
(2009) 02 AHC CK 0051

In the Allahabad High Court

Case No : Writ Petition No. 451(MB) of 2008 with Writ Petition Nos. 8387 (MB) of 2007; 8124 (MB) of 2007; 7419 (MB) of 2007; 7526 (MB) of 2007; 7924 (MB) of 2007; 8582 (MB) of 2007; 6949 (MB) of 2007; 9724 (MB) of 2007; 9828 (MB) of 2007; 1980 (MB) of 2008; 9453 (M

Mamta Kannaujia

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 06-02-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 243B, 243C(5)
Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 — Section 11, 12, 13, 15, 21A

Citation : (2009) 02 AHC CK 0051

Hon'ble Judges : Pradeep Kant, J and Ved Pal, J

Final Decision : Dismissed

Judgement

Pradeep Kant, J.—Heard the learned counsel Shri S.K. Kalia, Senior Advocate, Dr. L.P. Misra, Sri Upendra Nath Misra, and Sri Akhilesh Kalra for the petitioners and Sri Jai Deep Narain Mathur, Sri D.K. Uppadhyaya and Sri Anuj Kuddesia for the respondents.

2. This is a bunch of writ petitions which initially challenged the vires of U.P. Panchayat Laws (Amendment) Ordinance 2007 (U.P. Ordinance No.26 of 2007), but later on, since the aforesaid Ordinance was converted into an Act namely; U.P. Panchayat Laws (Amendment) Act, 2007 (hereinafter referred to as the "Act, 2007") (U.P. Act No.44 of 2007), the petitions were accordingly amended and challenge has been made to the aforesaid Act, 2007.

3. It may be stated at the outset that while challenging the Ordinance various pleas including the plea of malafide in introducing the amendment in question, in the U.P. Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 (hereinafter referred to as the "Act, 1961") were taken, saying that the entire amendment has been made with a malafide design, immediately after the general elections of the Assembly, when the new ruling party (Bahujan Samaj Party) came into

power on 13th May 2007, only with a view to oust all the duly elected Pradhans, Pramukh and Adhyaksha of the Panchayat, most of whom did not belong to the present ruling party. But on conversion of the Ordinance into the Act, the petitioners being conscious that no malafide can be attributed to the legislation though did not make a straight challenge on the plea of malafide to the amendment made, but emphatically made an effort to prove the plea that the amendments are in essence, for introducing such a scheme in the relevant Act so as to defeat the constitutional mandate, as introduced by Seventy Third Amendment, which amendment also destroyed the democratic character of the Panchayats, and permits gross intrusion of State executive.

4. By the impugned amendment, the offices of Senior UpPramukh and Junior UpPramukh, in the case of Kshettra Panchayat and that of Upadhyaksha, in the case of Zila Panchayat have been abolished and by virtue of Section 21A and 9A, the State Government or the District Magistrate have been given power to make temporary arrangement on the post of Adhyaksha or Pramukh, as the case may be, during the period of their temporary absence to their office in their office, as he thinks fit. The discretionary power conferred upon the District Magistrate or the State Government, as the case may be, for making alternative arrangement during this casual absence of the Pramukh or the Adhyaksha being bereft of any guidelines, is wholly uncanalised authorizing the District Magistrate or the State Government to make such arrangement purely on whims and caprices of an executive authority.

5. Further challenge to the amendment made by virtue of subsections 11, 12 and 13 of Section 15 of the Adhiniyam has been made whereby a no confidence motion could be brought against the Pramukh or the Adhyaksha after one year of his assuming the office and this no confidence motion shall stand passed with a majority of only more than half of the members elected for the time being as against the preexisting block period of two years, for bringing the motion and the requisite majority of not less than 2/3rd of the members for passing the motion.

6. The plea is that this amendment has spelled a death knell to the entire intent of the Constitution (73rd Amendment) Act, 1992 because a Pramukh who is elected by preference vote in majority cases with less than Fifty Percent (50%) votes stands defeated the very day he is elected as he is constantly under the threat of noconfidence motion.

7. The main challenge to the amendment is three fold:

(i) the abolition of office of the Vice Chairperson namely; that of Senior Up Pramukh and Junior Up Pramukh in the Kshettra Panchayat and Upadhyaksha in the Zila Panchayat is against the constitutional scheme;

(ii) conferring power upon the District Magistrate in the case of Kshettra Panchayat and the State Government in the case of Zila Panchayat for making temporary arrangement for the office of Pramukh and Adhyaksha respectively, when these elected office bearers are unable to perform their duties because of

absence due to illness or for any other reasons whatsoever, by making a temporary arrangement as these authorities may think fit, is a direct invasion on the constitutional mandate of manning the Panchayat only by elected members; submission is that the power so conferred upon the District Magistrate as well as the State Government, is wholly unguided and uncanalised, with no prescription so as to restrict these authorities within the limits of the constitutional provision and rather giving them indiscreet power to make any arrangement as per their own discretion, which may also permit to entrust functioning of the Pramukh or Adhyaksha upon any person whether he is a member of the Panchayat or not; meaning thereby that even an outsider or a person who has lost the election and could not become the Pramukh or Adhyaksha, can also be permitted by the District Magistrate or the State Government, as the case may be, for discharge the function of the elected office, as such, the aforesaid provision suffers from the vice of excessive delegation which makes the provision wholly unconstitutional and invalid and,

(iii) the protection given to the elected Pramukh and Adhyaksha from being pulled out of the office on a motion of no confidence by providing that no such motion can be brought within two years from the date of election and such a motion when moved has to be passed by majority of twothird members of the Panchayat, has been taken away by reducing the block period to one year and majority requirement being made only simple namely; more than half of the members elected, submission is that by reducing the aforesaid block period and required majority for passing the motion of no confidence, effects the stability of the elected Panchayat and in fact introduces instability to the holders of the office which is again, against the constitutional scheme.

8. Corollary to the aforesaid argument is that the entire amendment has been introduced only to cut short the term of the elected Pramukh and Adhyaksha and to device a forum so as to hand over the reigns of Panchayats into the State Executive and bureaucracy, though the constitutional provisions mandate for a fully insulated democratic set up.

9. The issues which may require consideration, can be summarized as under:

(a) whether the impugned legislation strikes at the fundamental democratic principles and tries to defy the "electorate"s will? and thus is ultravires the constitution?

(b) whether the impugned provision is a colourable exercise of the powers by the legislature? If so, can the legislature or the executive do indirectly the thing which they can not do directly?

(c) whether the power given to a statutory authority creates arbitrary exercise of the discretion?

(d) whether there is excessive delegation of power upon the delegated authority so as to make arrangement for an elected office at his sweet will being unguided

by any restrictions imposed or the guidelines given in the Act itself?

(e) whether the impugned legislation commits a fraud on the constitution as it pretends to act within its power though is not empowered to do so?

(f) whether the impugned provisions violate the provisions of Part III of the constitution? Whether they stand in way of the directive principles of State policy and provide hindrance in creation of a welfare State as necessitated by the Constitution?

10. A glance, on the constitutional provision as amended by Seventythird Amendment as well as a glimpse of the history of State Legislation, namely the U.P. (Kshettra Panchayats and Zila Panchayats) Act, 1961, as amended from time to time may be relevant for deciding the issue aforesaid.

11. The Constitutional (Seventy Third Amendment) Act, 1992 incorporated in part IX of the Constitution, which came into force w.e.f. 24.4.1993, was introduced realizing that the Panchayats in their existing form and with the powers conferred prior to the said amendment could not achieve the status and dignity nor could become a strong and popular democratic decentralized centre of the power touching the the gross root level nor were able to achieve the object and purpose as enshrined in Article 40 of the Constitution.

12. The statement, object and reason for making SeventyThird Amendment spells out the reasons and the object, which reads as under:

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

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

?Accordingly it was proposed to add a new Part relating to Panchayats in the Constitution to provide for among other things, Gram Sabha in a village or group of villages; constitution of Panchayats at village and other level or levels; direct elections to all seats in Panchayats at the village and intermediate level, if any, and to the offices of Chairpersons of Panchayats at such levels; reservation of seats for the Scheduled Castes and Scheduled Tribes in proportion to their

population for membership of panchayats and office of Chairpersons in Panchayats at each level; reservation of not less than one-third of the seats for women; fixing tenure of 5 years for panchayats, and holding elections within a period of 6 months in the event of supersession of any Panchayat; disqualifications for membership of Panchayats; devolution by the State Legislature of powers and responsibilities upon the Panchayats with respect to the preparation of plans for economic development and social justice and for the implementation of development schemes; sound finance of the panchayats by securing authorisation from State Legislatures for grants-in-aid to the panchayats from the Consolidated Fund of the State, as also assignment to, or appropriation by, the Panchayats of the revenues of designated taxes, duties, tolls and fees; setting up of a Finance Commission within one year of the proposed amendment and thereafter every 5 years to review the financial position of Panchayats; auditing of accounts of the Panchayats; powers of State Legislatures to make provisions with respect to elections of Panchayats under the superintendence, direction and control of the Chief Electoral Officer of the State; application of the provisions of the said Part to Union territories, excluding certain States and areas from the application of the provisions of the said Part; continuance of existing Laws and Panchayats until one year from the commencement of the proposed amendment and barring interference by Courts in electoral matters relating to Panchayats.?

