Panchayat area shall be divided into territorial constituencies in such manner that, so far as practicable, each territorial constituency shall have a population of fifty thousand ;

(c) The members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise any part of the Panchayat area ;

(d) The members of the Council of States and the members of the State Legislative Council who are registered as electors within the Panchayat area.

(2) The members of the Zila Panchayat mentioned in clauses (a), (c) and (d) of sub-section (1) shall be entitled to take part in the proceedings and vote at the meetings of the Zila Panchayat except in the matters of election of, and on a motion of no confidence against, the Adhyaksha or the Upadhyaksha.

(3) Each territorial constituency referred to in clause (b) of sub-section (1) shall be represented by one member.

(4) The territorial constituencies of a Zila Panchayat may be delimited in the prescribed manner and if necessary rules in this regard may be made with retrospective effect from a date not earlier than the date of commencement of the Uttar Pradesh Panchayat Laws (Amendment) Act, 1994 (Inserted by U. P. Act No. 21 of 1995 dated August 25, 1995).

61. Meeting of Zila Panchayats.--(1) A Zila Panchayat shall meet for the transaction of business at least once in every two months.

(2) The Adhyaksha or in his absence from the district, the Upadhyaksha may convene a meeting of the Zila Panchayat whenever he thinks fit and shall, upon a requisition made in writing by not less than one-fifth of the members of Zila

Panchayat and served on the Adhyaksha or sent by registered post acknowledgment due, addressed to the Zila Panchayat at its office, convene a meeting of the Zila Panchayat within a period of one month from the date of the service or receipt of such requisition.

(3) A meeting may be adjourned until the next or any subsequent day, and an adjourned meeting may be further adjourned in like manner.

(4) Every meeting shall be held at the office of the Zila Panchayat or at some other convenient place of which notice has been duly given."

6. What we have understood from the arguments of the learned counsel for the petitioner is that the notification of the constitution of Zila Panchayat and the election of Adhyaksha are the pre-requisite for the constitution of the Panchayat and the term of the Panchayat which is co-terminus with the term of Zila Panchayat, shall be five years from the date appointed for its first meeting. As the petitioner was elected as Adhyaksha of Zila Panchayat, Mahoba on 2.7.1996 and the first meeting of the Zila Panchayat was held by the petitioner on 13.7.1996, hence before the end of five years tenure, i.e., 13.7.2000, the petitioner is entitled to continue to function as the Adhyaksha of Zila Panchayat, Mahoba.

7. It was contended that after creation of a new district, a Zila Panchayat cannot be deemed to have been established. For that the State Government was bound to take some steps by notifying the establishment of Zila Panchayat. In that regard, a reference was made to Section 17 of the Adhiniyam, 1961, which provides that State Government shall, by notification in the Gazette, establish for each district a Zila Panchayat bearing the name of the district.

8. The condition of "notification in the Gazette" has been removed by the Amending Act, 1995. As per the new provision, there has to be Zila Panchayat for each district bearing the name of the district. For the purpose of establishment of Panchayat, notification is not at all necessary. The Removal of Difficulties Order has provided the elected members of the Zila Panchayat on such territorial constituencies which are included in the new district shall be deemed to be the elected members of the Zila Panchayat.

9. Section 272 of the Adhiniyam, 1961, gives the State Government power to remove difficulties. The difficulty that has been taken into consideration by the order is definitely not of legislative nature and hence by the said order, the difficulties could be removed.

10. Now we have to examine various provisions contained in various Articles of the Constitution of India, as well as provisions contained in various Sections of U. P. Kshettriya Panchayat Election Rules.

11. Article 243(d) of the Constitution defines "Panchayat", which means an institution (by whatever name called) of self-Government constituted under Article 243B, for the rural areas. Article 243B provides that there shall be

constituted in every State. Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.

12. Article 243E, which is also relevant for consideration reads as under:

"243E. Duration of Panchayats etc.--(1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Panchayat shall be completed :

(a) before the expiry of its duration specified in clause (1) ;

(b) before the expiration of a period of six months from the date of its dissolution :

Provided that where the remainder of the period for which the dissolved Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat.

(4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under clause (1) had it not been so dissolved."

13. More or less similar provision exists in Article 83(2) and Article 172(1) of the Constitution of India, pertaining to duration of House of the People and Legislative Assemblies of State, which are reproduced as under:

83 (2). The House of the People, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the house.

172 (1). Every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly."

14. But no difficulty arises in holding the first meeting of House of People or the State Assembly inasmuch as under Article 85 and Article 174 the President of India or the Governor, as the case may be, may summon the House and will address both Houses under Article 86 and Article 176, as the case may be. The words "and the expiration of the said five years shall operate as a dissolution of House or Assembly", as the case may be in both Articles 83(2) and 172(1) are of vital importance, but such a provision neither exists in Article 243E of the Constitution nor in Section 20 (1) of the Adhiniyam. 1961, or in Section 12 (3) of

the U. P. Panchayat Raj Act, 1947.

15. The language of Article 243E of the Constitution has been borrowed in Section 20 (1) of the Adhiniyam, 1961 and Section 12 (3) of the U. P. Panchayat Raj Act, 1947.

16. Section 18 of the Adhiniyam, 1961, provides that a Zila Panchayat shall consist of an Adhyaksha who shall be its Chairperson and so on. Section 19 of the Adhiniyam, 1961, provides that in every Zila Panchayat, an Adhyaksha and a Upadhyaksha shall be elected by the elected members of the Zila Panchayat from amongst themselves.

17. Section 20 of the Adhiniyam, 1961, reads as under :

"20. Term of Zila Panchayat and its members.--(1) A Zila Panchayat shall, unless sooner dissolved u/s 232, continue for five years from the date appointed for its first meeting and no longer.

(2) The term of office of a member of a Zila Panchayat shall, unless otherwise determined under the provisions of this Act, expire with the term of the Zila Panchayat.

(3) An election to constitute a Zila Panchayat shall be completed : (a) before the expiry of its duration specified in subsection (1) ;

(b) before the expiration of a period of six months from the date of its dissolution :

Provided that where the remainder of the period for which the dissolved Zila Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this sub-section for constituting the Zila Panchayat.

(4) A Zila Panchayat constituted upon the dissolution of a Zila Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Zila Panchayat would have continued under sub-section (1) had it not been so dissolved.

(5) A person who has become a member of the Zila Panchayat under clause (a), (c) or (d) of subsection (1) of Section 18 shall cease to be a member upon his ceasing to hold the office by virtue of which he has become such member.

18. Section 12 (3) of U. P. Panchayat Raj Act reads as under :

"12 (3). (a) A Gram Panchayat shall, unless sooner dissolved under clause (f) of sub-section (1) of Section 95, continue for five years from the date appointed for its first meeting and no longer.

(b) An election to constitute a Gram Panchayat shall be completed :

(i) before the expiry of its duration specified in clause (a) ;

(ii) before the expiration of a period of six months from the date of its dissolution :

Provided that where the remainder of the period for which the dissolved Gram Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this sub-section for constituting the Gram Panchayat.

(c) A Gram Panchayat constituted upon the dissolution of a Gram Panchayat before the expiry of its duration shall continue only for the remainder of the period for which the dissolved Gram Panchayat would have continued under clause (a) had it not been so dissolved.

(d) The constitution of a Gram Panchayat shall be notified in such manner as may be prescribed and thereupon the Gram Panchayat shall be deemed to have been duly constituted, any vacancy therein notwithstanding :

Provided that the constitution of a Gram Panchayat shall not be so notified till the Pradhan and at least two-thirds of the members of the Gram Panchayat have been elected."

19. Section 21 of the Adhiniyam, 1961, deals with the terms of Adhyaksha and Upadhyaksha, which provides that the term of office of the Adhyaksha or the Upadhyaksha shall commence on his election and shall end with the term of the Zila Panchayat.

20. Section 21A of the Adhiniyam, 1961, provides for temporary arrangements in certain contingencies when the Adhyaksha is unable to discharge his functions owing to absence, illness or any other cause etc., which reads as under :

"21A. Temporary arrangements in certain cases. --When the Adhyaksha is unable to discharge his functions owing to absence, illness or any other cause, and the office of Upadhyaksha is vacant or when the Upadhyaksha acting u/s 60 during a vacancy in the office of Adhyaksha is unable to discharge his functions owing to absence, illness or any other cause, the State Government may by order, make such arrangement, as it thinks fit, for the discharge of the functions of such Adhyaksha until the date on which the Adhyaksha or Upadhyaksha, as the case may be, resumes his duties."

