

(1991) 07 MP CK 0026

In the Madhya Pradesh High Court

Case No : M.P. No's. 2484, 3334, 3537 and etc. of 1990 and 3, 4, 5, 10 and 47 etc. of 1991

Mukund Das and Another

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 11-07-1991

Acts Referred:

Constitution of India, 1950 — Article 245, 246, 40

Madhya Pradesh Panchayat Raj Adhiniyam, 1990 — Section 1, 122, 123, 34, 36

Citation : (1991) J LJ 715 : (1992) 1 MPJR 28 : (1993) 38 MPLJ 767 : (1993) MPLJ 767(2)

Hon'ble Judges : B.C. Verma, Acting C.J.; D.M. Dharmadhikari, J

Bench : Division Bench

Advocate : M.V. Tamaskar, N.S. Kale, for the Appellant; N.C. Jain, General, P.C. Naik and R.P. Jain, Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

In this and in other connected Writ Petitions Nos. 3334, 2484, 2118, 2194, 2216, 2277, 2376, 2506, 2523, 2923, 3312, 3482, 3573, 3061, 3607, 3608, 3612, 3621, 3631, 3635, 3636, 3643, 3659, 3666, 3697, 3702, 3189, 2415, 3616, 3617, 2383, 3699, 2262, 2258, 3703, 2382 and 2249 of 1990 and 3, 4, 5, 10, 47, 49, 101, 102, 110, 216, 217, 255, 274, 415, 463 and 218 of 1991, the disposal of which shall be governed by this order challenge is to the legislative competence and the vires of certain provisions of the Madhya Pradesh Panchayat Raj Adhiniyam, 1990, (Act No. 13 of 1990) and Rules made thereunder.

The Indian polity has recognised the village panchayats and Janpad panchayats as the basic units of a Government. With the awakening of the desire to participate in the governance of the State, the demand for decentralisation of political power increased. In the erstwhile State of C. P. & Berar there were two Acts. The Central Provinces and Berar Panchayats Act, 1946 and the Central Provinces and Berar Local Government Act, 1948. Similar enactments were in

force in the former State of Madhya Bharat, the Vindhya Pradesh Region, Bhopal Region and Sironj Region.

After the re-organisation of the States and formation of the State of Madhya Pradesh in the year 1956, the aforesaid Acts continued to be prevalent in different Regions of the State till before the M.P. Panchayats Act, 1962 (Act No. 7 of 1962) was enacted. While mentioning the objects of this Act, it was stated that the principal need of the country as to all round rural development was generally acknowledged and could be achieved only if there by rural initiative and intelligent co-operation of the rural population and by giving the adult rural population a right to participate in the village administration. This Act provided for three tier panchayat system containing 399 sections. Feeling need for short and simple Act, the State Legislature enacted the Madhya Pradesh Panchayat Act 1981, repealing the Panchayat Act of 1962.

After the Government led by Bharatiya Janta Party assumed power in the State Assembly, the State Legislature enacted the Panchayat Raj Adhiniyam, 1990 (Act No. 13 of 1990). The said Act received the assent of the Governor on 10-7-1990 and was published in the M.P. Gazette (Extraordinary) dated 31-7-1990. The purpose of the Act, as stated in the Preamble, is:

"An Act to consolidate and amend the law relating to establishment of panchayats with a view to ensure effective involvement of the Panchayat Raj Institutions in the local administration and development activities."

All these Panchayat Acts contained provisions to organise village panchayats and endow them with necessary powers and authority to enable them to function as units of a self-government. This is in furtherance of directive principles contained in Article 40 of the Constitution embodying the sacred wish of Mahatma Gandhi, the father of the Nation that even a rustic person in the interior village of the country may feel proud of being a citizen of a free nation by participating in the local administration. Article 40 of the Constitution of India reads as under :

"40. Organisation of village panchayats -- The State shall take steps to organise village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self- government"

The inclusion of this Article 40, to quote Seervai, the learned author, "appears to have been a sop for those who held that a democratic Indian Constitution should be founded on the village as unit of Government."