13. With the realization that there should be decentralization of democratic process because the trickle down policy of governance ignored the aspirations of the people at the grass root level who neither had the finances nor the power. The Constitution was amended by the 73rd Amendment which came into force on 24th April 1993. The statement of objects and reasons, as already stated above, clearly provides as follows:

(i) Local bodies should become responsive.

(ii) There should be decentralization of governance.

(iii) In respect of the matters provided in the schedule pursuant to Article 243G of the Constitution the local bodies were given exclusive authority. The relevant provisions are 243C, 243G and 243N, required amendments to be made in the local legislations in order to give effect to the provisions of the aforesaid constitutional amendment.

(iv) Article 243E provides that the duration of the Panchayat shall be 5 years and that elections to the Panchayat shall be completed before the expiry of its duration.

14. For achieving the object as illustrated above, Part IX has been introduced which consists of Articles 243A to 243O, with various subarticles and also the XI Schedule referable to Article 243G.

15. Article 243N obligated the State Legislature or other competent authority to

bring their existing laws relating to Panchayats in consonance with the constitutional provision within a maximum period of one year from the date of commencement of the Constitution Seventythird Amendment Act, 1992. It starts with a nonobstantee clause and says that notwithstanding anything contained in this part, any provision of any law relating to Panchayats in force in a State immediately before commencement of the Constitution (Seventythird Amendment) Act, 1992, which is inconsistent with the provisions of this Part shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement whichever is earlier.

16. The proviso to aforesaid Article says that all the Panchayats existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State.

17. It may be pertinent to mention here that so far the U.P. Panchayat Raj Act 1947 is concerned, although the office of the UpPradhan has been abolished by the impugned amendment but the amendments made therein are not in controversy as all the petitions either relate to intermediate level panchayat or district level panchayat namely; Kshettra Panchayat or Zila Panchayat. However, only with a view to show that in the Act of 1947 the amendment made in Section 12J dealing with temporary arrangement in certain cases, specifically provides that the Prescribed Authority shall nominate a member of the Gram Panchayat to discharge the duties and exercise the powers of Pradhan until such vacancy in the office of either the Pradhan is filled in, or until such incapacity is removed, but such a provision that temporary arrangement shall be made from amongst the elected members in the Kshettra Panchayat and Zila Panchayat has not been provided which makes the provision relating to intermediate level panchayat and district level panchayat, not only discriminatory but also against the constitutional scheme.

18. U.P. (Kshettra Panchayats and Zila Panchayats) Act 1961 (hereinafter referred to as the "Act, 1961") has seen many amendments prior to Seventythird Amendment in the Constitution. The amendments which are relevant for the present controversy are only being considered.

19. In the original Act of 1961 the composition of Kshettra Samitis and Zila Parishads which have been now named as Kshettra Panchayats and Zila Panchayats respectively gave composition of Kshettra Samitis and Zila Parishads and also the provisions of Pramukh and UpPramukh and Adhyaksha and UpAdhyaksha. Section 6 named a list of the persons who shall be the members of Kshettra Samiti. Section 7 prescribed for the office of Pramukh and Up Pramukh and their election. Section 8 provided for the terms of Kshettra Samiti and its members. Section 9 provided the term of Pramukh and UpPramukh. Section 15 provided for motion of nonconfidence in Pramukh or UpPramukh and

originally it put a bar of 12 months in moving such motion and required a majority of more than half of the total members of the Kshettra Samiti for passing of the motion.

20. Likewise for Zila Parishad (now Zila Panchayat) the composition of its members is given in Section 18 and the prescription for Adhyaksha and Upadhaksha was given in Section 19. Section 28 provided for moving noconfidence motion against Adhyaksha.

21. The amendments relating to the office of Upadhyaksha, their term, and the block period during which no confidence motion could be brought against Adhyaksha and Upadhaksha of Zila Panchayat and the requisite majority for treating the motion as passed could be summarized as under:

22. The office of Upadhyaksha has been provided from very commencement of the original Act in the year 1971 and he was to be elected by secret ballot by the members of Zila Panchayat and his term was "one year" from the date of his election. In the year 1990 by U.P. Act No.10 of 1990 the "one year" term of the office of Upadhyaksha was changed to the term "commencing upon his election and ending with the term of Zila Panchayat" and his office was also brought within the purview of no confidence motion.

23. In the year 1994 Section 19 was amended and Upadhyaksha was to be elected by the members of Zila Panchayat from amongst themselves and his term was made coextensive with the terms of Zila Panchayat by an amendment in Section 21.

24. Lastly in the year 2007 by U.P. Act No.44 of 2007 the office of Upadhyaksha was abolished by Section 9 of the Amendment Act and other related provision to the office of Upadhyaksha, were also omitted accordingly.

25. The counsel for the petitioners submitted that the office of Upadhyaksha has been altogether abolished, hence the system of officiating arrangement for running the administration of Zila Panchayat by an elected office bearer i.e. Upadhyaksha at the time when Adhyaksha is absent or unable to hold the office has been discontinued and thereby giving frequent opportunity to State/District Administration to make undue interference in the day today administration of a democratically elected institutions of self governance and hence it is violative of constitutional scheme, contained in part IX of the Constitution.

26. The one year block period for initiation of no confidence motion as provided in original Act of 1961 was increased from "twelve months" to "two years" in the year 1965 and in the year 1990 it was reduced to "one year" from "two years" through an amendment by U.P. Act No.20 of 1990. In the year 1998, by U.P. Act No.20 of 1998, the block period was again increased to "two years" from "one year". In the year 2007 Section 28 of the Act was again amended by U.P. Act No.44 of 2007 and the block period in Section 28(12) and Section 28(13) were again reduced to "one year" from "two years".

27. In the year 1994, by U.P. Act No.9 of 1994 the term "member" in Section 28 was substituted by the "elected members". Thus no confidence motion was still to be passed by a majority of more than half of the "elected members" even after the 73rd Constitutional Amendment.

28. In the year 1998, however, an amendment relating to majority for no confidence motion was made and the term "more than half" in Section 28(11) were substituted with term "not less than two third".

29. In the year 2007 the Act was further amended by U.P. Act No.44 of 2007 by which the word "not less than twothird" in Section 28(11) of the Act were again substituted by the word "more than half".

30. Similarly in context to Kshettra Panchayat the original Act of 1961 in Section 7(1)(b) provided that every Kshettra Samiti shall have one Senior UpPramukh and one JuniorUpPramukh, apart from Pramukh, who are to be elected by the members and their term, coextensive with the term of Kshettra Samiti/Kshettra Panchayat.

31. In the year 1994 the Act was amended by U.P. Act No.9 of 1994 providing that Pramukh, Senior UpPramukh and Junior UpPramukh shall be elected by "elected members of Kshettra Panchayat from amongst themselves".

32. In the year 2007 U.P. Act No.44 of 2007 again amended the Act and likewise Zila Panchayat in Kshettra Panchayat also the office of UpPramukh, Senior UpPramukh and Junior UpPramukh was abolished.

33. The majority as provided in Section 15(11) of the Original Act of 1961 for passing of nonconfidence motion was "more than half of the total number of members of Kshettra Samiti".

34. In the year 1994 by U.P. Act No.1994 the term "member" in Section 15(11) was substituted by "elected members" hence in 1994 also, the motion was to be carried through with the support of more than half of the total number of elected members of Kshettra Panchayat.

35. In the year 1998 the required majority was enhanced to "twothird" from more than half as the word "more than half" in Section 15(11) was substituted by the word "not less than twothird" by U.P. Act No.20 of 1998.

36. Lastly in the year 2007 again the provision relating to the majority for moving no confidence motion was amended by U.P. Act No.44 of 2007 and the words "not less than two third" was substituted by the words "more than half" in Section 15(11).

37. The original Act of the 1961 provides block period of 12 months for initiation of no confidence motion in reference to Kshettra Samiti/Panchayat, which was amended in the year 1965 by U.P. Act No.16 of 1965 and the block period was enhanced to "two years" from "12 months". Again in the year 1990 the block period was reduced as the words "two years" was substituted by words "one

year" by U.P. Act No.20 of 1990. In the year 1998 U.P. Act No.20 of 1998 again amended Section 15 and the block period was again enhanced to "two years". In the year 2007 again by U.P. Act No.44 of 2007 the term "two years" was substituted by "one year" by virtue of which the block period of "two years" was reduced to "one year".

38. The time gap for bringing a second no confidence motion, after the first motion was either defeated or could not be carried through, initially was one year and as per the amendments made to the initial block period for bringing no confidence motion, i.e. when the block period was one year for bringing no confidence motion, the second motion could not have been brought within a period of one year and when the block period was made two years, the second motion could not be brought within two years.

39. Lastly in 2007 by U.P. Act No.44 of 2007 Section 15(12) and 15(13) were again amended and the time gap between two no confidence motion, was reduced to "one year" from "two years".