21. Sub-section (23) of Section 2 of the Adhiniyam, 1961, defines that "appointed date" with reference to a khand or a district respectively means the date of notification issued u/s 5 or Section 17, which was subsequently amended. The amended position of Section 2 (23) of the Adhiniyam, 1961, is reproduced as under :

"appointed date with reference to a khand or a district respectively means the date of constitution of the first Kshettra Panchayat for the khand or, as the case may be, the first Zila Panchayat for that district under this Act as amended by the Uttar Pradesh Panchayat Laws (Amendment) Act, 1994."

After the said amendment, a notification for constituting the first Kshettra Panchayat for the khand or, as the case may be, the first Zila Panchayat for the district is not necessary.

22. In the light of the aforesaid provisions contained in the Constitution of India as well as in the Act, we have to examine the correctness or genuineness of the petitioner's case that he is entitled to continue as Adhyaksha of the Zila Panchayat, Mahoba till 13.7.2000.

23. It is really unfortunate that after the insertion of Part IX of the Constitution by Constitution (73rd Amendment) Act. 1992, with effect from 24.4.1993, U. P. Panchayat Raj Act as well as U. P. Kshettriya Panchayat and Zila Panchayat Adhiniyam, 1961 were not properly amended to synchronise with the mandate of the Constitution. The words "five years from the date appointed for its first meeting and no longer" occurring in Article 243E of the Constitution, which deals with the duration of the Panchayat, is of vital importance, meaning thereby, in literal or textual sense, it could be said that the term of every Panchayat, unless sooner dissolved, will be five years from the date appointed for its first meeting and no longer. If the State Legislature would have suitably amended the U. P. Panchayat Raj Act, 1947 and U. P. Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961, mentioning a particular period or the designation of an authority for holding such a meeting or defining the words "date appointed for its first meeting" after the declaration of the result, the anomaly which is allowed to creep, would have been removed, but it was not done as a result of which there is influx of writ petitions before this Court and we have been informed that in the matters pertaining to Zila Panchayat, Gonda, more or less similar question has cropped up before Hon'ble Supreme Court, which is awaiting final decision of Hon'ble Supreme Court.

24. It is needless to mention that the State Government as well as the State Election Commission, under the mandate of Part IX of the Constitution of India, have to perform onerous duties to hold the election of about seven lacs members and about 65,500 Panchayats at the village level. These Panchayats have been vested with certain powers to carry on development activities at the grass root level to usher in the concept of basic democracy at the grass root level. In no democratic country of the World, such an exercise has been made.

25. It would be rather very difficult task to fix the date on which the term of a particular Panchayat shall come to an end as it will be rather impossible to collect information as to which date the first meeting of a particular Panchayat was held. It is for the State Government as well as the State Election Commission to determine as to when the term of five years of a Panchayat expires and then to hold the election of all such a Panchayat simultaneously, because duration of the Panchayat shall be five years from the date appointed for its first meeting and no longer.

26. The difficulty, which the State Government has now been facing, is its own

creation. As soon as the election of Panchayats was declared, it was incumbent upon the State Government to have arranged for the constitution or reconstitution of the Zila Panchayats before the expiry of the term of the existing Zila Panchayat as provided u/s 22 of the Adhiniyam, 1961, but for some reason or the other, no effort was made to constitute or reconstitute the Zila Panchayats before the expiry of the term of the existing Zila Panchayats, as a result of which neither the Adhyaksha and Upadhyaksha of the Zila Panchayat were elected nor the first meeting of the Zila Panchayat was held within a reasonable period.

27. Section 20 of the Adhiniyam, 1961, does not provided any guideline as to what would be the date appointed for the first meeting of the Panchayat and who is the authority to convene the first meeting and which will be the authority to arrange for constitution or reconstitution of the Zila Panchayats, before the expiry of the term of the existing Zila Panchayats as contemplated u/s 20 of the Adhiniyam, 1961. If any constitutional authority like the State Election Commission would have been authorized to fix the first date of meeting and constitute or reconstitute the Zila Panchayat before the expiry of the term of existing Zila Panchayats such an anomaly would not have crept. Section 20 of the Adhiniyam, 1961, and Section 12 (3) of U. P. Panchayat Raj Act is silent on that question and it does not provide any guideline, as a result of which uncanalised, uncabined and unbridled power has been given to the State Government to constitute or reconstitute the Zila Panchayats whenever it so desires. Parliamentary system of Government is as such where the party, which commands the majority of the House, governs the State. If a particular party which governs the State feels that the majority of the members elected in a Zila Panchayat belongs to another party, and it will not have been able to win the post of Adhyaksha or Upadhyaksha, it may not constitute the Zila Panchayats as a result of which the first meeting cannot be held for considerable lapse of time. Even the Adhyaksh or Upadhyaksh, as the case may be, may not call meeting for some personal or political reasons.

28. Part IX of the Constitution was inducted by 73rd Amending Act for purposes of devolution of powers to the basic unit, namely, Panchayat which according to Article 243(d) means an institution (by whatever name called) of self-Government which shall be constituted in Article 243B for the rural areas.

29. Article 243B mandates that there shall be constituted in every State. Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part. Article 243C of the Constitution provided that subject to the provisions of this Part IX, the Legislature of a State may, by law, make provisions with respect to the composition of the Panchayats. But as Sections 20, 22 and 61 of the Adhiniyam, 1961 and Section 12 (3) of U. P. Panchayat Raj Act, 1997, does not provide any guidelines, the object and purpose of different provisions of Part IX of the Constitution of India may be circumvented, defeated and destroyed.

30. In view of the aforesaid situation. Sections 20, 22 of the Adhiniyam, 1961,

Article 243A of the Constitution as well as Section 12 (3) of U. P. Panchayat Raj Act may be interpreted in such a manner where the lacunae which may give rise to the interested persons to defeat the purpose and object of the Constitution and Act may be avoided.

31. If the provisions of Article 243E of the Constitution of India, is strictly construed in its textual or literal sense, then the term of each Panchayat would be different and election for every Panchayat would be held on different dates. It would be difficult rather impossible task for the State Election Commission to gather such information as to when the first meeting of the Panchayat was held and then to fix a time table for holding the election of each and every Panchayat. In case of Zila Panchayat, Section 61 of the Adhiniyam, 1961 deals with the meetings of Zila Panchayats, which provides that a Zila Panchayat shall meet for the transaction of business at least once in every two months. Each Zila Panchayats may not meet on particular date. There may be variance about the dates when the first meetings of the Zila Panchayat take place, meaning thereby ; that the term of every Zila Panchayat would come to an end on different dates. A duty has been cast upon us to reconcile the provisions of aforesaid Section of Adhiniyam, 1961 and U. P. Panchayat Raj Act, 1947, indicated hereinabove with the different provisions of some of the Articles of Constitution. If construed literally or textually. It may destroy the functioning of the Zila Panchayat. We are of the view that the aforesaid provisions of Adhiniyam, 1961, should be read along with Article 83(2), 172(1), 243(d) and 243E of the Constitution of India because if two alternative constructions in the Statute are available, the construction which are in consonance with the spirit of the Constitution should be adhered to.

32. It has been said that a Statute or a Constitution must be construed as on the day after it was enacted, But this general rule is subject to qualification. One such qualification consists in giving to the words what Dr. Wynes called a "generic interpretation" (Wynea, Legislative, executive and Judicial Powers in Australia, 5th edition. P 26) and Hon"ble Venkatarama Aiyar, J., called "flexible construction". Dr. Wynes phrase "generic interpretation" clearly brings out the true nature of this principle of interpretation, which is reproduced below :

"....."generic interpretation"..... Asserts no more than that new development of the same subject and new means of executing an unchanging power do arise from time to time and are capable of control and exercise by the appropriate organ to which the power has been committed..... while the power remains the same, its extent and ambit may grow with the progress of history. Hence it will be seen that suppositions as to what the framers might have done if their minds had been directed to future developments are irrelevant and the question whether a novel development is or is not included in the terms of the Constitution finds its solution in the application of the ordinary principles of interpretation, namely, what is the meaning of the terms in which the intention has been expressed.

33. In *The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd.*, it was contended that the words of the Constitution conferring legislative power must be so construed as to make it flexible and elastic in order that the power may be exercised in respect of matters which might be unknown at the time a law was enacted but might come into existence with the march of time and the progress of science.

Relying upon the decisions in *Att. Gen. v. Edison Telephone Co. of London* (1880) 6 QBD 244. *Toronto Corpn. v. Bell Telephone Co. of Canada*, *In re* (1932) AC 304, Hon^{ble} Venkatarama Aiyer, J., formulated the following principle in *Madras v. Cannon Dunkerley and Co.* (supra).