Learned counsel for the petitioners opened their case with a severe attack to the provisions of Section 4 of the Panchayat Raj Adhiniyam, 1990 (hereinafter referred to as "the Adhiniyam"). Section 4 of the Adhiniyam relating to the establishment of Gram Sabhas, is as follows :

"4. Establishment of Gram Sabha -- The State Government or the prescribed authority shall, by order, establish a Gram Sabha for a Patwari Circle formed by the Collector under Sub-Section (I) of Section 104 of the Madhya Pradesh Land

Revenue Code, 1959 (No. 20 of 1959) and specify the name of Gram Sabha by which it shall be known :

Provided that in case of non-inclusion of any village or a group of villages in any Patwari Circle, a Gram Sabha may be established according to such principles as may be prescribed for such village or group of villages including forest village as if such village or group of villages were included in any Patwari Circle, or an independent Gram Sabha may be established for such village or group of villages :

Provided further that no Gram Sabha shall be established for any area of the Patwari Circle which comes within the jurisdiction of any other local authority established and constituted under the concerned municipal law."

Legislative competence of the State Legislature to enact the Adhiniyam was first questioned. Presumably the suggestion is that the State Legislature is not competent to legislate on the subject. Such a contention is completely devoid of substance. Whether a statute is constitutional or not is always a question of power. Such a power to enact a law like the one in question can well be found in Entry 5, List II of VIIth Schedule of the Constitution, which reads as follows :

"Local Government, that is to say, the Constitution and powers of Municipal Corporations, Improvement Trusts, District Boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration."

This Entry apparently is very wide, empowering a State Legislature to make law relating to local Government. We have, therefore, little hesitation in holding that the Legislature was competent to enact the Panchayat Raj Adhiniyam. When a Legislature is competent to pass, a particular law, the motives which impelled it to act, are really irrelevant. On the other hand, if the Legislature gets competence, the question of motive does not arise at all. (See : B.R. Shankaranarayana and Others Vs. The State of Mysore and Others, That being the law, the petitioners also cannot be heard to say, as they mentioned during the lengthy arguments, that the Panchayat Raj Adhiniyam has been passed with a motive to oust the persons presently occupying offices of Sarpanch and Upsarpanchas and Panchas, who, in a number of cases, belong to the opposite party.

Counsel for the petitioners then urged that this piece of legislation (Section 4 of the Adhiniyam) suffers from the vice of excessive delegation by the Legislature of its essential functions to the State without any guidelines, or rules. The further contention is that if the limits of a Gram Sabha are to be fixed in accordance with Section 104 of the M. P. Land Revenue Code, 1959, it be considered as one time exercise in which case the provision shall be bad as the provision denies opportunity of participation in the establishment of Gram Sabhas, either before or at the time subsequent to that establishment. If, however, it is considered as a continuous exercise, with alteration of limits of the Patwari Circle, it shall have to

be left to the wishes of the Collector, who is the revenue officer under the M. P. Land Revenue Code, 1959 and not under the Adhiniyam. In that event, it shall again be bad as those interested shall have no notice of such changes. Counsel urged that legislative wisdom granting the electorate must have an opportunity in the matter of demarcating constituencies and must have opportunity to effect appropriate changes. For this reason the provision cannot be allowed to remain on the statute book. Another limb of the argument in the same direction had been that since a village is taken as a unit of self-governance, opportunity of hearing should be given to those who are to administer the Panchayats. This is the minimum requirement of the Rule of natural justice, without which the provision may be rendered unreasonable and arbitrary. Shri Tankha, appearing for petitioners in M.P. No. 4/91 and M.P. No. 47/91, argued that the Rule of natural justice must also be imported in exercise of the legislative powers, and submitted that even if a legislative Act is arbitrary or infringes rules of natural justice, it needs to be struck down. This argument was met with by Shri Kale, learned counsel of the interveners in M.P. No. 3537/90, who submitted that the State Government, under the provision, has only to issue a notification, whereas, in fact, the establishment of the Panchayats is by a declaration made by the Legislature. In issuing such notification to carry out the wishes of the Legislature, the State has only to perform a ministerial act and is not required to determine any issue. No hearing, either prior or subsequent to the notification, is necessary. No civic consequences ensue, if a particular village is included in one or the other Gram Sabha. What the learned counsel says is that since no decision making process is involved while issuing a notification as contemplated by Section 4, no hearing to any one is necessary. To this, the learned Advocate General, appearing for the State, added that the legislature in its wisdom has chosen a Patwari Circle as a unit finding it to be more convenient. Such legislative wisdom cannot be questioned. It was urged that there was no excessive delegation to the State Government, while enacting Section 4 of the Adhiniyam, which in fact, was a piece of conditional legislation. No hearing was, therefore, necessary.