40. The amendments which have been made in the State Act from time to time clearly reveal that in the year 1961 the block period of bringing no confidence motion was one year and total majority was required more than half of the members for passing the motion of no confidence but during the passage of time, the said provisions underwent certain changes, which have been referred to, in the preceding paragraphs. Even in the year 1994 when after the constitutional amendment, the U.P. Act No.9 of 1994 was incorporated, the same block period of one year was retained and majority of more than half of the members were required to get the motion passed with only modification that the motion was to be carried through by majority of more than half of the "elected members". It was only in the year 1998 that by virtue of amendment by U.P. Act No.20 of 1998 the block period was enhanced to two years and the requisite majority was also increased to not less than 2/3rd of the elected members for the time being.

41. Thus it is evident that even before the 73rd amendment of the Constitution, the block period was one year at times with requisite majority of more than half of the elected members for passing the motion of no confidence motion and this continued even after the aforesaid amendment also in the year 1994 but thereafter the State Act was amended in the year 1998 and the enhanced block period and enhanced majority was prescribed under the aforesaid provision, therefore, the plea of the petitioner that reduction of block period to one year and the requisite majority being reduced from not less than 2/3rd elected members to more than half of the elected members for passing motion of non confidence is against the constitutional provisions, cannot be accepted nor is supported by any legal arguments.

42. First of all let us deal with the plea of the petitioner that reduction of block period for moving no confidence motion against the Pramukh or Adhyaksha as

the case may be, from two years to one year, from the date of his/her election and the requirement of passing of no confidence motion with the majority of only more than half of the members elected for the time being, is against the constitutional scheme and is against the spirit and object of Article 40 of the Constitution and violates the fundamental right of elected office bearers.

43. The Pramukh and the Adhyaksha are elected from amongst the members of the Kshettra Samiti or Zila Panchayat respectively on the strength of votes casted in favour of the winning member. The person so elected occupies the seat of the Pramukh or the Adhyaksha merely on getting a majority of votes and therefore, if he is sought to be removed by one half of the total members elected for the time being, no exception can be taken. An elected office bearer holding the post of Pramukh or Adhyaksha democratically has a right to remain in office till he enjoys the faith and confidence of the majority of electorate and the moment, the members who elected him/her, loose their faith in his/her such an elected Pramukh or the Adhyaksha cannot have any right to stick to the Chair despite he having lost the mandate of the electorate. Whether the block period is two years or it is one year for bringing the motion of no confidence, it hardly matters as the purpose for which such a motion is to be brought, would not change, which will be brought only if a person, an elected office bearer loses his credibility or faith in the electorate who do not wish that he should continue in office any more. If the elected office bearers can be removed from the office by moving a no confidence motion after two years they can also be removed after one year, if the conditions so exist. An elected Adhyaksha or Pramukh cannot claim that irrespective of the fact that he/she has lost majority, should be allowed to continue for a longer period.

44. The plea that the election of the Pramukh or the Adhyaksha is held by counting first preference vote and therefore, a person stands elected, even if, he does not get majority of more than 50% of the votes and therefore, the very next day, a no confidence motion can be brought where one half of the members unite and throw him out of the office, therefore, this figure of onehalf defeats the very object of the constitutional scheme of having the democratic institution, is a purely fallacious argument.

45. An elected Pramukh or the Adhyaksha firstly; cannot be ousted by bringing a no confidence motion till the block period is over which may be two years or one year. Therefore, he is secured for not being ousted from the office for a period of two years or one year, as the case may be, irrespective of the fact that he has succeeded in the election by a majority of more than half of the members or by a thinner majority. The procedure for bringing a no confidence motion and removal of an elected office bearer would be the same, even after two years, if the block period is taken as two years. A person who is elected as the Pramukh or Adhyaksha by majority of votes in his favour, which may be less or more than half of the members voting for the purpose, has been given due protection by prescribing that he cannot be removed within one year from his election and

unless a motion of no confidence is supported by not more than half of the members elected for the time being, is passed.

46. In a democratic set up, it is the electorate's will which is to prevail. There may be many consideration at the time of electing a person to the office of the Pramukh or Adhyaksha but different considerations e.g. his functioning, integrity and sincerity towards the Institution, etc. may play an important part for considering his continuance in the office once he is elected. If the elected office bearer is unable to deliver goods or if the electorate is of the view that such a person is not managing the affairs of the institution properly or is abusing his/her power or may be for any other reason, his/her removal may be considered. For that purpose, a detailed procedure has been prescribed which finally requires the passing of no confidence motion by a majority of more than half of the members elected for the time being.

47. The argument that since the Pramukh or Adhyaksha is elected by majority of votes which may be less than 50% of the total electorate therefore, he is vulnerable to such motion, will be equally true, even if the block period is kept for two years and thereafter the motion of no confidence is brought, it, therefore, does not make any difference nor does it violate the constitutional scheme in any manner, if the block period is fixed one year instead of two years.

48. Further plea of the petitioners is that the effect of Section 15 of the Act, is that the autonomous character is hit at large as the office bearers of the Panchayat can be removed from the office by nonconfidence motion with a sanction of more than half of the members elected for the time being with only a block period of one year which in effect only saves the Pramukh for a period of one year and thereafter the axe keeps on hanging over the heads of the Pramukhs putting them in continuous fear of nonconfidence motion, thus making the autonomous character a distant dream, any such provision which takes away the autonomy of these Panchayat Raj Institutions cannot be supported by any legal principle.

49. The fear of being removed by a vote of nonconfidence, cannot be a ground for upholding the aforesaid plea. The provision of bringing nonconfidence motion against the elected Chairperson is itself based on democratic principles and is democratically accepted procedure, in law, for removing the elected office bearer with a majority of the elected members who do not want that he/she should continue as such. It is a duly recognized and well defined democratic method for getting rid of an elected office bearer who has not been able to prove his worth as such. The procedure for bringing no confidence motion is neither against any constitutional Amendment nor it militates against any of the provisions of the Constitution or the Act and rather it strengthens the democratic set up of the Panchayat Raj Institutions, which can keep a check upon the elected Pramukh or adhyaksha, from being irresponsible, indifferent, casual, corrupt and inefficient so that Panchayat Raj Institutions may function properly, lawfully and effectively.

50. It may also be apposite to observe that if an elected Pramukh or Adhyaksha, as the case may be, loses confidence amongst the electorate namely the members, then there would be no plausible reason for compelling the dissatisfied members to reel and work under such a Pramukh or Adhyaksha for a longer period of two years. When a motion of no confidence is brought, the reasons for removal are addressed in an open meeting, thereafter the motion is put to vote. The mandatory requirement of debating on the motion for a maximum given time, in the meeting, also gives safeguard, and opportunity to defend against frivolous and motivated designs of the members where the Adhyaksha and Pramukh can satisfy his members, even against the motion and if the members are convinced the motion will stand defeated.

51. There cannot be a fundamental right of the person so elected to continue in the office for the entire period for which he has been elected nor can there be a fundamental right to hold a particular office. The right of being elected as Pramukh or Adhyaksha is a statutory right and it can be curtailed by due process of law. The legislature is fully competent to enact a provision laying down the manner of election of the Pramukh or Adhyaksha and also the procedure for removal by means of bringing a no confidence motion. If the legislature in its wisdom has prescribed the period of one year, as block period with simple majority of more than half of the members, for the time being elected, sufficient for carrying out the motion, it does not violate any right of elected Pramukh or Adhyaksha nor it is against the provisions of Constitution nor runs against Article 40 of the Constitution nor it is against the constitutional scheme as given in Seventythird Amendment.

52. The fact may be noted, that in the original Act of 1961, the said Act provided block period of 12 months i.e. one year for bringing a no confidence motion and a majority of more than half of the members elected. This provision has undergone some changes by various amendments prescribing two years block period and requisite majority of twothird elected members and sometimes reducing the said period to one year, with requisite majority for getting the motion passed by more than half of the members elected. Therefore, if the same original block period and requisite majority for passing the noconfidence motion, which was even retained after incorporation of Part IX of the Constitution, has again been prescribed in the given amendment, it cannot be said that such prescription, in any view, offends the constitutional scheme, merely on the ground that period of two years and majority of twothird members was once again amended after Seventythird Amendment, by the State legislature in the State Act.

53. The elected representative holding the office of Pramukh or the Adhyaksha cannot have any grievance if he is removed from the office by passing a no confidence motion and truly speaking, if such a office bearer has lost faith of his own electorate, he has no moral or legal right to adhere to the Chair despite loss of confidence.

54. Block period of one year otherwise also cannot be said to be arbitrary or unreasonable. One year period is sufficient to show his/her skill and to win the faith and support of those members also who might not have voted in his/her favour at the time of election. If the elected Pramukh or the Adhyaksha fails to instill such a faith or confidence amongst the members they cannot have any grudge, if they are removed by passing a no confidence motion. The period of one year, can not be taken to be unreasonably short, to prove his/her worth for being continued as Pramukh or Adhyaksha.