"the principle of these decisions is that when, after the enactment of a legislation, new facts and situations arise which could not have been in its contemplation, the statutory provisions could properly be applied to them if the words thereof are in a broad sense capable of containing them, in that situation. "It is not that the meaning of the words changes, but the changing circumstances illustrate the full import of that meaning". The question then would be not what the framers understood by those words, but whether those words are broad enough, to include the new facts".

34. In *Maumsell v. Olins*, (1975) AC 373, Lord Simon formulated the exception to the "golden rule" required by technical words, or words of art, as follows :

"(The "golden rule") is sometimes put. (sic) that in statutes dealing with ordinary people, in their everyday lives, the language is presumed to be used in its primary ordinary sense unless this stultified the purpose of the statute or otherwise produces some injustice, absurdity, anomaly or contradiction in which case some secondary ordinary sense may be preferred so as to obviate the injustice, absurdity, anomaly or contradiction, or fulfil the purpose of the statute ; while in statutes dealing with technical matters, words which are capable of both bearing the ordinary meaning and being terms of art in the technical matter of the legislation will presumptively bear their primary meaning as such terms of art (or, if they must necessarily be modified, some secondary meaning as terms of art.)"

35. As per the interpretation of the Constitution is concerned, Professor Cross observed that "no one would suggest that a written Constitution should be construed for all time as if the Court was sitting the day it was enacted". In support of his contention. Prof. Cross quoted Lord Jowitt's observation in *A-G for Ontario v. A-G for Canada*, (1947) AC 127, when considering the question whether the B.N.A. Act, 1867, empowered the Canadian Parliament to abolish the right of appeal from the Canadian Courts to the Privy Council.

Lord Jowitt observed that :

"It isirrelevant that the question is one which may have seemed unreal at the date of the (B.N.A. Act). To such an organic statute, the flexible

interpretation must be given that changing circumstances require."

36. In *Navinchandra Mafatlal Vs. The Commissioner of Income Tax, Bombay City*, it was observed by Hon"ble Supreme Court that :

"The golden rule of interpretation is that words should be read in their ordinary, natural and grammatical meaning subject to the rider that in construing words in a Constitution conferring legislative power the most liberal construction should be put upon the words so that they may have effect in their widest amplitude."

37. In *Senior Electric Inspector v. Laxminarain Chopda*, (1962) 3 SCR 156. Hon"ble Subba Rao, J., speaking for the Bench relied upon the principles of flexible construction which has been formulated by Hon"ble Venkatarama Aiyer, J., in *Cannon Dunderiey* (supra) :

"in construing a document or a statute the Court has to ascertain the intention of "them that made it" generally described as the "mischief rule"). Such intention is to be (gathered from the words used, and, normally, if the words bear a plain ordinary meaning, that meaning gives effect to the intention of the maker of the written instrument. But the plain ordinary meaning of words may be qualified by the circumstances with reference to which the words are used, so that the intention is better effectuated by giving to the words a different meaning from that which they normally bear. Therefore, this golden rule is subject to the qualification that if such a construction produces an inconsistency or absurdity or inconvenience so great as to convince the Court that the intention could not have been to use them in their ordinary meaning, the Court would be justified in putting on those words some other meaning which, though less proper is one which the Court thinks the words will bear.

To arrive at the real meaning it is always necessary to get an exact conception of the aim. scope and object of the whole Act to consider what was the law before the Act was passed, and what was the mischief or defect for which the law has not provided and the third, of the remedy the Parliament has appointed, and fourth, the reason of the remedy (Maxwell, pp 18-19).

38. It is well-settled that if a literal construction would not promote the object of an Act but would produce an absurd result, the Court would avoid such a result, if another construction of the relevant provision was possible. In *Davis and Sons Ltd. v. Atkins* (1977) AC 931. Lord Diplock, in a graphic phrase refused to construe a provision which would convert it "into a veritable rogue"s charter".

39. The extrinsic aids to construction have been a recent trends in statutory interpretation. The importance attached to "context" in statutory interpretation, has gone hand in hand with an analysis of the phrase "intention of Parliament" and of the factors that go to make up the whole legislative process resulting in an Act of Parliament. Once it is realized that the "Intention of Parliament" is not a description but a linguistic convenience", the whole legislative process assumes importance for statutory interpretation. The realities of the legislative process,

the close relationship between the draftsman of an Act and the court of construction, the practical grounds on which Courts limit the use of preparatory work as an aid to construction.

40. No doubt, it is not for a Court to rewrite an enactment if its meaning is clear in order to supply omissions but it may be said that if no meaning can be given to certain words of an enactment, and effect can be given to that enactment with the words removed or rearranged, the Courts have the power and the duty to remove or rearrange the words, for, as the Privy Council observed in *Salmon D. Duncombe*, (1886) 11 App Cas 627. Maxwell P. 221, the Court will not allow the intention of the Legislature to fail for defective draftsmanship, that a purely textual interpretation may not disclose the true intendment of the Legislature which means that the principles of construction meaning must be given to the articles by unraveling the mix up and by rejecting words which are unsensible, for otherwise the Constitution would have to be interpreted independently of its terms, which would be absurd. However, the golden rule of interpretation, which gives the words of statute or a Constitution their ordinary, natural and grammatical meaning subject to the rider that in construing words in a Constitution, the most liberal construction should be put upon the words so that they might have effect in their widest amplitude. But, where words are clear and unambiguous effect must be given to them regardless of consequences. However, this is a general and not a universal rule as is clear from the judgment of Lord Blackburn in *River Wear Commissioners v. Adamson*, (1877) 2 App Cas 743 . In that case, the hardship produced and the injustice worked by a literal interpretation to so great that Lord Blackburn put on the relevant words remaining different from the literal meaning because as he observed, "it may have been said but could hardly have been intended to be said." The proposition was enunciated and applied by Hon^{ble} Venketarama Aiyer, J. in *R.M.D. Chamarbaugwalla Vs. The Union of India (UOI)*, , and further in *A. G. v. Prince Earnest Augustus* 1957 AC 436, Lord Simonds, said :

".....the contention of the Attorney General was..... met by the bald general proposition that where the enacting part of a statute is clear and unambiguous, it cannot be cut down by the preambleI wish at the outset to express my dissent from it, if it means that I cannot obtain assistance from the preamble in ascertaining the meaning of the enacting part."

41. In *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, . Hon^{ble} Ray, J. speaking for the Bench held :

"A statute can be declared to be valid where any term has been used in the Act which per se seems to be without jurisdiction but can be read down in order to make it constitutionally valid by separating and excluding the part which is invalid or by interpreting the word in such a fashion in order to make it constitutionally valid and within jurisdiction of the Legislature which passed the said enactment by reading down the provisions of the Act. This, however, does not under any circumstances mean that where the plain and literal meaning that

follows from a bare reading of the provisions of the Act, rule or regulation is that it confers arbitrary, uncanalised, unbridled, unrestricted power to terminate the services of a permanent employee without recording any reasons for the same and without adhering to the principles of natural justice and equality before the law as envisaged in Article 14 it can read down to save the said provision from constitutional invalidity by bringing or adding words in the said legislation such as saying that it implies that reasons for the order of termination have to be recorded. In interpreting the provisions of an Act. It is not permissible where the plain language of the provision given a clear and unambiguous meaning that it can be interpreted by reading down and, presuming certain expressions in order to save it from constitutional invalidity. Therefore, it cannot be held by reading down the provisions of Regulation 9 (b) framed u/s 53 of the Delhi Road Transport Act, 1950 read with Delhi Road Transport (Amendment) Act, 1971, that the said provision does not confer arbitrary, unguided, unrestricted and uncanalised power without any guidelines on the authority to terminate the services of an employee without confirming to the principles of natural justice and equality as envisaged in Article 14."

Hon"ble Sawant. J., observed :

The doctrine of reading down or of recasting the statute can be applied in limited situations. It is essentially used, firstly, for saving a statute from being struck down on account of its unconstitutionality. It is an extension of the principle that when two interpretations are possible one rendering it constitutional and the other making it unconstitutional, the former should be preferred. The unconstitutionality may spring from either the incompetence of the Legislature to enact the statute or from its violation of any of the provisions of the Constitution. The second situation which summons its aid is where the provisions of the statute are vague and ambiguous and it is possible to gather the intentions of the Legislature from the object of the statute, the context in which the provision occurs and the purpose for which it is made. However, when the provision is cast in a definite and unambiguous language and its intention is clear, it is not permissible either to mend or bend it even if such recasting is in accord with good reason and conscience. In such circumstances, it is not possible, for the Court to remake the statute. Its only duty is to strike it down and leave it to the Legislature if it so desires to amend it. What is further. If the remaking of the statute by the Courts is to lead to its distortion that course is to be scrupulously avoided. One of the situations further where the doctrine can never be called into play is where the statute requires an extensive additions and deletions. Not only it is no part of the Court's duty to undertake such exercise, but it is beyond its jurisdiction to do so."