Supporting their respective contentions, the learned counsel for both parties referred to a number of authorities, including the decision in Khambalia Municipality and Another Vs. State of Gujarat, This was a case where the validity of Section 9 of the Gujarat Panchayats Act, 1961, providing for the establishment of Nagar or Gram was questioned. The criticism was that in enacting such a provision, the legislature did not sufficiently indicate the policy which is to guide the State Government to declare a local area to be Gram or Nagar, or in the matter of making an enquiry preliminary to the declaration and the framing of rules for the enquiry and has given a naked and arbitrary discretion to the State Government in that behalf. This contention was rejected as without merit by the majority judgment, it was observed in para 7 of the report that an essential legislative function consists in the declaration of a legislative policy and its formulation as a binding Rule of conduct. Having laid down the legislative policy, the legislature may confer discretion on an administrative agency as to the

execution of the policy and leave it to the agency to work out the details within the frame-work of the policy. After discussing the policy in that case, the Court concluded that the provision in question cannot be said to suffer from the vice of excessive delegation of legislative power to the State Government. The position in the present case is somewhat similar. While placing the bill before the Assembly, the aims and objects and the policy were declared and placed before the house on 23-7-1990. It is indicated therein that there was no sufficient provision for reservation of seats for the scheduled tribes, scheduled castes and women. There was no proper correlation between the three tiers of the system provided under the repealed Act. No sufficient provision was also made to check misuse of funds. It is to achieve this and similar objects so declared that a Patwari Halka was taken as a unit of administration so as to minimise alteration of the limits. The legislature has thus formulated a policy. It is thereafter that in terms of Section 4 of the Adhiniyam, it entrusted the administrative agency to execute that policy and work out the details within the framework" of that policy. On some, what similar lines is the decision in *Ayodhya Prasad v. State of U.P.* AIR. 1968 SG 1344. This case also relates to formation of Panchayats in Uttar Pradesh. There also the policy was stated in clear terms and what remained or was left to the executive was to carry out the mandate and given effect to the declared law to achieve the purpose of the Act. It was observed that such power is given by the legislature advisedly so that the working of democracy in the rural areas in the Kashetra Samitis (smaller village units) may be smooth and without difficulty. It was, therefore, held that such delegation was neither excessive nor did it violate Article 14 of the Constitution. The principle laid down in *Ayodhya Prasad*'s case may well be applied to the present case.

Reference may also be made to the decision of the Supreme Court in the *Tulsipur Sugar Co. Ltd. Vs. The Notified Area Committee, Tulsipur*, Here the Court was concerned with a notification constituting a Notified Area Committee which was originally Town Area Committee. Challenging this constitution as Notified Area Committee, the contention raised was that since the notification was promulgated without giving prior opportunity to all those concerned to make representation regarding the advisability of extending the limits of Tulsipur Town Area Committee so as to include certain villages where the factory of the plaintiff was situated, the notification was liable to be delivered void. The Act did not provide that the State Government should give previous publicity to its proposal to declare any area as town area or should make such declaration only after taking into consideration any representation or objections filed in that behalf by the members of the public. The Court observed that the question should be determined on a finding if the function of the State Government under the relevant provision constituting the Notified Area Committee was judicial or quasi-judicial involving adjudication of the rights of any person resulting in civil consequences. The Court observed that the declaration, constituting geographical area into a town area which does not require the State Government to make such declaration after giving notice of its intention to do so, to the members of

the public in inviting the representations regarding such objections, is legislative in character, because the application of the rest of the provisions of the Act to the geographical area which is declared as a town area is dependent upon such a declaration. It was held that such provision contained in Section 3 of that Act was in the nature of conditional legislation. Pointing out the essential distinctions between conditional legislation and delegated legislation, reference was made to the earlier decision of the Supreme Court regarding the In Re: The Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act, 1947 and the Part C States (Laws) Act, 1950, wherein the following observations appear (at p. 889 of Tulsipur Sugar Co. Ltd. Vs. The Notified Area Committee, Tulsipur,

"The same principle was applied by the Judicial Committee in AIR 1945 48 (Privy Council) In that case, the validity of an emergency ordinance by the Governor General of India was challenged inter alia on the ground that it provided for setting up of special criminal courts for particular kinds of offences, but the actual setting up of the courts was left to the provincial Governments which were authorised to set them up at such time and place as they considered proper. The Judicial Committee held that "this is not delegated legislation at all. It is merely an example of the not uncommon legislative power by which the local application of the provisions of a statute is determined by the judgment of a local administrative body as to its necessity."