55. A similar provision became the subject matter of challenge under U.P. Municipality Act, 1916 which provides in detail the provisions for election of President, his qualification, resignation, removal etc, in the case of Mohan Lal Tripathi v. District Magistrate, Rae Bareilly, reported in AIR 1993 Supreme Court 2042. The Apex Court upheld the validity of reduction of period from two to one year for initiating no confidence motion against the President and observed as under:

?Reduction of period, during which a noconfidence motion could be tabled against the president, from two to one year was challenged and it was urged that in absence of disclosure of any discernible and reasonable principle which is necessary for every State action the ordinance, which later on became Act was liable to be struck down. Motive was also imputed to the legislature and it was urged that recourse was taken by the new political party as "spoils system" of the election which was arbitrary and violative of Article 14 (Kumari Shrilekha Vidyarthi v. State of U.P., (1991) 1 SCC 212: (AIR 1991 SC 537). No assistance can be derived from Shrilekha Vidyarthi case. A Legislature does not act on extraneous consideration. Ordinance issued in 1990 was replaced by Act 19 of 1990. The Act came into force on 24th July 1990 but it was made retrospective with effect from 15th February 1990, the date when the ordinance was issued. But for lack of legislative competence or for being arbitrary a legislative action cannot be struck down on ground of mala fide. State of Himachal Pradesh v. Kailash Chand Mahajan, 1992 (2) JT 144 (p.165): (1992 AIR SCW 1247). Further it may be noticed that this amendment was not introduced for the first time. Period of moving a motion within 12 months from the date of assumption of office was introduced in 1942. It was increased to two years by Act 41 of 1976, it was brought down to one year again by Act 19 of 1990. What was urged by learned counsel was that since no election had taken place of local bodies, from 1976 to 1988, the period of two years was never given a trial, therefore, there was no occasion for the legislature to have reduced this period. The argument does not appear to have been advanced before the High Court. Necessary averments were not made even in the special Leave Petition. There was thus no occasion for other side to explain, that its action in reducing the period did not suffer from any infirmity. It may be mentioned that elections in the Municipal Board both of members and Presidents were held in December 1988 whereas general elections of the State Assembly leading to change of political power were held in 1989. In absence of any factual foundation the argument appears to be

devoid of any merit. Moreover what persuaded the legislature to reduce the period is again a matter of legislative policy the wisdom of which cannot be scanned by this Court.?

56. For the reasons stated above, we do not find any discrepancy or illegality in the aforesaid prescription of block period of one year and requiring a majority of only more than half of the members elected for the time being, for treating a no confidence motion passed nor it can be said that the said prescription in any way, strikes at the fundamental democratic principles not it is in any way against the constitutional scheme of Seventythird Amendment of the Constitution. The challenge to the aforesaid clause is, therefore, devoid of merit and has to be rejected.

57. So far the composition of Kshettra Samitis and Zila Parishads were concerned it consisted of various member who were named in the relevant provisions of the Act and the Pramukh, UpPramukh, Adhyaksha and UpAdhyaksha were also to be elected for constituting a Kshettra Samiti and Zila Parishad as given in the concerned provisions of the State Act as amended from time to time.

58. Section 9A which was introduced by U.P. Act No.XXXV of 1976 in the year 1976 in respect of Kshettra Samitis provided that when the Pramukh was unable to discharge his functions owing to absence, illness or for any other cause, and the office of UpPramukhs are vacant, or when the UpPramukh, if any, acting under Section 83 during a vacancy in the office of Pramukh was unable to discharge his functions owing to absence, illness or for any other cause, the District Magistrate was authorized to make such arrangements, as he thought fit, for the discharge of the functions of the Pramukh, until the date on which the Pramukh or UpPramukh, as the case may be, resumed his duties were such power to make the alternative arrangement was conferred upon the State Government.

59. Similarly in the case of Adhyaksha and UpAdhyaksha of Zila Parishad Section 231A was inserted laying down the same provision for functioning in the place of Adhyaksha or Upadhyaksha, as the case may be, till he resumed his duties.

60. The present amendment also has a similar provision namely; Section 9A for the Kshettra Panchayat and Section 21A for the Zila Panchayats and as a consequence of abolition of the office of the Senior UpPramukh and UpJunior Pramukh in respect of Kshetra Panchayat and that of UpAdhyaksha in the case of Zila Panchayat, (hereinafter referred to as the "ViceChairperson") the District Magistrate and the State Government respectively have been given the powers to make such arrangement as they may think fit in case of temporary absence of aforesaid elected office bearers. This amendment is in fact, only a consequential amendment, which necessarily had to be made, as a result of abolition of the offices of the Vice Chairpersons.

61. The plea of the petitioners that the abolition of the offices of the ViceChairperson in effect does away with the constitutional scheme is being

supported by an argument that in the absence of the ViceChairperson the moment the Chairperson (Pramukh or Adhyaksha, as the case may be) becomes unable for performance of his function, the State machinery intervenes which has the effect of making an arrangement of the elected institution by the State executive. In other words the argument is that had there been the office of Vice Chairperson namely: the Senior UpPramukh and Junior UpPramukh in the case of Kshettra Panchayats and that of Upadhyaksha in the case of Zila Panchayat, this situation would not arise as in the absence of Chairperson, the elected office bearers next below him namely; the ViceChairperson would automatically take charge and discharge the functions of the Chairperson whereas under the present amendment this two tier and three tier system stands vanished which destroys the basic structure of the elected institutions.

62. The aforesaid provisions are being quoted below:

?9A. When the Pramukh is unable to his functions owing to absence, illness or any other cause, and the office of UpPramukhs are vacant, or when the UpPramukh, if any, acting under Section 83 during a vacancy in the office of Pramukh is unable to discharge his functions owing to absence, illness or any other cause, the District Magistrate may, by order, make such arrangements, as he thinks fit, for the discharge of the functions of the Pramukh, until the date on which the Pramukh or UpPramukh, as the case may be, resumes his duties.

?21A. 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 under Section 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 Governemnt 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.?

63. A challenge has also been made to the original Section 21A saying that it itself violates the very basic feature of the democratic institutions of panchayat and therefore, the original section itself is violative of constitutional scheme. This argument has been raised with a view to meet the challenge of respondent State that it is only the preexisting provisions of the State Act, which has been reincorporated and reasserted in the present amendment and therefore, it does not violate any law nor militates against the constitutional scheme.

64. Further by amendment in Section 9 subsection (2) it has been provided that ? where the office of the Pramukh is vacant, the District Magistrate may, by order, make such arrangement as he thinks fit for the discharge of the functions of the Pramukh, till the Pramukh is elected?.

65. For adjudging the constitutional validity of amendment, one has to see as to whether the amendments made, in any way, violate the constitutional scheme or they violate any of the fundamental right as guaranteed under the Constitution or they undermine the scheme for which Seventythird Amendment has been

made which would stand nullified or would minimize its effect and consequently it would be an impediment in attaining the goal enshrined in the Constitution, but merely because an enactment has been made which does not conform to the State Act presently in force and it amends certain provisions of the State Act which might have been amended after Seventythird Amendment in the Constitution, will not make the enactment invalid or unconstitutional unless it is established that enactment so made was not having the legislative competence of the State Legislature or that it violates any of the fundamental rights and/or of course it is wholly unreasonable, arbitrary or against the constitutional scheme.

66. Article 243B lays down the constitution of Panchayats and Article 243C prescribes the composition of Panchayat. Article 243B says that there shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this part. This means that the Panchayat has to be constituted at the village, intermediate and district level in consonance with the provisions of Part IX of the Constitution and subclause (2) excludes the constitution of Panchayat at the intermediate level, if it has a population not exceeding twenty lakhs, thus making it mandatory to constitute a Panchayat at different levels as per Part IX of the Constitution.

67. Article 243C lays down the composition of Panchayats.

68. If a Panchayat is constituted in a manner which is not in consonance with the aforesaid provisions of Article 243C such composition would be against the constitutional provision.

69. Article 243C which reads as under, in subclause (3) provides for representation (a) of the Chairperson of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having panchayats at the intermediate level, in the Panchayats at the district level; and (b) of the Chairperson of the Panchayats at the intermediate level, in the Panchayats at the district level;

70. Article 243B and 243C read as under:

?243B: Constitution of Panchayat (1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.

(2) Notwithstanding anything in clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs.?

243C: Composition of Panchayats (1) Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats;

Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by

election shall, so far as practicable, be the same throughout the State.

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

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

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

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

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

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

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

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

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

(5) The Chairperson of

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

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

71. Subclause 3(c) and 3(d) named certain other members for constituting a Panchayat namely the members of the House of people and the members of the Legislative Assembly of the State and the members of the Council of States and the members of the Legislative Council of the State, as given in the aforesaid provision.

72. A perusal of the entire constitutional scheme reveals that there is no requirement under the aforesaid composition to necessarily provide for an office

of ViceChairperson namely; Senior Pramukh and Junior Pramukh or that of Upadhyaksha in the intermediate level or the district level panchayat, as the case may be.

73. In the unamended Act, also the Chairperson with their ViceChairperson were to be elected in pursuance of the provisions of Section 7 and 19 of the State Act respectively.

74. After the amendment in the Constitution, the Act of 1961 was amended by U.P. Act No.9 of 1994 and the State Legislature in its wisdom though made certain amendments but did not interfere with the provisions of the ViceChairperson in the Panchayats and therefore, the provisions in this regard as were existing since before were allowed to continue. The offices of the Pramukh with their ViceChairperson and Adhayaksha and Upadhyaksha were not disturbed and they continued to function as such.