Hon"ble Ramaswamy, J., was of the opinion that :

"The Courts though have no power to amend the law by process of interpretation, but do have power to mend it so as to be in conformity with the intendment of the Legislature. Doctrine of reading down is one of the principles

of interpretation of statute in that process. But when the offending language used by the Legislature is clear, precise and unambiguous, violating the relevant provisions in the Constitution, resort cannot be had to the doctrine of reading down to blow life into the void law to save it from unconstitutionally or to confer jurisdiction on the Legislature.

Hon''ble Sabyasachi Mukherji, C.J. observed that :

The Court must proceed on the premise that the law making authority intended to make a valid law to confer power validly or which will be valid. The freedom, therefore, to search the spirit of the enactment or what is intended to obtain or to find the intention of the Parliament gives the Court the power to supplant and supplement the expressions used to say what was left unsaid. This is a power which is an important branch of judicial power, the concession of which if taken to the extreme is dangerous, but denial of that power would be ruinous and this is not contrary to the expressed intention of the Legislature or the implied purpose of the legislation."

Hon''ble Ramaswamy, J. further observed that :

"Since Constitutions are the superior law of the land, and because one of their outstanding features is flexibility and capacity to meet changing conditions, constitutional policy provides a valuable aid in determining the legitimate boundaries of statutory meaning. Thus, public policy having its inception in Constitutions may accomplish either a restricted or extended interpretation of the literal expression of a statute. A statute is always presumed to be constitutional and where necessary a constitutional meaning will be inferred to preserve validity. Likewise, where a statute tends to extend or preserve a constitutional principle, reference to analogous constitutional provisions may be of great value in shaping the statute to accord with the statutory aim or objective."

42. How the provisions of the Constitution can be depicted has been dealt with by Hon''ble Supreme Court in Supreme Court Advocate-On- Supreme Court Advocates-on-Record Association and another Vs. Union of India, , wherein Hon''ble Pandian, J., in para 155 of the report observed :

"Incontrovertibly, our Constitution is structured with a wealth of influential and choice words, measured phrases and expressions--the real meaning and message of which are sometimes missed and on many occasions, are hidden or unforeseen. However, the implication, relevance, signification, spirit and core of that word, as used in the Constitution are beyond the range of the interest of a layman."

In that regard. Hon''ble Pandian, J., quoted the observations of Hon''ble Bhagwati, J., in Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another, , wherein it was observed :

The words used in a statute cannot be read in isolation ; their colour and content

are derived from their context and, therefore, every word in a statute must be examined in its context.....The context is of the greatest importance in the, interpretation of the words used in a statute."

Hon"ble Pandian, J., thereafter referred to the observation of the Privy Council in Minister of Home Affairs v. Fisher. (1979) 3 All ER 21, wherein it was held that ;

"a constitutional instrument is a document sui generis, to be interpreted according to principles suitable to its particular character and not necessarily according to the ordinary rules and presumption of statutory interpretation."

Hon"ble Ahmadi, J., in his dissenting judgment in para 300 of the report observed :

It is well-settled that a Constitution is an ever evolving organic document which cannot be read in a narrow, pedantic or syllogistic way but must receive a broad interpretation. Constitution being a growing document its provisions can never remain static and the Court's endeavour should be to interpret its phraseology broadly so that it may be able to meet the requirements of an ever-changing society. But while it may be permissible to give an enlarged and expanded meaning to the phraseology used by the Constitution makers, while it may be permissible to mould the provisions to serve the need of the society, while it may even be permissible in certain extreme situations to stretch the meaning and, if necessary, bend it forward, it would certainly be impermissible to break it or in the guise of interpretation to replace the provisions or rewrite them."

Observations of Hon"ble Kuldeep Singh, J., regarding interpretation of the constitutional provision, which are contained in paras 321 to 326 of the report, are relevant and are produced below :

"The Framers of the Constitution planted in India a living tree capable of growth and expansion within its natural limits. It lives and breathes and is capable of growing to keep with the growth of the country and its people. Constitutional law cannot be static if it is to meet the needs of men. New situations continually arise. Changes in conditions may require a new-look at the existing legal concepts. It is not enough merely to interpret the constitutional text. It must be interpreted so as to advance the policy and purpose underlying its provisions. A purposeful meaning, which may have become necessary by passage of time and process of experience, has to be given. The Courts must face the facts and meet the needs and aspiration of the times."

"Interpretation of the Constitution is a continual process. The institutions created thereunder, the concepts propounded by the Framers and the words, which are beads in the constitutional rosary, may keep on changing their hue in the process of trial and error, with the passage of time."

"When the words in the Constitution--defining institutions and their functioning--were drafted, the Framers could not have foreseen as to what would be the development in the coming future. In R.C. Poudyal v. Union of India AIR 1993 SC

1604, M.N. Venkatachaliah, J., (as the learned Chief Justice then was) observed as under :

"In the interpretation of a constitutional document words are but the framework of concepts and concepts may change more than words themselves. The significance of change of concept themselves is vital and constitutional issues are not solved by a mere appeal to the meaning of the words without an acceptance of the line of their growth."

The case before us must be considered in the light of our entire experience and not merely in that of what was said by the Framers of the Constitution. While deciding the questions posed before us we must consider what is the judiciary today and not what it was fifty years back. The Constitution has not only to be read in the light of contemporary circumstances and values, it has to be read in such a way that the circumstances and values of the present generation are given expression in its provisions. An eminent jurist observed that "constitutional interpretation is as much a process of creation as one of discovery."

"It would be useful to quote hereunder a paragraph from the judgment of Supreme Court of Canada in *Hunter v. Southam Inc* :

"It is clear that the meaning of "unreasonable" cannot be determined by recourse to a dictionary, nor for that matter, by reference to the rules of statutory construction. The task of expounding a constitution is crucially different from that of construing a statute. A statute defines present rights and obligations. It is easily enacted and as easily repealed. A Constitution, by contrast, is drafted with an eye to the future. Its function is to provide a continuing framework for the legitimate exercise of Governmental power and, when jointed by a Bill or a Charter of Rights, for the unremitting protection of individual rights and liberties. Once enacted, its provisions cannot easily be repealed or amended. It must, therefore, be capable of growth and development over time to meet new social, political and historical realities often unimagined by its framers. The judiciary is the guardian of the Constitution and must, in interpreting its provisions. bear these considerations in mind. Professor Paul Freund expressed this idea aptly when he admonished the American Court not to read the provisions of the Constitution like a last will and testament lest it become one".

"The constitutional provisions cannot be cut down by technical construction rather it has to be given liberal and meaningful interpretation. The ordinary rules and presumptions, brought in aid to interpret the statutes, cannot be made applicable while interpreting the provisions of the Constitution. In *Minister of Home Affairs v. Fisher*, dealing with Bermudian Constitution Lord Wilberforce reiterated that a Constitution is a document "sui generis, calling for principles of interpretation of its own, suitable to its character."

Hon"ble J.S. Verma, J., speaking for himself and on behalf of Hon"ble Yogeshwar Dayal, J., Hon"ble G.N. Ray, J., Hon"ble A.S. Anand, J., and Hon"ble S.P.

Bharucha, J. indicated in para 466 of the report :

"It has to be borne in mind that the principles of non-arbitrariness which is an essential attribute of the rule of law is all pervasive throughout the Constitution ; and an adjunct of this principle is the absence of absolute power in one individual in any sphere of constitutional activity. The possibility of intrusion of arbitrariness has to be kept in view, and eschewed, in constitutional interpretation and, therefore, the meaning of the opinion of the Chief Justice of India, in the context of primacy, must be ascertained. A homogenous mixture, which accords with the constitutional purpose and its ethos, indicates that it is the opinion of the judiciary "symbolised by the view of the Chief Justice of India" which is given greater significance or primacy in the matter of appointments. In other words, the view of the Chief Justice of India is to be expressed in the consultative process as truly reflective of the opinion of the judiciary, which means that it must necessarily have the element of plurality in its formation. In actual practice, this is how the Chief Justice of India does and is expected to function so that the final opinion expressed by him is not merely his individual opinion, but the collective opinion formed after taking into account the views of some other Judges who are traditionally associated with this function."