Thus, conditional legislation has all along been treated in judicial pronouncements not to be a species of delegated legislation at all. It comes under a separate category and if in a particular case all the elements of a conditional legislation exist, the question does not arise as to whether in leaving the task of determining the condition to an outside authority, the legislature acted beyond the scope of its powers." On these premises, it was held that the notification by which certain geographical area was declared as a Notified Area, is in the nature of conditional legislation and inclusion of area where the Tulsipur Sugar Factory was situated, was a valid piece of legislation and the attack to its validity because of alleged violation of the rules of natural justice based upon no prior publicity or hearing, was negatived.

The latest reported decision on the subject is to be found in Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others, In that case, Section 3(3)(2) of the Bombay Provincial Municipal Corporation Act, 1949 fell for consideration. In that case, the Government of Maharashtra issued a draft notification u/s 3(3) of the Corporation Act proposing to form Kalyan Corporation suggesting merging of municipal areas of Kalyan, Ambarnath, Dombivali and Ulhasnagar. Objections were received. The Government finally decided to exclude Ulhasnagar from the proposed Corporation and issued notification accordingly. Consequently Corporation was constituted excluding Ulhasnagar area. The other proposals continued as before. In the writ petition filed in the High Court against such constitution of the Municipal Corporation, Kalyan. It was alleged by certain objectors that the action of the Government affording an opportunity of being

heard only to a federation of residents of Ulhasnagar and not to other objectors, was contrary to Article 14. They also alleged that exclusion of Ulhasnagar, having regard to its geographical continuity, was unintelligible and incomprehensible. The High Court allowed the petition and directed the State Government to reconsider the proposal. Certain persons who intervened in the High Court, appealed to the Supreme Court against that order. The Supreme Court set aside the order of the High Court and held that the function of the Government in establishing a Corporation under the Act is neither executive or administrative. The process indeed is legislative. Consequently no judicial duty is cast on the Government in the discharge of that statutory function. The only question to be seen is if the statutory provisions have been complied with. It was emphasised that the Government in exercise of its powers, is not subject to the rules of natural justice any more than the itself. The rules of natural justice are not applicable to the legislative action plenary or subordinate. Procedural requirement of hearing is not implied in exercise of legislative powers unless hearing was expressly prescribed. Relying upon the decision by Megarry, J. in *Bates v. Lord Hailsham of St. Marylebone* (1972) 1 WLR 1373, the Court observed that it is only in the administrative or executive field that there is a general duty of fairness, but such considerations do not seem to affect the process of legislation whether primary or delegated. Reference was also made to the *Judicial Review of Administrative Action* (3rd Edition) by Prof. Section A. De Smith and the following was quoted with approval:

"However, the analytical classification of a function may be a conclusive factor in excluding the operation of the audi alteram partem rule. It is generally assumed that in English law, the making of a subordinate legislative instrument need not be preceded by notice or hearing unless the parent Act so provides."

Shri Tankha, appearing for some of the petitioners cited number of authorities to support his contention that the Rule of natural justice should also govern the exercise of legislative powers. The cases so relied include *Hari Nandan Sharan Bhatnagar Vs. S.N. Dixit and Another*, , *E.P. Royappa Vs. State of Tamil Nadu and Another*, , *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, , *Baldev Singh and Others Vs. State of Himachal Pradesh and Others*, , *Swadeshi Cotton Mills Vs. Union of India (UOI)*, , *Management of M.S. Nally Bharat Engineering Co. Ltd. Vs. State of Bihar and Others*, and *B.R. Shankaranarayana and Others Vs. The State of Mysore and Others*, Some of these cases have been discussed by a Division Bench of Patna High Court, while dealing with similar problem in *Raghunath Pandey and Others Vs. The State of Bihar and Others*, It was pointed out after referring to some of them viz., *S.L. Kapoor Vs. Jagmohan and Others*, *Swadeshi Cotton Mills v. Union of India (supra)* and *A.K. Kraipak v. Union of India*, AIR 1970 SC 150, that the cases belong to two categories, namely, where a stigma is cast on the person aggrieved or where the law directly or indirectly requires a prior hearing. Needless to say that the present case does not fall in either of the above two categories. In the Patna case, a Municipality was to be constituted under the Bihar Municipal Corporation Act by inclusion of certain

Gram Panchayats within the limits of the Municipal Corporation. For the purpose of constituting such a municipality, the State Government is required to issue a notification declaring the area, including the area of any municipality or notified area or such other areas as may be specified therein to be a municipal corporation. The State Government has further been authorised to issue notifications from time to time altering the limits of such Municipal Corporation. Conditions have been imposed for issuance of such a notification. This provision was challenged almost on all such grounds which have been agitated by the petitioner in these petitions. The Court held that in such a case no civil consequences are involved, nor is attracted the Rule of natural justice. The Court also held that such a legislation is a piece of conditional legislation and not a delegated legislation. The Court concluded that it was, therefore, for the legislature only to have laid down the broad principles of its policy and then leave its implementation to administrative authority. In our opinion, the view taken by the Patna High Court is well supported by authority and reason and we have no hesitation in saying that it lays down the correct law.