75. The question, therefore for consideration is whether the abolition of the aforesaid offices of ViceChairperson hits the constitutional scheme of composition of Panchayat or it is simply an amendment deleting certain provisions of that State Act, prevalent at the relevant time.

76. As already noted above, the composition as given in the Constitution of Panchayat does not say any where that apart from a Chairperson there has to be a Vice Chairperson or Deputy Chairperson. The Constitution is silent in this regard. If the State Legislature in its wisdom amended the provisions of the State Act as were prevalent since before the aforesaid Seventythird Amendment, and continued with the offices of the Vice Chairperson, it cannot be said that such an action was in any way illegal or against the constitutional provisions and rather it would also be in conformity with the constitutional requirement. The Constitution does not bar the creation of the office of the Upadhyaksha or Up Pramukh nor it says that there has to be only one Chairperson in a Panchayat and no ViceChairPerson. For the purpose of interpretation, the term Chairperson may be read to include, viceChairperson also, in case the State wished to have such offices. The State has the legislative competence for enacting the law and therefore, the aforesaid provision of maintaining the offices of the ViceChairpersons was in consonance with the constitutional provision, but does this mean that if the offices of ViceChairpersons have been abolished, the constitutional scheme is frustrated, the answer has to be in negative.

77. The composition of the Panchayat as given in Article 243B very specifically says that all the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.

78. Subclause 3 of Article 243C, as has already been reproduced above, confers

power upon the State Legislature to enact a law for representation of the Chairperson and other members as given therein. The constitutional scheme shall stand fulfilled in case a Panchayat is constituted as per the prescription made in the aforesaid Article of the Constitution. There being no directive in the Constitution for having a Vice Chairperson, any enactment made by the State Legislature, which does not have the office of Vice Chairperson, would not make the law invalid automatically.

79. The effect of such abolition of office of the Vice Chairpersons and the impact of such omission upon the constitutional scheme as well as on the Panchayat which has been given a constitutional status, however, would also have to be seen, that if, in any manner, the effect of abolition of their posts/offices is such that it makes the provisions to read and work against the constitutional mandate, may be, that provision can be declared as *ultra vires* the constitutional scheme, for the said reason.

80. While testing the validity of a State enactment vis-à-vis constitutional provision it also has to be seen, that apart from the fact that the said enactment does not violate the constitutional scheme or the constitutional provision it also should not have any effect which in substance in its operation and implementation, gives a negative effect or undermines the scheme which is embodied in the constitutional provision. The State Legislature is under an obligation to make law which not only conforms to the constitutional provisions but also propagates the constitutional philosophy, constitutional scheme and furthers, the object for which the constitutional amendment has been made.

81. It is primarily in this back ground that the petitioners have with great tenacity urged that the abolition of the offices of the Vice Chairperson, with the aforesaid provisions for making temporary arrangement during the absence of Chairperson have been definitely motivated with a design so as to defeat the very constitutional scheme by inducting persons at the whims and fancies of the District Magistrate or the State Government, as the case may be, for managing the affairs of the elected office, may be through a person who is not even a member of the Panchayat but suits the State or the ruling party or may be an outsider.

82. It has also been urged that the amended provisions do not prescribe any guidelines, machinery or yardstick either for the District Magistrate or for the State Government for finding out as to who is the person, to whom the charge of the Chairperson be given temporarily and that from the plain words of the section, it cannot be said that such an arrangement has to be necessarily made from amongst the elected members.

83. The argument is that the provision of Section 9A and 21A suffer from vice of excessive delegation.

84. The State asserts that the constitutional amendment has been made with a view to simplify the process of election for constituting Panchayat. It is also being

submitted that the amendments have been made to bring the existing Act in complete harmony of the constitutional Seventythird Amendment which does not speak of any Vice Chairperson or an Up Pramukh, neither in composition of Panchayats nor in the constitution of Panchayats. Further the delegation of power to the State Government or to the District Magistrate in the case of Zila Panchayat and Kshetra Panchayat respectively for making temporary arrangement is neither arbitrary nor excessive and stands circumscribed by the provisions of the Act itself where the State executive does not have any liberty to make any such arrangement which neither the constitution nor the State Act in its substantive provision permits. Reason, facts and circumstances behind any enactment can undoubtedly be used as external aid for interpreting the constitution or an enactment, when the provisions are ambiguous or not clear but when the provisions involve no ambiguity, there remains no role of external aid for the purpose of interpreting the provisions of a Statute.

85. Argument in substance is that the Act itself lays down the guidelines and scope of interference by the State Executive, which is to be done within the parameters laid down in the Act itself and therefore, the phrase that the temporary arrangement can be made by the State Government or the District Magistrate, as the case may be, as he thinks fit, is neither excessive delegation of powers nor is contrary to the scheme of the Act.

86. The argument of the petitioner is that since the aforesaid provisions do not lay down any criteria or guidelines in the provision itself, therefore, it is certainly a piece of excessive delegation where the State executive is not bound to look into the other provisions of the Act and neither it excludes them from exercising power irrationally, whimsically or arbitrary, therefore, the said provision cannot be protected by taking the help of external aid and has necessarily to be struck down, in view of the observations made in the case of District Registrar and Collector, Hyderabad and others v. Canara Bank and others, reported in (2005) 1 SCC 496 and in the case of B.B. Rajwanshi v. State of U.P. and others, reported in (1988) 2 SCC 415.

87. Learned counsel further relied upon the case of I.R. Coelho v. Union of India, reported in (2007) 2 SCC 1, in support of their plea that by effecting the aforesaid amendment, the State has tried to deprive the existing elected representatives of their fundamental right of "Right to choose" as enshrined in Part III of the Constitution and explained by the Supreme Court in the above case.

88. In the aforesaid case the Supreme Court has observed in para 140 at page 108 that fundamental rights include within themselves the "right to choose". Submission is that whether the said right to choose as explained by their Lordship is exhausted at the moment a people's representative continues for which he has been elected as it represents the faith and sanction of the people reposed in it. But by the arbitrary exercise of legislative power the State, if it ends the tenure of that particular officer, it certainly infringes the fundamental

right which is inconceivable with the provisions of the Constitution.

89. Right to choose will arise when election for the Chairperson is to take place and not while making a temporary arrangement. Under such an arrangement, the chosen Chairperson is not removed but it is only because of his own nonavailability for discharging his functions, the arrangement is to be made, that too, for the limited period till he resumes his duties. In such a circumstance it cannot be said that there is an infringement of right to choose. It is only for the smooth and unhampered functioning of the democratic institution, that such an alternative arrangement is to be made. By making this arrangement, in fact, the person will be entrusted only with the functioning of the office of the Chairperson but, shall not replace the elected Chairperson.

90. It has also been submitted that the statement of object and reasons in the impugned Amendment Act only states that 'it was decided to amend the said Acts. (The United Provinces Panchayati Raj Act, 1947, Act No.26 of 1947; and the Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961, Act No.33 of 1961) to omit the provisions of the offices in respect of which there is no provision in the Constitution namely the offices of UpPradhan, UpPramukh (Senior UpPramukh and Junior UpPramukh) and Upadhyaksha.' Hence, no specific and precise reasons have been given for the impugned amendments. This certainly shows the vice in the intention of Amending Authorities.

91. The reason for justifying the present amendment has to be explained by the State, but if the amendments do not violate the constitutional scheme and are found to be in consonance therewith, such amendments can not be struck down simply because, the State could not give any justifiable reason. A provision can also not be struck down simply on the ground that the reason put forward does not suit a particular class or persons.

92. The State has however, come out with a case, that holding elections of ViceChairperson, Senior UpPramukh, Junior UpPramukh or Upadhaksha in all the Panchayat time and again was an encumbersome and costly affair and since the continuance of these offices were not the requirement of the Seventythird Amendment therefore, the same having been abolished.

93. In support of the aforesaid plea for looking into the statement of objects and reasons of amending Act the reference of the case of S.C. Parashar v. Vasantsen Dwarkadas, (1964) 1 SCR 29, has been made wherein the Supreme Court observed as under:

'It is indeed true that the statement of objects and reasons for introducing a particular piece of legislation cannot be used for interpreting the legislation if the words used therein are clear enough. But the statement of objects and reasons can be referred to for the purpose of ascertaining the circumstances which led to the legislation in order to find out what was the mischief which the legislation aimed at.'