Hon"ble Punchi, J., in his dissenting judgment at para 498 observed :

"We need not feel uneasy to put up with the Constitution as it exists. Ours is a Constitution, perhaps the longest in the world, a document written profusely. There is no miserliness employed in the use of word. As an organic whole it has a live model to imagine about the Westminster model. All problems facing the nation, soluble with the aid of law, must find answers through the language and framework of the Constitution. All new thoughts and solutions to new problems experienced, not envisaged by the Founding Fathers, must translate themselves through the words of the Constitution. Greatest problems of the time are also not solved merely by interpretations made to suit the occasions. There are other legitimate modes available in passing through the tunnel of word employed by the Constitution."

Hon"ble Punchi, J., in the same para, quoted the speech of Dr. Rajendra Prasad of the Constituent Assembly when moving for adoption of the Constitution of India, which is reproduced below :

"We have prepared a democratic Constitution but successful working of democratic institutions requires in those who have to work them willingness to respect the viewpoints of others, capacity for compromise and accommodation. Many things which cannot be written in the Constitution are done by convention. Let me hope that we shall show those capacities and develop those conventions."

In para 40 of the report while dealing with the conventions. Hon"ble Kuldip Singh, J., observed :

"The written Constitutions cannot provide for every eventuality. Constitutional

institutions are often created by the provisions which are generally worded. Such provisions are interpreted with the help of conventions which grow with the passage of time. Conventions are vital insofar as they fill up the gaps in the Constitution itself, help solve problems of interpretation, and allow for the future development of the constitutional framework. Whatever the nature of the Constitution, a great deal may be left unsaid in legal rules allowing enormous discretion to the constitutional functionaries. Conventions regulate the exercise of that discretion. A power which juridically, is conferred upon a person or body or persons may be transferred, guided, or canalised by the operation of the conventional rule, K.C. Wheare in his book *Modern Constitutions*, (1967 Edn.) elaborates such a rule as under :

"What often happens is that powers granted in a Constitution are indeed exercised but that, while they are in law exercised by those to whom they are granted, they are in practice exercised by some other person or body of persons. Convention, in short, transfers powers granted in a Constitution from one person to another."

Hon^{ble} Kuldip Singh, J., further in paras 345, 349 and 351 observed :

"Every act by a constitutional authority is a "precedent" in the sense of an example which may or may not be followed in subsequent similar cases, but a long series of precedents all pointing in the same direction is very good evidence of a convention."

"The requirements for establishing the existence of a convention have been succinctly laid down by Sir W. Ivor Jennings in *The Law and the Constitution*, as follows : "We have to ask ourselves three questions ; first, what are the precedents ; secondly, did the actors in the precedents believe that they were bound by a rule ; and thirdly, is there a reason for the rule? A single precedent with a good reason may be enough to establish the rule. A whole string of precedents without such a reason will be of no avail, unless it is perfectly certain that the persons concerned regarded them as bound by it."

"A convention while it is a convention is to be distinguished from the law. But this does not mean that what was formerly a convention cannot later become law. When customary rules are recognized and enforced by Courts as law, there is no reason why a convention cannot be crystallized into a law and become enforceable. It is no doubt correct that the existence of a particular convention is to be established by evidence on the basis of historical events and expert factual submissions. But once it is established in the Court of law that a particular convention exists and the constitutional functionaries are following the same as a binding precedent then there is no justification to deny such a convention the status of law."

43. We have already mentioned that the Constitution defines Panchayat as an institution (by whatever name called) of self-government constituted in Article 243B for the rural areas. According to Section 20 of Kshettriya Panchayats and

Zila Panchayats Adhiniyam, 1961, the term of the Zila Panchayat is for five years from the date appointed for its first meeting and no longer. It speaks more or less the same language, which is enshrined in Article 243E of the Constitution of India, but nowhere either in the Constitution or in the Adhiniyam, 1961, the term of Adhyaksha is mentioned. Only the term of the Zila Panchayat and its members have been mentioned, which is for five years from the date appointed for its first meeting and no longer : meaning thereby that the term of a member of the Zila Panchayat is co-terminus with the term of the Panchayat, which is evident from the language of Section 21 of the Adhiniyam, 1961, which provides that the term of office of the Adhyaksha or the Upadhyaksha shall commence on his election and shall end with the term of the Zila Panchayat, meaning thereby that when the term of the Panchayat would come to end, the term of the Adhyaksha of Zila Panchayat would also come to end.

44. If the argument of Mr. H.S. Jain and Mr. Vinod Singh is accepted that Zila Panchayat would be deemed to be constituted from the date the Adhyaksha of the Zila Panchayat is elected or when the first meeting of Zila Panchayat takes place, then it would lead to anomalous positions, because often it may be due to interference of the Court or for any other reasons may be administrative or political, the Adhyaksha would not be able to be elected or would fail to convene the meeting of the Zila Panchayat, the Zila Panchayat would not be deemed to be constituted. To get rid of that hurdle or impediment. Section 21A of the Adhiniyam, 1961, was inserted into the Adhiniyam, 1961, by U. P. Act No. 37 of 1976, which came into force on May 1, 1976, which deals with the temporary arrangement in certain cases. Said provision is reproduced below :

"21A. Temporary arrangements in certain cases.--When the Adhyaksha is unable to discharge his functions owing to absence, illness, or any other cause, and the office of Upadhyaksha is vacant or when the Upadhyaksha acting u/s 60 during a vacancy in the office of Adhyaksha is unable to discharge his functions owing to absence, illness or any other cause, the State Government may by order, make such arrangements, as it thinks fit, for the discharge of the functions of such Adhyaksha until the date on which the Adhyaksha or Upadhyaksha, as the case may be, resumes his duties."

45. In that regard, we may refer to the case of a dispute between two persons belonging to Zila Panchayat, Gonda District where the doors of this Court were knocked by both the persons. The orders were passed by this Court and the matter is still pending before Hon'ble Supreme Court. Does it mean that if the Adhyaksha is not elected or is unable to resume the functions, the Zila Panchayat should remain frozen or remain non-functional ; may be for that reason, the provision of Section 21A of the Adhiniyam, 1961 was inserted and wherein the State Government appoints the Administrator, who may discharge the function of the Adhyaksha, when in the absence of Adhyaksha, even the Upadhyaksha, is unable to discharge his duties, who can call the meeting.

46. Section 61 of Adhiniyam, 1961, deals with meeting for the "transaction of

business" of the Zila Parishad. It has no relevance pertaining to term of Panchayat or the "date appointed for its first meeting" which may have a bearing upon or pertinent to the term of the Panchayat. If it is presumed that the meeting for the "transaction of business" is related to the "first meeting", then the purpose and object of Section 20 of Adhiniyam, shall be defeated as it could easily be circumvented. For example, if Adhyaksha is elected but he fails to discharge his duties as contained in Section 61 of the Adhiniyam, 1961, by not calling the meeting of the Zila Panchayat or adjourning the same u/s 61 for several months or years, then whether it means that the Zila Panchayat becomes nonfunctional and whenever he would call the first meeting, or whenever the first meeting would be held only that date would be deemed to be the date appointed for the first meeting. Thus, in this way such an Adhyaksha may prolong the term of his membership of Panchayat or the Office of Adhyaksha for more than five years against the mandate of Constitution as provided in Article 243E of the Constitution. Neither it is the intention of the Constitution nor of Adhiniyam, 1961. As we have pointed out earlier, after the insertion of Part IX in the Constitution, the State Legislation should have inserted the provisions in the Adhiniyam, 1961, mentioning the period or the date for the first meeting or name or designation of any constitutional authority who may have been vested a right or power to fix the date for the first meeting, so the election of the Panchayats may be held simultaneously but it was not done.

47. In the instant case, the election of Zila Panchayat, Hamirpur was held on 22.7.1995, the petitioner ought to have been elected as a member either on that date or on the next date when the result would have been declared. The term of a member of Zila Panchayat is co-terminus with the term of Zila Panchayat, i.e., "five years" from the date appointed for its first meeting. The word "appointed" itself denotes appointment of a date for the first meeting of the Zila Panchayat, but Section 20 of the Adhiniyam is silent about the Authority who will call the first meeting (other than a meeting for the transaction of business of Zila Parishad) or the period when the meeting should be called.