Shri Tankha invited Court's attention to two decisions the Management of M.S. Nally Bharat Engineering Co. Ltd. Vs. State of Bihar and Others, and Neelima Mishra v. Harinder Kaur Paintal : (1990) 2 SCC 746 : (AIR 1990 SC 1402). In the first, namely, Management of M/s. M.S. Nally Bharat Engg. Co. Ltd. the matter related to transfer of proceedings from one Labour Court or Tribunal to another. The transfer of case was criticised as arbitrary. It was found that the transfer was at the instance of workman without even hearing the management. It was held that denial of opportunity to the management is not in consonance with the fairness of Rule of natural justice. We do not see how this case is applicable to the present case, where what is questioned is the Act of legislature. In the other case (Neelima Mishra's case) the question was whether while exercising power of appointment on the recommendation made by the selection committee, the executive council disagrees with the recommendation of the selection committee and makes a reference to the chancellor, the action of the chancellor while considering the reference being only administrative and not judicial or quasi-judicial, there is no need to conform to the principles of natural justice. It was, however, held that the Chancellor, in the circumstances, must act properly and fairly and the principles of equity enshrined in Article 14 of the Constitution must guide every State action whether it be executive, legislative or quasi-judicial. The well known cases in E.P. Royappa Vs. State of Tamil Nadu and Another, , Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , Management of M.S. Nally Bharat Engineering Co. Ltd. Vs. State of Bihar and Others, and Swadeshi Cotton Mills Vs. Union of India (UOI), were referred to and relied on. It may be noted that these decisions are by the same learned Judge, i.e. K. Jagannatha Shetty, J., who rendered the decision in Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others, . Since the later decision Sundarja's case directly deals with the question raised in the present case, we feel that it should guide the decision in the present case also. The contention so

advanced by Shri Tankha must fail.

The next contention is based upon the terms of Article 40 of the Constitution. It is argued that choosing Patwari Circle as a unit of establishment of Gram Sabha is destructive of the basic concept of village panchayat envisaged under Article 40 of the Constitution. A unit of self-Government is not the same thing as unit of revenue administration as Patwari Circles, Tahsil etc. and, therefore, choosing the Patwari Circle to form limits of Gram Sabha is not permissible. It is suggested that the purpose underlying Section 104 of the Land Revenue Code, 1959 in the formation of a Patwari Circle is entirely different from the object for which the Gram Panchayat is established. Limits of Gram Sabha may be altered by the Collector by changing limits of Patwari Circle and not by any authority under the Adhiniyam. Criticism also is that the Adhiniyam does not contain any guidelines to prescribe the limits of the Gram Sabha and in the absence of any rules in that regard, the action is arbitrary.

Opposing this line of argument, Shri Kale learned counsel for certain intervenes, suggested that Patwari Circles lose their significance after the initial establishment of the Gram Sabha. Subsequent changes have to be brought about in accordance with Section 122 of the Adhiniyam and in that process Section 104 of the M.P. Land Revenue Code, 1959 and Section 122 of the Adhiniyam should be read together and harmoniously. If so read together, they will remove the entire doubt and confusions sought to be created by the petitioners. Learned Advocate General in this regard argued that in its wisdom, the Legislature thought it convenient to choose the Patwari Circle as a unit of Gram Sabha initially and the same cannot be questioned. Referring to the objects and reasons leading to the enactment (the Adhiniyam), he suggested that fixing Patwari Circle as a unit for Gram Sabha is aimed at minimising the frequent alterations of the limits of Gram Sabhas. It was suggested that the legislature thought that fixing a Patwari Circle which consists of a village or villages, was found to be more viable and convenient mode of governance. One of the aims of the Adhiniyam was to achieve economic viability and that has been done by choosing larger unit like the Patwari Circle thus enabling a Gram Sabha to raise funds to discharge certain functions and duties u/s 43(4) and 9 of the Adhiniyam. It was also suggested that this policy itself contains a guideline.