94. The above rule has been applied by the Supreme Court to ascertain the true intent of the legislature and the statute when a particular statute or legislation is challenged for its validity. This rule is termed as 'Heydon's Rule'. In *R.M.D. Chamarbaugwalla v. Union of India*, AIR 1957 SC 628; 1957 SCR 930, 940: Court observed that, 'when a question arises as to the interpretation to be put on an enactment, what the court has to do is to ascertain 'the intent of them that make it', and that must of course be gathered from the words actually used in the statute. That, however, does not mean that the decision should rest on a literal interpretation of the words used in disregard of all other materials. 'The literal construction then', says Maxwell on Interpretation of Statutes, 10th Edn. P.19, 'has, in general, but prima facie preference. 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, according to Lord Coke: (1) What was the law before the Act was passed; (2) What was the mischief or defect for which the law had not provided; (3) What remedy Parliament has appointed; and (4) The reason of the remedy'. The reference here is to Heydon case (1584) 3 Co. Rep 76 ER 637. These are principles well settled, and were applied by this Court in *Bengal Immunity Company Limited v. State of Bihar*, (1955) 2 SCR 603, 633. To decide the true scope of the present Act, therefore, we must have regard to all such factors as can legitimately be taken into account in ascertaining the intention of the legislature, such as the history of the legislation and the purposes thereof, the mischief which it intended to suppress and the other provisions of the statute, and construe the language of impugned provisions in the light of the indications furnished by them.'

95. In the case of *State of U.P. v. Mc Dowell & Co.*, (1996) 3 SCC 709, the Supreme Court has observed that the power of the Parliament or for that matter, the State Legislatures is restricted in two ways. A law made by Parliament or State Legislature can be struck down by Courts on two grounds alone, viz. (1) lack of legislative competence and (2) violation of fundamental rights guaranteed in Part III of the Constitution or of any other Constitutional provision. So the ground of invalidation must fall within the four corners of the two grounds mentioned above.

96. To hold the office of a Vice Chairperson or Up Pramukh is not a fundamental right. That right accrued from the Statute itself enacted by the State Legislature, therefore, it is dependent upon the legislation by the State. No fundamental right of any person who intends to contest the election of the Vice Chairperson can be said to be violated as no such right has been conferred under the Constitution. The amendment protects the tenure of the Vice Chairperson where elections have been held to this office and some incumbent is holding the said post till the expiry of its term. What has been prohibited is that no fresh elections shall be held for the aforesaid offices as the same has been abolished.

97. The abolition of these offices since do not violate any fundamental right of any person nor do they takeaway the right of being elected as member to the

Panchayat, such abolition cannot be said to be violative of Constitutional Scheme. It is the wisdom and policy of the State Government either to maintain the said offices or to abolish the same. The Court could not take exception to such an enactment unless it is found to be in violation of Constitutional scheme or may be in violation of the object and purpose for which the Constitution was amended but in the absence of any such violation, only because the said offices were existing since before and they would not be available in future would not make the amendment bad, unconstitutional or ultravires. The scheme of the Constitution can still stand implemented and executed in the manner provided under Part IX of the Constitution.

98. In view of the discussion made above, we are of the considered opinion that the abolition of the offices of ViceChairpersons in the Panchayat in itself alone would not make such abolition in the composition of the Panchayat perse illegal, arbitrary or violative of constitutional provision under the Seventythird Amendment of Part IX of the Constitution, unless it is either established that the amendment so made, runs contrary to the scheme of Part IX of the Constitution or has the effect of nullifying the purpose and object of the Constitutional amendment, or violating any fundamental right or, which is not in conformity with object of the Constitutional provisions.

99. This requires us to deal with the plea of the petitioners that the provision of Section 9A in the case of Kshettra Panchayat and 21A in the case of Zila Panchayat are arbitrary and against the constitutional mandate. If this plea is found to be established, the entire amendment would be effected and the abolition of the offices of the ViceChairperson would not stand protected.

100. In the case of Shashi Kant Laxman Kale and another v. Union of India and another, reported in (1990) 4 SCC 366, wherein the Supreme Court was considering the provisions of Section 10(10C) of the Income tax Act 1961 which provided for exemption under Section 10 (10C) to the payment received from a public Sector Company at the time of his voluntary retirement and exclusion of employees of public sector Company from the benefit of the provision, the Court observed "to sustain the presumption of constitutionality, consideration may be had even to matters of common knowledge; the history of times; and every conceivable state of facts existing at the time of legislation which can be assumed. Even through for the purpose of construing the meaning of the enacted provision, it is not permissible to use these aids, yet it is permissible to look into the historical facts and surrounding circumstances for ascertaining the evil sought to be remedied. The distinction between the purpose or object of the legislation and the legislative intention, indicated earlier, is significant in this exercise to emphasis the availability of larger material to the Court for reliance when determining the purpose or object of the legislation as distinguished from the meaning of the enacted provision".

101. Once the legislation is found prima facie unconstitutional, the Court must discover the imperative necessity for amendment, to improve restriction, the

means adopted to secure that end as well as the procedure to be adopted to that end and the Court must lift veil to discover the true nature and character of the legislation, as held in the case of *Peerless General Finance and Investment Co. Ltd. v. Reserve Bank of India*, reported in (1992) 2 SCC 343. This was a case where challenge was made to the directive issued by the Reserve Bank of India under Section 45 K(3) on the ground of being violative of Article 19(1)(g) and 14 where their Lordship observed that "the court must lift the veil of the form and appearance to discover the true character and the nature of the legislation, and every endeavour should be made to have the efficacy of fundamental right maintained and the legislature is not invested with unbounded power. The Court has, therefore, always to guard against the gradual encroachments and strike down a restriction as soon as it reaches that magnitude of total annihilation of the right".

102. There is no dispute that question of validity of the impugned provision has to be determined in the light of the provisions of the Part IX of the Constitution. There is always a presumption as regards the constitutionality of a statute. Rule of presumption in favour of constitutionality, however, only shifts the burden of proof and rests it on the shoulders of the person who attacks it. It is for that person to show that there has been a clear transgression of constitutional principles. But this rule is subject to the limitation that it is operative only till the time it becomes clear and beyond reasonable doubt that the legislature has crossed its limits. This rule in its application as principle of construction means that if two meanings are possible then the Courts will reject the one which renders it unconstitutional and accept the other upholding the validity of the impugned legislation as held in the case of *State of Rajasthan and others v. Basant Nahata*, reported in (2005) 12 SCC 77.

103. In the case of *Union of India v. Elphinstone Spg. And Wvg Co. Ltd.*, reported in (2001) 4 SCC 139 the Supreme Court observed as under:

¶9. A statute is construed so as to make it effective and operative. There is always a presumption that the legislature does not exceed its jurisdiction and the burden of establishing that the legislature has transgressed constitutional mandates, such as those relating to fundamental rights, is always on the person who challenges its vires. Unless it becomes clear beyond reasonable doubt that the legislation in question transgresses the limits laid down by the organic law of the Constitution it must be allowed to stand as the true expression of the national will. The aforesaid principle, however, is subject to one exception that if a citizen is able to establish that the legislation has invaded its fundamental rights then the State must justify that the law is saved. It is also a cardinal rule of construction that if on one construction being given the statute will become ultra vires the powers of the legislature whereas on another construction which may be open, the statute remains effective and operative, then the Court will prefer the latter, on the ground that the legislature is presumed not to have intended an excess of jurisdiction.?

104. The Apex Court in the aforesaid case consequently held that the said principle of presumption is not an absolute rule but it is subject to limitations. Its application in interpretation can only be applied to resolve a conflict when two interpretations are possible and not when there is only one leading to the conclusion that the delegated legislation is unguided and excessive. If the provisions are unconstitutional a mere presumption which decides the burden of proof cannot save them. The Court also took into account the *Craies on Statute Law* 7th Edn. At page 95, which is stated as under:

"The first business of the courts is to make sense of the ambiguous language, and not to treat it as unmeaning, it being a cardinal rule of construction that a statute is not to be treated as void, however, oracular. This was thus laid down by Bowen, L.J. In *Curtis v. Stovin*, reported in (1889) 22 QBD 513. The rules for the construction of statutes are very like those which apply to the construction of other documents, especially as regards one crucial rule viz. That, if possible, the words of an Act of Parliament must be construed so as to give a sensible meaning to them. The words ought to be construed *ut res magis valeat quam pereat*." And Fry, L.J. Added: "The only alternative construction offered to us would lead to this result that the plain intention of the legislature has entirely failed by reason of a slight inexactitude in the language of the section. If we were to adopt this construction, we should be construing the Act in order to defeat its object rather than with a view to carry its object into effect."

105. In the case of *Manhar Lal Bhogilal Shah v. State of Maharashtra*, reported in (1971) 2 SCC 119, where the Court was dealing with constitutional validity of Section 187A of the Sea Customs Act, 1878, in which it was provided that no Court shall take cognizance of any offence relating to smuggling of goods punishable under Item 81 of the Schedule to Section 167 except upon complaint in writing made by the Chief Customs Officer or any other officer of customs not lower in rank than an Assistant Collector of Customs, observed that if the Act does not enunciate any provision or clause or clauses and the State Act is left free to make any arbitrary selection, then the Act is void.

106. In the case of *B.B. Rajwanshi v. State of U.P. and others*, reported in (1988) 2 SCC 415, the validity of Section 6(4) of the U.P. Industrial Act, 1947 was considered and declared *ultravires*, the Article 14 of the Constitution, as it confers uncontrolled and unguided power on the State Government to remit an award of Labour Court or Tribunal for reconsideration and thereby to reopen or annul the award. Their Lordships while declaring the aforesaid provision *ultravires* the constitutional provision, held that "Section 6(4) confer unguided and uncontrolled power on the State Government. When the statutory provision is clearly violative of Article 14 having conferred unguided and uncontrolled power on the executive the Court cannot uphold the constitutionality by reading to it by reading into it the validating requirements it lacked. But where the statutory provision confers unguided and unfettered discretion on the executive, executive can seek guidance from the statute itself while exercising the

discretion. But when even doing so the discretion is likely to be used arbitrarily in favour of a party, it is plainly violative of Article 14".