48. If the meeting of the Panchayat was not held within a reasonable time even after the election of Adhyaksha, then whether the term of the petitioner as a member may be extended for more than five years? In the instant case, if the argument of the petitioner is accepted then the term of the petitioner as Adhyaksha would expire on 13.7.2001 ; meaning thereby that his term of membership will also extend up to 13.7.2001 which will be against the object, purpose, spirit, language and tenor of Article 243E of the Constitution of India.

49. We are not aware that due to non-election of Adhyaksha after the election of the members of Zila Panchayat, when the first meeting was not held within a reasonable period, the provisions of Section 21A, was invoked or not by the State Government by appointing an Administrator to run the affairs of the Adhyaksha. It cannot be presumed that the State Government would have slept over the matter and would have not appointed the Administrator in view of

Section 21A of the Adhiniyam, 1961. In that eventuality, the Zila Panchayat would be deemed to have been constituted in the year 1996 itself.

50. In view of the fact that the term of Adhyaksha has not been indicated in the Constitution or in the Act, itself and the term of a member of Zila Panchayat is co-terminus with the term of the Zila Panchayat, hence the term of the membership of the petitioner as a member of the Panchayat, cannot be more than five years. The petitioner was elected as Adhyaksha only because he was a member of the Zila Panchayat. If his term as a member of the Zila Panchayat comes to end, he cannot hold the office of the Adhyaksha of Zila Panchayat. Non-holding of the meeting of the members of Zila Panchayat, which was elected on 22.7.1995 till 13.7.1996, when the first meeting was alleged to have taken place, cannot be said to be reasonable period.

51. The contention that the Zila Parishad shall not be deemed to have been constituted till the Adhyaksha is elected is misconceived. Section 18 of the Adhiniyam, 1961, only provides that a Zila Panchayat shall consist of an Adhyaksha, who shall be Chairperson and Section 61 of the Adhiniyam relates to the meeting for transaction of business, which may be convened by the Adhyaksha or Upadhyaksha or in their absence State Government may make such arrangement as it thinks fit for the discharge of the function of such Adhyaksha, until the date on which the Adhyaksha or Upadhyaksha, may resume the duties.

52. Sections 66, 67, 68 and 73 of Representation of the People Act, 1951, are reproduced as under :

"66. Declaration of results.--When the counting of the votes has been completed, the returning officer shall, in the absence of any direction by the Election Commission to the contrary, forthwith declare the result of the election in the manner provided by this Act or the rules made thereunder.

67. Report of the result.--As soon as may be after the result of an election has been declared, the returning officer shall report the result to the appropriate authority and the Election Commission, and in the case of an election to a House of Parliament or of the Legislature of a State also to the Secretary of that House, and the appropriate authority shall cause to be published in the Official Gazette the declarations containing the names of the elected candidates.

68. Vacation of seats when elected to both Houses of Parliament.--(1) Any person who is chosen a member of both the House of the People and the Council of States and who has not taken his seat in either House may, by notice in writing signed by him and delivered to the Secretary to the Election Commission within ten days from the date, or the later of the dates, on which he is so chosen, intimate in which of the Houses he wishes to serve, and thereupon, his seat in the House in which he does not wish to serve shall become vacant.

(2) In default of such intimation within the aforesaid period, his seat in the

Council of States shall, at the expiration of that period, become vacant.

(3) Any intimation given under sub-section (1) shall be final and irrevocable.

(4) For the purposes of this Section and of Section 69, the date on which a person is chosen to be a member of either House of Parliament shall be in the case of an elected member, the date of his election and in the case of a nominated member, the date of first publication in the Gazette of India of his nomination.

73. Publication of results of general election to the House of the People and the State Legislative Assemblies.-- Where a general election is held for the purpose of constituting a new House of the People or a new State Legislative Assembly, there shall be notified by the Election Commission in the official Gazette, as soon as may be after the results of the elections in all the constituencies other than those in which the poll could not be taken for any reason on the date originally fixed under clause (d) of Section 30 or for which the time for completion of the election has been extended under the provisions of Section 153, have been declared by the returning officer under the provisions of Section 53, or, as the case may be, Section 66, the names of the members elected for those constituencies and upon the issue of such notification that House or Assembly shall be deemed to be duly constituted :

Provided that the issue of such notification shall not be deemed :

(a) to preclude :

(b) (i) the taking of the poll and the completion of the election in any Parliamentary or Assembly constituency or constituencies in which the poll could not be taken for any reason on the date originally fixed under clause (d) of Section 30 ; or

(ii) the completion of the election in any Parliamentary or Assembly constituency or constituencies for which time has been extended under the provisions of Section 153 ; or

(c) to affect the duration of the House of the People or the State Legislative Assembly. If any, functioning immediately before the issue of the said notification.

53. It is thus evident that as soon as the process of election comes to an end after the declaration of the result, the constitutional authority (Election Commissioner) notifies the result of the election in official Gazette and upon the issue of such notification, the House or Assembly shall be constituted.

54. The word "constitute" or "constituted" occurring in Article 243B and clause (3) of Article 243E of the Constitution of India and subsection (3) of Section 20 and Section 22 (1) of Adhiniyam, 1961 does not mean that the Zila Panchayat would not be deemed to be constituted, if the Adhyaksh or Pradhan, under the provision of Adhiniyam, 1961 or U. P. Panchayat Raj Act is not elected or the first meeting of the Zila Panchayat is not held. The literal meaning of the word

"constitute" is, to form or to make up, to establish or found, to set up, to appoint. The word "constitute" also means to set or station in a given situation, state, or character, to fix or determine, as a trait or characteristic. In a statute providing that a city council may "make, ordain, constitute, establish and pass" ordinances, etc. all these verbs mean the same thing, and may one of them would have been sufficient. The word "constitute" also means to appoint or depute either of a body or an individual to constitute employs the act of making as well as choosing. The word "constituted" does not necessarily mean "created" or "set up" though it may mean that it also includes the idea of clothing the agreement in a legal form. In the Oxford English Dictionary, Vol. II at pages 875 and 876, the word "constitute" is said to mean, inter alia, "to set up, establish, found (an Assembly, etc.)". Thus, the word in its wider significance would include both the idea of creating or establishing and the idea of giving a legal form to, a partnership.

55. Hon"ble Supreme Court in P.R. Chowdhary and S. Gangoli Vs. The State of U.P., , while examining the decision of a Bench of Calcutta High Court observed that :

"The Bench of the Calcutta High Courtwas not, therefore, right in restricting the word "constitute" to mean only "to create", when clearly it could also mean putting a thing in a legal shape. The Bombay High Court, therefore. in the case of Dwarakadas Kheta and Co. v. Commissioner of Income Tax (1956) ITR 903 , was right in holding that the Section could not be restricted in its application only to a firm which had been created by an instrument of partnership, and that it could reasonably and in conformity of commercial practice, be held to apply to a firm which may have to come into existence earlier by an oral agreement but the terms and conditions of the partnership have subsequently been reduced to the form of a document. The Supreme Court took the view that the word "constitute" is construed in the larger sense, as indicated above, the difficulty in which the Chief Justice of the Calcutta High Court found himself would be obviated inasmuch as the Section would take in cases both of firms coming into existence by virtue of written documents as also those which may have initially come into existence by oral agreements but which had subsequently been constituted under written deeds. The purpose of the provision of the Income Tax Act, Section 26A is not to compel the firms which had been brought into existence by oral agreements to dissolve themselves and to go through the formality of constituting themselves by instruments of partnership. The words "constituted under" is construed in that wider sense, effect to the intention of the Legislature of compelling a firm which had existed as a result of an oral agreement to enter into a document defining the terms and conditions of the partnership, so as to bind the partners to those terms, before they could get the benefit of the provisions of Section 23 (5) (a), Section 23 (5) (a) confers a privilege upon partners who may find it more worth their while to be assessed upon their individual total income than upon the total income of the partnership, it is, therefore, very important from the point of view of the Revenue that the

Department should be apprised in time of the true Constitution of the partnership, the names of the true partners and the precise share of each of them in the partnership profits (or loss, if any). The very object of this provision will be defeated if the alleged partnership is not genuine, or if the true Constitution of the partnership and the respective shares of the partners are not fully and correctly placed on record as soon as possible, for the purpose of assessment. In this connection, the provisions of Section 28 (2) of the Act are also worth noticing. That sub-section provides that if the Income Tax Officer or the appellate authorities under the Act are satisfied that the profits of a registered firm have been distributed otherwise than in accordance with the shares of the partners, as shown in the instrument of partnership registered under the Act and governing such distribution, and that any partner has concealed any part of his profits. The penalty prescribed therein may be imposed upon such a partner. Unless the instrument of partnership has been registered in respect of the accounting year, and before the assessment has been done, the penal provisions aforesaid cannot be enforced, it is, therefore, essential, in the interest of proper administration and enforcement of the relevant provisions relating to the registration of firms, that the firms should strictly comply with the requirements of the law, and it is incumbent upon the Income tax authorities to insist upon full compliance with the requirements of the law. But there is no warrant in the words of the relevant provisions of the statute for restricting registration u/s 26A of the Act to those firms only which have been created to bring into existence by an instrument of partnership. It is more in consonance with the terms of the relevant provisions of the Act, referred to above, to hold that the words "constituted under an instrument of partnership" include not only firms which have been created by an instrument of partnership but also those which may have been created by word of mouth but have been subsequently clothed in legal form by reducing the terms and conditions of the partnership to writing, (See Income Tax Act, 1922. Section 26A) P.R. Chowdhary and S. Gangoli Vs. The State of U.P., .