In our opinion, the contention so raised by the petitioners and based upon Article 40 of the Constitution cannot be accepted. There appears to be good reason behind choosing a Patwari Circle as a unit of Gram Sabha. It may well afford a convenient mode of governance and may also achieve economic viability to provide funds for better functioning of the Gram Sabha. At least that is the avowed object which has been made manifest at the time of enacting the Adhiniyam. This policy itself is a guideline, if such guideline is at all necessary. As rightly suggested by the learned Advocate-General, the action may be struck down if the power is abused, but for that reason, the provision cannot be struck down. Such is the view expressed by the Supreme Court in Khambalia

Municipality and Another Vs. State of Gujarat, At the same time, if the policy is ultimately found to be not much useful or beneficial, the same may be revised. (See Tamil Nadu Education Department Ministerial and General Subordinate Services Association and Others Vs. State of Tamil Nadu and Others, at p. 381).

The terms of Section 4 and the following sections of the Adhiniyam indicate only one thing that the entire scheme of the Adhiniyam is aid at "village administration". After all, a Patwari Circle consists of number of villages. Article 40 may be violated only when the intention of any act of the State Government be to stultify the progress of Gram Panchayat/ Gram Sabha. What is aimed at is gain to the masses which must outweigh the gain to few individuals. Better administration and all round improvement is envisaged and Article 40 is in no way offended. It may also be noticed that Section 122 of the Adhiniyam permits the State Government or the prescribed authority to change the headquarter of a Gram Panchayat or Nagar Panchayat or alter the limits of Gram Sabha. When this is done, a safeguard is provided to prevent any abuse of such power. Proviso to Section 122(1) says that no order under this Section shall be made unless a proposal in this behalf is published for inviting suggestions and objections in such manner as may be prescribed and objections are considered. Further, Section 123 permits the State Government or the prescribed authority to disestablish a Gram Sabha and a check in exercise of that power is also provided under the proviso appended to that section. It, therefore, cannot be said that the State Government or the prescribed authority under the Adhiniyam has not retained any power or jurisdiction to alter the limits of Gram Sabha initially established or even to disestablish a Gram Sabha. This shall be certainly independent of the jurisdiction exercised by the Collector u/s 104 of the Land Revenue Code, 1959 to establish a Patwari Circle. When these provisions under the two different enactments are consistently read (as they ought to) giving effect to the Rule a harmonious construction and to avoid, repugnancy, it is clear to us that while the unit of Gram Sabha may continue to be a Patwari Circle, changes can be brought about in the limits of a Gram Sabha and even if in this exercise certain villages are excluded or included from or within a Patwari Circle, the mandate in Section 4 of the Adhiniyam that a Gram Sabha shall be established for every Patwari Circle formed by the Collector u/s 104 of the 1959 Code, shall not be violated. We are, therefore, of the opinion that the challenge to the provision of Section 4 on the premises of Article 40 of the Constitution, is not tenable and is hereby rejected.

Our conclusion, therefore, is that Section 4 of the Adhiniyam is a conditional legislation containing condition for establishing a Gram Sabha. No prior hearing is necessary as it does not involve any civil consequences. It is also not violative of Article 40 of the Constitution as the unit of self-governance continue to be a village or group of villages and even if it is permissible to apply Article 14 of the Constitution to the directive principles, we hold that the provision is neither unfair, nor unreasonable. Due provision u/s 122 and 123 of the Adhiniyam has been made for subsequently altering the limits of the Gram Sabha or even

disestablishing a Gram Sabha once established under the terms of Section 4 of the Adhiniyam. When such power is exercised consistently with Section 104 of the M.P. Land Revenue Code, 1959 there may be no difficulty in implementing these provisions. We, therefore, reject all the contentions advanced challenging the validity of the provisions contained in Section 4 of the Panchayat Raj Adhiniyam, 1990.

The provision contained in Section 34 of the Adhiniyam, providing for removal of the office bearers of a Panchayat, is alleged to be vague, arbitrary and capricious. The contention is that the terms of Section 34 in absence of any guidelines or checks, leave a room for exercise of such power arbitrarily. This is said to be particularly so because removal for misconduct in terms of Section 34 attaches a disqualification to contest elections in future. In our opinion, the contention does not have much force and deserves to be rejected. The provision is that the office bearer of a Panchayat can be removed by the State Government or by the prescribed authority, If (1) he has been guilty of misconduct in the discharge of his duties or (2) if his continuance in office is undesirable in the interest of public. Sufficient checks, however, have been provided in the exercise of that power so that such power is neither misused nor is arbitrarily exercised. The authority exercising this power has to make an enquiry. The person concerned has to be given an opportunity to show cause why he should not be removed from his office. In our opinion, this safeguard of showing cause furnishes sufficient protection to the office bearer of a Panchayat and also keeps the authority within bounds, preventing any misuse of such power.