107. In the case of District Registrar and Collector, Hyderabad and another v. Canara Bank and others, reported in (2005) 1 SCC 496, the Supreme Court considered the legality and validity of Section 73 of the Indian Stamp Act which has been incorporated by Andhra Pradesh Act No.17 of 1986, by amending the Central Act in its application to the State which was struck down by the State of Andhra Pradesh ultra vires of the provisions of Indian Stamp Act as also Article 14 of the Constitution.

108. In the case of A. Satyanarayana and others v. S. Purushottam and others, reported in (2008) 5 SCC 416, the Apex Court considering the rule observed that "a statutory rule, it is trite law, must be made in consonance with constitutional scheme. A rule must not be arbitrary. It must be reasonable, be it substantive or a subordinate legislation. The legislature, it is presumed, would be a reasonable one. Indisputably, the subordinate legislation may reflect the experience of the rulemaker, but the same must be capable of being taken to a logical conclusion".

109. In the case of Lalit Mohan Pandey v. Pooran Singh and others, reported in (2004) 6 SCC 626, referring to the constitutional and legislative scheme of the Seventythird Amendment, the Apex Court observed as under:

?The Constitution (Seventythird) Amendment Act, 1992 was enacted with a view to provide for democracy at the grass root level. ?Panchayat? is an institution of selfgovernance at the village, intermediate and district levels. It is required to be constituted in accordance with Part IX of the Constitution of India. Article 243C(3) of the Constitution provides that the legislature of a State may by law provide for the representation of a Chairperson of the Panchayats at the village level, in the Panchayats at the intermediate level or in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level.?

110. ?The Adhyaksha at the district level is to be elected by and from amongst the elected members. The provisions providing for procedures for holding the election must be construed having regard to the necessity of establishing democracy at the grass root level, being a constitutional requirement. The State Act and the Rules applicable therefore must, therefore, be interpreted having regard to the constitutional scheme.

111. The Court while holding that the provisions is an infringement on the right of privacy of a person, right to freedom from unreasonable search and scizure therefore, being violative of Article 19(1)(a) and (d) and 21, observed that the constitutional validity of the power conferred by law came to be decided from yet another angle in the case of Air India v. Nergesh Meerza, reported in (1981) 4 SCC 335, wherein it was held that "discretionary power may not necessarily be a discriminatory power but where a statute confers a power on an authority to decide matters of moment without laying down any guidelines or principles or

norms, the power has to be struck down as being violative of Article 14".

112. Relying upon the aforesaid proposition of law, it has been urged by the petitioners that on abolition of the offices of Vice Chairperson the power conferred under temporary arrangement and powers conferred under the provision of making temporary arrangement during absence of Chairperson in a Panchayat does not give any guidelines or principle or norms on the basis of which such power has to be exercised by the State executive at the given moment, therefore, the same is violative of Constitutional scheme as well as Article 14, whereas the State has reiterated its stand, that the provisions aforesaid, are neither arbitrary nor unconstitutional nor give any unrestricted power to the State or District Magistrate, as is being presumed by the petitioners.

113. The power conferred under the aforesaid provision of the Act, keeping in view the entire scheme, the guidelines if do exist and if they are explicit and can be found and discovered from the object, purpose and scheme of the Act, then it cannot be said that the powers conferred are arbitrary or unguided.

114. In the case of Manhar Lal Bhogilal Shah (supra) the Court made the following observation:

“Even if any policy or guidelines have to be found, they can certainly be discovered from the object, purpose and scheme of the Act.” Further “the procedural provisions must be read in the light of the object and purpose of the Act”.

115. The statement of objects and reasons for Seventythird Amendment, speak of democracy at the grass root level decentralization of process and the directive principles of Article 40 of the Constitution, which proposes to provide from amongst other things Gram Sabha in a village or group of villages constitution of Panchayat at different level, direct elections of the offices of Panchayats, reservation of seats in proportion to the population for member ship of Panchayats and office of Chairperson in Panchayats at each level etc. for achieving the object specific Articles have been added in the Constitution.

116. For interpreting and finding the meaning of the legislative intention in substituting and amending the aforesaid provision of Section 9A and 21A it would be appropriate to look to the purpose and object of the Act so as to understand the true will of the legislation and also to find out whether enactments so made are in conformity with the constitutional scheme.

117. In Francis Bennion's Statutory Interpretation, (1984 edn.), the distinction between the legislative intention and the purpose or object of the legislation has been succinctly summarized at page 237 as under:

“The distinction between the purpose or object of an enactment and the legislative intention governing it is that the former relates to the mischief to which the enactment is directed and its remedy, while the latter relates to the legal meaning of the enactment.”

18. In the case of *Shashi Kant Laxman Kale (supra)*, it has been observed that ? There is thus a clear distinction between the two. While the purpose or object of the legislation is to provide a remedy for the malady, the legislative intention relates to the meaning or exposition of the remedy as enacted. And further for determining the purpose or object of the legislation, it is permissible to look into the circumstances which prevailed at the time when the law was passed and which necessitated the passing of that law. For the limited purpose of appreciating the background and the antecedent factual matrix leading to the legislation, it is permissible to look into the Statement of Objects and Reasons of the Bill which actuated the step to provide a remedy for the then existing malady. In *A. Thangal Kunju Musaliar v. M. Venkitachalam Potti*, reported in AIR 1956 SC 246, the Statement of Objects and Reasons was used for judging the reasonableness of a classification made in an enactment to see if it infringed or was contrary to the Constitution.

119. In determining the question as to whether the provision of making temporary arrangement is unconstitutional, being against the constitutional scheme or arbitrary giving unguided power to the State executive, the scheme of the Act and also the plea of the respondents State that the guidelines and the restrictions in making such arrangement are available and ingrained in the Act itself, is to be considered.

120. In the case of *Vasu Dev Singh v. Union of India*, reported in (2006) 12 SCC 753, at page 770: ?Hon''ble Supreme Court has referred to G.P.Singh's Principles of Statutory Interpretation, 10th Edn., where it is stated at page 916 as under:

?Grounds of Judicial review Delegated legislation is open to the scrutiny of courts and may be declared invalid particularly on two grounds: (a) violation of the Constitution; and (b) violation of the enabling Act. The second ground includes within itself not only cases of violation of the substantive provisions of the enabling Act, but also cases of violation of the mandatory procedure prescribed. It may also be challenged on the ground that it is contrary to other statutory provisions or that it is so arbitrary that it cannot be said to be in conformity with the statue or Article 14 of the Constitution or that it has been exercised in bad faith. The limitations which apply to the exercise of administrative or quasijudicial power conferred by a statute except the requirement of natural justice also apply to the exercise of power of delegated legislation. Rules made under the Constitution do not qualify as legislation in true sense and are treated as subordinate legislation and can be challenged in judicial review like delegated legislation. Compliance with the laying requirement or even approval by a resolution of Parliament does not confer any immunity to the delegated legislation but it may be a circumstance to be taken into account alongwith other factors to uphold its validity although as earlier seen a laying clause may prevent the enabling Act being declared invalid for excessive delegation.?

121. The learned counsel for the petitioners submitted that even if the legislature is competent to enact the law, but the amendment being not in tune with the

constitutional scheme, the same is ultravires. Consequently it has also been urged that the abolition of the offices of the ViceChairperson in the Panchayat alongwith unguided and uncanalised power being conferred upon the State and the District Magistrate, as the case may be, for making temporary arrangement, makes the entire amendment bad in law as it may be misused and/or may be used for some ulterior motive of the ruling political party and in any case such a power can be exercised on the mere fancy of the State authorities.

122. Article 243G of the Constitution of India read with Article 40 of the Constitution reveals the autonomous character of the Panchayati Raj Institutions, as it describes them to be the institutions of selfgovernment. The Panchayati Raj Institutions have been given enough powers and authority in order to perform their functions so that they can sustain themselves within their autonomous character.

123. A Legislative Act can only be sustained in the eyes of law if it satisfies the twin test of reasonable classification and the rationale principle correlated to the object sought to be achieved by the impugned Act as observed in the case of *D.S. Nakara v. Union of India*, (1983) 1 SCC 305.

124. In this regard if we look into the constitution of Panchayat and the constitutional provision as given in Article 243B and 243C of the Constitution, it makes it clear that a Panchayat would be constituted for the purpose, under Articles 243B and 243. Article 243C gives power to the State, subject to the provisions of Part IX to make a law for composition of Panchayat, State is thus having the legislative competence to make such a law and subclause (3) of Article 243C gives power, to enact a law for the composition of Panchayat. Thus the Panchayat shall consist the persons named in subclause (3) out of which the Chairperson of the Panchayat at the village level have to be elected in such manner as the legislature of State, may by law, provide and the Chairperson of the Panchayat at intermediate level or district level has to be elected by and from amongst the elected members thereafter.