56. In view of the aforesaid meaning of the word "constitute" or "constituted", it cannot be said that the Zila Panchayat would be constituted only after the Adhyaksha or the Upadhyaksha is elected or whenever the first meeting of the Zila Panchayat takes place. Taking into account the aforesaid proposition, we are of the view that the Zila Panchayats would be deemed to be constituted as soon as the result of the members of Panchayat is declared.

57. It is thus evident that after the declaration of result of the election of House of People and the State Legislative Assemblies and issuance of notification by the Election Commission, the House or Assembly shall be deemed to be duly constituted.

58. Although there exists no such provision either in the Adhiniyam, 1961 or in U. P. Panchayat Raj Act. 1947, but keeping in view that the provision of Representation of People Act, 1950, being a legislation passed by Parliament

which may be treated as a supreme law regarding the election, we are of the view that Panchayat would be deemed to have been constituted, when the final result would have been declared. The Constitution shall not be dependent on the issuance of the notification, as the provision regarding issuance of notification u/s 17 (6) of the Adhiniyam has been deleted.

59. We have already indicated that the words "shall continue for five years from the date appointed for its first meeting and no longer" occurring in Article 243E of the Constitution. has been borrowed from Article 83(2) and Article 172(1) of the Constitution. If either in Article 83(2) or in Article 172(1) of the Constitution, the words "from the date appointed for its first meeting" have not been defined or explained, it causes no inconvenience or hardship and it also does not lead to any anomaly, inconvenience or mischief, because the House of the Representative or the Legislative Assembly would be deemed to be constituted after the issuance of the notification by the Election Commissioner. The President or the Governor, as the case may be, appoints the Council of Ministers. The President or the Governor summons the House within the shortest possible time and address the House. The interregnum between the Constitution of the House of the Representative or the Legislative Assembly is only for few days, hence if the term of the House of the Representative or the Legislative Assembly comes to an end after five years from the date of its first meeting. There is no possibility for any mischief, because after the expiry of five years, the House of Representative or the Legislative Assembly, as the case may be stands dissolved.

60. But as we have pointed out earlier that the Executive or the Adhyaksha, if elected may not call a meeting for several months or years, as in the instant case. When Article 243E of the Constitution was enacted, new facts and situations which have arisen now could not have been contemplated. If a particular provision results into injustice, mischief, inconvenience, absurdity or anomaly, it is the duty of the Court to obviate the injustice, absurdity, anomaly, mischief or inconvenience to fulfil the purpose of the statute. As the circumstances have underwent change it is the duty of the Court to rearrange the words in such a way which is in accordance with the intendment of the Legislature. While enacting Article 243E of the Constitution, Section 20 (1) of Adhiniyam. 1961, and Section 12 (3) of U. P. Panchayat Raj Act, neither the Parliament nor the State Assembly foresaw that the purpose and object of Part-IX of the Constitution or Adhiniyam. 1961 or U. P. Panchayat Raj Act, 1947, may be defeated. This Court cannot allow the intention of either the Parliament or the Legislative Assembly to fail for any defective drafting of the draftsman, which neither the Parliament nor the Assembly intended. As neither Article 243E of the Constitution nor Section 20 (1) of the Adhiniyam. 1961, or Section 12 (3) of U. P. Panchayat Raj Act. 1947, defines or explains "date appointed for its first meeting" or the authority who will call the first meeting, hence it is the duty of the Court to mend the words in such a way which may be in conformity with the intendment of the Parliament or the State Legislature. As the intendment of the Parliament and the State Legislature is explicit and clear by adding Part IX of the

Constitution by 73rd Amendment, thereafter the Adhiniyam, 1961, and U. P. Panchayat Raj Act, 1947, were suitably amended. The intendment of both the Parliament and the State Legislature was to strengthen the democracy at the grass-root level and to involve the Panchayats into the development activities. This Court can never allow the intention of the Parliament or the State Legislature to fail.

61. Every student of Constitutional Law knows it fully well that under Article 75 of the Constitution of India, the Prime Minister shall be appointed by the President and the Ministers shall be appointed by the President on the advice of the Prime Minister. The Prime Minister shall hold the office during the pleasure of the President. The Council of Ministers shall be collectively responsible to the House of the People. Nowhere in the Constitution, is it mentioned that the President will appoint only that person as the Prime Minister who is elected as a leader by the members of a particular party or parties, but according to the conventions and practices, the President invites only that person as Prime Minister, who commands the confidence of the majority of the members of the House and as soon as he loses that confidence, he will have to resign or be dismissed by the President, who may call another person to form the Ministry, who inspires confidence of the majority in the House. According to clause (2) of Article 83, the House of the People, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the House. The term of the House of People starts from the first meeting but the first meeting immediately takes place when after the election, the Commission issues notification after the general election. Same convention and practice may be observed by the State Government after the declaration of the result of the Panchayats. But it was not done, as a result of which the anomalies, inconvenience and difficulties arose, which require to be remedied. But while doing so, we do not rewrite, or read or to add anything in Article 243E of the Constitution but it may be construed in such a way where the intendment of the Constitution may not be defeated. Construing a particular provision of the Constitution to achieve the purpose and object of the Constitution or filling a gap to check the abuse of power by any authority or person, cannot amount to rewriting in any provision of the Constitution. Hence, we construe Article 243E by adding the words "by the Governor with the consultation of the State Election Commission" after the words "date appointed".

62. It was expected that the State Government immediately after declaration of the result of the Panchayat elections, should have appointed a date for the first meeting of the Panchayats. As there existed no constitutional functionary, to have appointed the date of the first meeting. In Section 20 (1) of the Adhiniyam, 1961, and Section 12 (3) of the U. P. Panchayat Raj Act, 1947, the Executive as well as the Adhyaksha have prolonged the date appointed for the first meeting of the Panchayats, which is against the intendment of the Constitution. Hence, we have to rearrange or read the same words in those Sections.

63. In view of the aforesaid reasons, we have no alternative except to rearrange the Section 20 (1) of the Adhiniyam, 1961, and Section 12 (3) of the U. P. Panchayat Raj Act, 1947, by adding "by the Governor with the consultation of the State Election Commissioner" after the words "for five years from the date appointed", which will be read now as under :

Section 20 (1) of Adhiniyam, 1961 :

20. Term of Zila Panchayat and its members.--(1) A Zila Panchayat shall, unless sooner dissolved u/s 232, continue for five years from the date appointed "by the Governor with the consultation of the State Election Commissioner" for its first meeting and no longer.

Section 12 (3) of the U. P. Panchayat Raj Act:

12 (3). (a) A Gram Panchayat shall, unless sooner dissolved under clause (f) of sub-section (1) of Section 95, continue for five years from the date appointed "by the Governor with the consultation of the State Election Commissioner" for its first meeting and no longer.

64. This will certainly obviate the anomaly, injustice or inconvenience, because as soon as the result of the Panchayats would be declared, the Governor with the consultation of the State Election Commissioner will convene the meeting of the Panchayats on a particular date all over the State, in which the Adhyaksha or the Upadhyaksha would be elected and on the same date, the Adhyaksha and the members of the Zila Panchayat will be administered oath. As the Governor and the State Election Commissioner are constitutional authorities, they will strictly act, according to the Constitutional intendment and mandate, without considering the political convenience so no such anomaly or difficulty may arise in future and the elections of all the Panchayats may take place simultaneously within a prescribed period.