Learned counsel for the petitioners in support of their contention referred us to the decisions of the Supreme Court in *Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others*, and *A.L. Kalra Vs. Project and Equipment Corporation of India Ltd.*, and submitted that since "misconduct" when proved entails penal consequences in the sense that it shall attack to the office bearer a disqualification for a period of six years to be elected, co-opted or appointed as office bearer under the Adhiniyam, it is obligatory to specify, and, if necessary, define it with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct. It may be mentioned that one of these decisions was concerned with the removal or dismissal from service of an industrial employee and the other with an employee in the public sector corporation. In *Glaxo Laboratories case* (supra), the Standing Orders of the establishment fell for consideration. It was observed that the employer was entitled to prescribe conditions of service more or less specifying the acts of misconduct to be enforced within the premises where the workmen gather together for rendering service. Standing Order 22 enumerated and collected number of acts, which, if committed within the premises of the establishment, would constitute misconduct. Standing Order 23, however, did not contain any such enumeration of misconduct, although it provides that "any workman who is adjudged by manager on examination of the workman, if present and of the facts to be guilty of misconduct is liable"The contention

was that while misconduct was enumerated in Standing Order 22, punishment is prescribed in Standing Order 23 and the misconduct in Standing Order 23 would comprehend any misconduct, irrespective of the fact whether it is enumerated in Standing Order 22 or not. While examining this contention, the Supreme Court referred to Section 3(2) of the Standing Orders Act and found that the employer in an industrial establishment while preparing draft Standing orders, has to make provision in such draft for every mailer set out in the schedule which may be applicable to the industrial establishment and where model Standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model. It was observed that Item 9 of the schedule provides "suspension or dismissal for misconduct and acts or omissions which constitute misconduct". Consequently, it was held that it is obligatory upon an employer to draw up with precision those acts of omission and commission, which, in his industrial establishment would constitute misconduct. Since penalty is imposed for misconduct, the workman must know in advance which act of commission would constitute misconduct so as to be visited with penalty. The statutory obligation is to prescribe with precision in the Standing order all those acts of omission and commission, which would constitute misconduct. It is in this light that the Court observed (at p. 514 of *Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others*,

"In the face of the statutory provision, it would be difficult to entertain the submission that some other act of omission which may be misconduct though not provided for in the Standing Order would be punishable under Standing Order 23. Upon a harmonious construction, the expression "misconduct" in Standing Order 23 must refer to those acts of omission or commission which constitute misconduct as enumerated in Standing Order 22 and none else."

It is this rule in *Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others*, which was applied in the subsequent decision in *A.L. Kalra Vs. Project and Equipment Corporation of India Ltd.*, In the present case, the *Adhiniyam* does not contain any provision requiring the State Government or the authorities to enumerate the acts which may constitute misconduct for the purposes of Section 34. All the same, the Explanation appended thereto specifies certain acts which, for the purposes of that section, shall be included in the term "misconduct". The Explanation runs:

"Explanation-- For the purpose of this Sub-Section "misconduct" shall include. . . ."

Such a definition is *prima facie* extensive. The word "include" is often used in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used, these words and phrases must be construed as comprehending not only such acts as they signify but also those acts which the interpretation Clause declares they shall include. Such is the Rule expressed in *Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad*, That being so, there is not much scope to argue that the

provision is bad and cannot be given effect to because of want of enumeration of acts constituting misconduct. It may, however, be seen that the provision is in respect of persons who hold certain office on their being either elected, or co-opted and they have to discharge some public functions and duties as elected panchas. They cannot be allowed to continue in office if they commit any act in the discharge of their duties contrary to the public interest. Nonetheless, as we have earlier observed, the provision contains sufficient safeguards when it gives the office bearers a reasonable opportunity of being heard against the proposed action of removal from office. We may also mention that such a provision was inserted in Section 27 of the Panchayat Act, 1972. Again, a similar provision was continued in Section 35 of the Panchayat Act, 1981. Needless to say that it has been tried and worked so well for all these years and there has been no complaint of abuse or arbitrary exercise of power. For the aforesaid reasons, we do not see anything in Section 34 of the Adhiniyam, which may prompt us to hold it as a bad piece of legislation suffering from any vice of arbitrariness. This contention is, there fore, rejected,

It may be mentioned that some of the petitioners in their petitions also doubted the validity of Section 10 of the Adhiniyam, which relates to the establishment of Gram Panchayats, Nagar Panchayats, Janpad Panchayats and Zila Panchayats. However, at the hearing, they did nothing more than mentioning it. We also find that there is hardly any scope for levelling any criticism against the validity of that provision which only requires the establishment of those institutions. The criteria for establishing these Panchayats as provided in Section 10 of the Adhiniyam also appears to be reasonable. Therefore, we hold that Section 10 of the Adhiniyam is a valid piece of legislation.