125. Panchayats with which the petitions deal are the Panchayats of intermediate and district level where the Chairperson are to be elected from amongst the elected members. The Panchayat apart from having Chairperson consists of "members of the house of the people" and the "members of the legislative assembly of the State" and "the members of the council of the State" and the "members of the legislative Council of the State". The State executive while exercising powers in making temporary arrangement cannot appoint these members in place of Adhyaksha, in view of specific bar put under Section 27A of the Act of 1961.

126. Section 27A with the heading Bar to legislators and holders of certain offices becoming or continuing as Pramukh, UpPramukh, Adhyaksha or Upadhyaksha not only disqualifies the persons mentioned therein from being elected as Pramukh, UpPramukh, Adhyaksha or Upadhyaksha but also disqualifies them from

continuing as such, if they were elected since before becoming a member of the specified categorically as given therein.

127. Section 27A says that notwithstanding anything contained in Sections 7, 19 and 27(a) a person shall be disqualified for being elected as and for being a Pramukh, UpPramukh, Adhyaksha or Upadhyaksha if he is

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

(ii) Nagar Pramukh or UpPramukh of a (Municipal Corporation), or

(iii) President or Vice President of a (Municipality) or

(iv) Chairman of a town Area Committee or President of a Notified Area Committee.

128. The composition of Panchayat as given in Article 243C is of either elected Chairperson or elected members of the Panchayat alongwith members of the Parliament or the State Legislature. The result is that in view of bar under Section 27A of the Act, the members of the House of People and that of the members of the Legislative Assembly of the State and the members of the Council of the State are disqualified from becoming the Chairperson of the Panchayat. They can neither be elected nor can be continued as such.

129. It is trite that a member or a person who is disqualified for being elected or continued as Chairperson of a Panchayat can be appointed, in temporary arrangement on the said post or for managing the said office, the provision therefore, of making arrangement, as the State executive thinks fit, cannot be read nor can be taken to mean by any stretch of imagination that it permits the State executive to make an alternative arrangement by appointing any member or a person who is otherwise disqualified to hold the office under the Act itself under Section 27A. The arrangement thus would be only from amongst the elected members of the Panchayat.

130. The said clause 2 of Article 243C says that all the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies and for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area. Thus the members have to be elected by direct election from territorial constituencies as per constitutional mandate and they alongwith the Chairperson and the members of the Parliament and the members of the State Assembly constitute the Panchayat. With this composition of Panchayat, whatever alternative arrangement is to be made by the State or District Magistrate, they are left with no option but to make an alternative arrangement from amongst the elected members, and who are not disqualified for holding such an office under Section 27A.

131. A far fetched argument has been raised by the petitioner that the said bar

of Section 27A may not allow any member of the Parliament or the members of the State Legislature to be appointed in the alternative arrangement to look after the office of Chairperson but still the State and the District Magistrate can appoint a person who is a total outsider or otherwise, if he is a nominated or exofficio member, as named in Section 6 for Kshettra Panchayat and Section 18 for Zila Panchayat.

132. The arrangement has to be made in accordance with the provisions of the Constitution as well as that of the State Act which does not give any power to the State or the District Magistrate to introduce a person in the Panchayat who is not an elected member of the Panchayat. Any such arrangement would not only defeat the very object of the Act as well as that of the constitutional provision, but shall also be against the constitutional scheme and beyond the powers conferred under Section 9A and 21A of the Act.

133. Article 243C(5)(b) prescribes that the Chairperson of Panchayat at the Intermediate level or district level shall be elected by, and from amongst, the elected members thereof.

134. The aforesaid prescription is not only a provision envisaging election of Chairperson from amongst the elected members but also lays down the eligibility criteria for being the Chairperson of a Panchayat. A person who is not an elected member cannot become Chairperson of a Panchayat and therefore, stands disqualified for the said office. The Phrase that the "Chairperson of a Panchayat shall be elected by, and from amongst, the elected members thereof" leave no scope of interpretation that it is only the elected member who can be elected as Chairperson and therefore, in the absence of such an elected Chairperson a person who is otherwise eligible for becoming the Chairperson can only be entrusted with the functioning of the said office. Any interpretation, if given otherwise to the provision of Section 9A and 21A would run against the concept and the mandate of Article 243C (5) (b) of the Constitution. Any arrangement, may be temporary on the office of Chairperson, is not to be made against the spirit and specific provisions of the Constitution and has to be made from amongst the elected members.

135. In the case of B.R. Kapoor v. State of Tamil Nadu, reported in (2001) 7 SCC 331, the Supreme Court observed as under;

?While interpreting the constitutional provision or the provision of any other enactment, the validity of the same can not be tested by making factual imagination and utterly extreme interpretation.?

136. The argument that the State executive can appoint for the period interregnum, in terms of Section 9A or Section 21A any person including an outsider, if accepted, would mean, interpreting the said provision on mere hypothetical imagination, which does not flow from the section, nor is in line with the entire constitutional scheme and the scheme of the State Act.

137. In any case appointment of an outsider including a Govt. Servant on the post of Chairperson, will in substance, mean, appointment of an administrator, which power obviously is not conferred under the said provisions of the Act.

138. The temporary arrangement for these offices, thus necessarily has to be made from amongst the elected members from amongst whom the ViceChairpersons were also to be elected under the preamended provisions of the State Act, and therefore, it cannot be said, that by giving power to the State executive for making temporary alternative arrangement, the democratic character of the Institution would be destroyed or that the Institution of Selfgovernance, with its constitutional status, would be undermined. By making such an arrangement, the Panchayat will not lose its democratic set up as such arrangement will be made only during the temporary absence of the Chairperson, when also the said office shall be looked after, by an elected member, which arrangement shall automatically cease, the moment, the ousted Chairperson resumes his/her duties.

139. In the absence of Chairperson if any arrangement is made temporarily till the Chairperson resumes his duties it cannot be said that any right of the elected members regarding choosing the Chairperson is in any way effected or infringed. Such arrangement is only for looking after the work and carrying on the functions of the Panchayat for the period during which the elected Chairperson is unable to perform his duties. The plea that the provision aforesaid suffers from the vice of excessive delegation, is not established. Reference in this regard can also be made of the following cases.

140. In the case of *Novvaads v. Secretary, Department of Municipal Administration and Water Supply* and another, reported in (2008) 8 SCC 42, the Apex Court observed that there cannot be presumption of misuse of power merely because discretion is conferred on a public authority for the exercise/use of the power.

141. The Apex Court took into consideration the case of *St. Johns Teachers Training Institute v. National Council for Teacher Education*, reported in (2003) 3 SCC 321, wherein it has been held:

“Delegated legislation permits utilization of experience and consultation with interests affected by the practical operation of statutes. Rules and regulations made by reason of the specific power conferred by the statutes to make rules and regulations establish the pattern of conduct to be followed. Regulations are in aid of enforcement of the provisions of the statute. The process of legislation by departmental regulations saves time and is intended to deal with local variations and the power to legislate by statutory instrument in the form of rules and regulations is conferred by Parliament. The main justification for delegated legislation is that the legislature being overburdened and the needs of the modern day society being complex, it cannot possibly foresee every administrative difficulty that may arise after the statute has begun

to operate. Delegated legislation fills those needs.?

142. In the case of *State of M.P. v. Bhola*, reported in (2003) 3 SCC 1 the Supreme Court observed as under:

20. A delegated legislation can be declared invalid by the Court mainly on two grounds; firstly, that it violates any provision of the Constitution and secondly, it is violative of the enabling Act. If the delegate which has been given a rulemaking authority exceeds its authority and makes any provision inconsistent with the Act and thus overrides it, it can be held to be a case of violating the provisions of the enabling Act but where the enabling Act itself permits ancillary and subsidiary functions of the legislature to be performed by the executive as its delegate, the delegated legislation cannot be held to be in violation of the enabling Act.?

143. Applying the aforesaid principles also it can be safely concluded that power conferred upon the District Magistrate and the State, as the case may be, does not suffer from the vice of excessive delegation.

144. On a harmonious and meaningful construction of the provisions of Section 9A, 21A and 27A in the light of the scheme of the State Act as well as in letter and spirit of the constitutional provisions of Part IX and in particular Article 243C (5) (b) the State or the District Magistrate, as the case may be, can only entrust the functioning of the office of the Chairperson to an elected member, and not to any other person including an exofficio or nominated member, while making the temporary arrangement. Thus the abolition of the offices of the Vice Chairperson, does not violate any constitutional provision, nor is arbitrary.

145. In view of the discussion made above and for the reasons indicated therein, it can safely be held that the provisions of the Amendment Act (U.P. Act No.44 of 2007) are valid and are intravires the constitutional scheme.

146. They do not violate the constitutional provision or the scheme, nor in any way are arbitrary or discriminatory, so as to be violative of Article 14 of the Constitution.

147. The writ petitions are, thus, devoid of merit and deserve to be dismissed.

148. All the writ petitions are accordingly dismissed. Interim orders, if any, stand discharged.

(Petitions dismissed)