65. As we have already held that the Zila Panchayats would be deemed to be constituted on the date when the results of the election of the members has been declared, and the term of the Panchayats is five years and no longer and the term of a member is coterminus with the term of the Zila Panchayat, which comes to an end after the end of five years and not from the date of the election of the Chairman or from the date of its first meeting, the term of the office of the Adhyaksha or the Upadhyaksha shall commence on his election and shall end with the term of the Zila Panchayat. After the election of the membership of the Zila Panchayat has been declared, neither the Adhyaksha nor any member of the Zila Panchayat elected in the first Panchayat, shall have a right to remain in office in place of those who have now been elected or may be elected.

66. The contention of the petitioner that the petitioner was elected as the Chairman of the Mahoba, Zila Panchayat, on 2.7.1996 and the first meeting of the Zila Panchayat, Mahoba, was held on 13.7.1996, hence he is entitled to function as Adhyaksha of Zila Panchayat. Mahoba, upto 12.7.2001 is totally

misconceived as he was elected as a member of Zila Panchayat, Hamirpur, on 22.4.1995 and after Mahoba was carved out as a separate district, his membership transferred to newly created district, namely, Mahoba. In view of the Removal of Difficulties Order issued u/s 272 of the Adhiniyam. 1961, he will cease to be a member after expiry of five years from the date of his election. He was elected as Adhyaksha as he was the member of panchayat and, when he has already ceased to be a member, he cannot continue as a Adhyaksha/Chairman. After the re-organisation of the States, similar question arose. The membership of the Legislature of the erstwhile States was transferred to newly created States. The Constitutional Bench of Hon"ble Supreme Court in Mangal Singh and Another Vs. Union of India (UOI), , observed :

"We do not think that any such power is contemplated by Article 4. Power with which the Parliament is invested by Articles 2 and 3 is power to admit, establish, or form new States which conform to the democratic pattern envisaged by the Constitution ; and the power which the Parliament may exercise by law is supplemental, incidental or consequential to the admission, establishment or formation of a State as contemplated by the Constitution, and is not power to override the constitutional scheme. No State can, therefore, be formed, admitted or set up by law under Article 4 by the Parliament which has not effective legislative executive and judicial organs."

".....that in the enactment of laws for giving effect to the admission, establishment or formation of new States, or alteration of areas and the boundaries of those States, power to modify provisions of the Constitution in order to tide over a temporary difficulty may be exercised by the Parliament. The High Court was, therefore, right in holding that Section 13 (1) was not invalid merely because it departed from the minimum prescribed as the total membership of the Legislative Assembly for a State."

67. A similar question arose before a Division Bench of Bombay High Court in Padmakar Balkrishna Vs. State of Bombay and Others, , in which it has been held that by virtue of Section 30 read with Section 28, the reconstituted Assembly is to be deemed to have come into existence on the date appointed for the first meeting of the Assembly in the old State.

68. The Removal of Difficulties Order, which is transitional in nature, issued u/s 272 of the Adhiniyam. 1961, casts a legislative duty to the State to issue such an order. Hence, the newly constituted Zila Panchayat is deemed to have come into existence on the date appointed for the first meeting of the Zila Panchayat in the old Panchayat.

69. A similar question arose in Writ Petition bearing No. 3214 (M/B) of 2000 which was filed by one Laxmi Narain Singh who was elected as a member and Adhyaksha of Hamirpur. He assailed the notification dated 22.5.2000 issued by the State Election Commission for holding the election of the Zila Panchayat in district Hamirpur. The writ petition was dismissed by a Division bench of this

Court.

70. The notification for holding the election of Adhyaksha of Zila Panchayat was issued on 21.7.2000 by the State Election Commissioner. It is well-settled that after the issuance of the notification for holding the elections, the election cannot be stalled by the Court. The contention of the petitioner that he does not want to stall the process of election and, the election may take place, but the present Zila Panchayat may be allowed to continue till 13.7.2001 and thereafter the newly elected Panchayat members may take their charge, is totally misconceived. The process of election of the member of the Zila Panchayat came to an end on 23.6.2000 thereafter, the election was held and the result declared. It will be against the tenets of the democracy and the spirit of the Constitution as well as the Adhiniyam, 1961, to debar the newly elected members from constituting the Panchayat, hence we are not inclined to interfere into the matter. Writ petition is accordingly dismissed.

71. Similar question arises in writ petition bearing No. 3798 (M/B) of 2000 which has again been filed by Laxmi Narain Singh, whose earlier petition was dismissed by this Court. He prayed for quashing the notification dated 21.7.2000 issued by the State Government so far as it relates to the election of the Adhyaksha of the Zila Panchayat, Hamirpur, and not to constitute or reconstitute the Zila Panchayat, Hamirpur, before expiration of the term of the existing Zila Panchayat. We are of the view that as the present writ petition raised the same question, which was involved in Writ Petition bearing No. 3777 (M/B) of 2000, which has been dismissed. Accordingly this writ petition is also dismissed.

72. Similar question of law is involved in Writ Petition bearing Nos. 3388 (M/B) of 2000, 3423 (M/B) of 2000, 3480 (M/B) of 2000 and 3216 (M/B) of 2000, which was involved in Writ Petition bearing No. 3777 (M/B) of 2000, which has been dismissed. Accordingly these writ petitions are also dismissed.

73. The petitioners of Writ Petitions bearing No. 3508 (M/B) of 2000, 2835 (M/B) of 2000, 3344 (M/B) of 2000 and 3386 (M/B) of 2000 have assailed Section 5 of the impugned Panchayat Raj Amendment Act, 2000 (U. P. Act No. 22 of 2000) and want this Court to declare it unconstitutional and void. The said section provides that the State Government of an officer authorized by it in this behalf may, by order, appoint an Administrative Committee consisting of such member of persons qualified to be elected as members of the Zila Panchayat, as it may consider proper or an Administrator and the members of the Administrative Committee or the Administrator shall hold office for such period not exceeding six months as may be specified in the said order and all powers, functions and duties of the Zila Panchayat, its Adhyaksha and Committees shall vest in and be exercised, performed and discharged by such Administrative Committee or the Administrator, as the case may be. In pursuance of the provision contained in Section 5 of the impugned Panchayat Raj Amendment Act, 2000, the State Government after the end of the tenure of Panchayats, appointed an Administrator. A Division Bench of this Court has declared the said provision as

ultra vires for the reason that under the constitutional provision contained in Article 243E of the Constitution, the State Government as well as the State Election Commissioner was bound to hold the election, prior to the end of the term of first Panchayat. The State Government filed an appeal before the Hon'ble Supreme Court against the judgment and order passed by a Division Bench of this Court and that part of the order of the High Court was stayed, by the Hon'ble Supreme Court, but directed the State Government to hold the three tier elections within a specified period.

74. Mr. H. S. Jain contended that if it is assumed that the Section 5 of the impugned Panchayat Raj Amendment Act, 2000, is intra-vires, even then there was no unavoidable reason for the State Government not to hold the Panchayat election before the end of the term of the Panchayat. If it is assumed that there existed no reason for not holding the elections within the aforesaid period and the State Government has committed any illegality in not holding the elections before the end of the term of the first Panchayat, this Court in exercise of its power under Article 226 of the Constitution of India, cannot allow any illegality to perpetuate by directing the members of the first Panchayat or its Adhyaksha or Upadhyaksha to continue till the Constitution of the new Zila Panchayat, when admittedly their term has expired in view of the decision of Hon'ble Supreme Court in Council of Scientific and Industrial Research v. Dr. Ajay Kumar Jain (2000) 4 SCC 198 (Para 17), wherein it was observed that if something wrong has been done in violation of the rules, we cannot use that as an example to perpetuate an illegality. The election of new Zila Panchayats have already been held and its members were elected. The notification has been issued by the State Election Commissioner to hold the election of the Adhyaksha and Upadhyaksha, hence there exists no necessity for Court to interfere into the present arrangement.

75. The notification for holding the election of Adhyaksha for Zila Panchayat was issued on 21.7.2000 by the State Election Commission. It is well-settled that after the issuance of the Notification for holding the election, the election process cannot be stalled by this Court. The contention of the petitioner is that he does not want to stall the process of election, the election may take place, but the present Zila Panchayat may be allowed to continue till 13.7.2001 and thereafter the newly elected Panchayat may take the charge. The process of the election of member of Zila Panchayat came to end on 23.6.2000 when the polling was held and the elected members will elect the Adhyaksha and Upadhyaksha of the Zila Panchayat. It will be against the tenets of democracy, the democratic rule, the spirit of the Constitution and the Adhinyam. 1961, to debar the newly elected members from constituting the Panchayats, hence we are not inclined to interfere into the matter. Accordingly, all the writ petitions are dismissed.