This takes us now to the consideration of certain parts of Section 13 which are as follows :

(1) Every Gram Panchayat shall consist of-

(i) Panchas elected from the wards and elected Sarpanch; and

(ii) Panchas co-opted, if any, under Sub-Section (4) or (5).

Provided that if any ward fails to elect a Panch, the Gram Panchayat shall elect from persons qualified to be elected, any person to be a Panch and the person so elected shall, for all purposes of this Act be deemed to be duly elected from that ward.

(2)

(3) Out of total number of wards of Gram Sabha twenty per cent wards subject to minimum of two shall be reserved for women. Out of the wards so reserved such number of wards shall be reserved for women of Scheduled Castes and / or Scheduled Tribes as may be nearly as may be the same proportion to the total number of seats reserved for women as the total number of wards reserved for Scheduled Castes/Scheduled Tribes bear to the total number of wards in the

Gram Sabha. The wards which shall be reserved for women shall be decided by the prescribed authority by drawing lots and by rotation in the prescribed manner.

Explanation-- For working out the percentage less than half shall be ignored and half and more than half shall be taken as one.

(4) Where there are persons belonging to the Scheduled Castes or Scheduled Tribes residing within the Gram Sabha area, such number of seats shall be reserved by the Collector for the Panchas of Scheduled Castes or Scheduled Tribes on the Gram Panchayat as shall bear as nearly as may be the same proportion to the total number of Panchas in the Gram Panchayat as the population of the persons of the Scheduled Castes or Scheduled Tribes in the Gram Sabha area bears to the total population of such area seats reserved for Panchas of Scheduled Castes and Scheduled Tribes shall be allotted in the wards in which the percentage of the population of Scheduled Castes or Scheduled Tribes, as the case may be, worked out by the Collector is found by him to be comparatively higher in descending number.

Provided that in case no reservation of seats is possible as aforesaid due to small population of Scheduled Castes or Scheduled Tribes, and the elected Panchas do not already include a Panch of such castes or tribes and the combined population of Scheduled Castes and/or Scheduled Tribes is at least 5% of the total population of Gram Sabha, the Gram Panchayat shall co-opt a person of the Scheduled Castes or the Scheduled Tribes, who is qualified for being a Panch of the Gram Panchayat.

(5) If the elected Panchas do not include a member of committee of Co-operative Society functioning within Gram Sabha area, the Gram Panchayat shall co-opt a member of committee of a Co-operative Society who is qualified for being a Panch of the Gram Panchayat:

Provided that the member co-opted under this sub-section shall have right to speak at and otherwise to take part in the proceedings of any meeting of Gram Panchayat or any of its Standing Committees but shall not be entitled to vote in or move any motion or resolution thereat:

Explanation.-- For the purpose of this sub-section the expression "committee" shall have the meaning assigned to that expression in Clause (d) of Section 2 of the Madhya Pradesh Co-operative Societies Act, 1960 (No. 17 of 61).

Since these provisions have to be read along with the Rules 4 and 13 of the M.P. Panchayat (Election and Co-option) Rules, 1990, it will be useful to quote these rules also at this stage:

Power of Collector to determine reserved seats for wards. --

(1) Subject to the provisions of Sub-Sections (3) and (4) of Section 13, the ward or wards in which seats shall be reserved for women and members of the Scheduled Castes and Scheduled Tribes shall be determined by the Collector.

(2) The total number of seats to be reserved for the members of the Scheduled Castes and Scheduled Tribes shall be got calculated separately on the basis of total population of the gram sabha area and the population of the members of the Scheduled Castes or Scheduled Tribes. Fraction less than half shall be disregarded and those half and more than half shall be counted as one.

(3) Seats reserved either for Scheduled Castes or for the Scheduled Tribes shall, as far as practical be allotted in the wards in which the percentage of population of Scheduled Castes or Scheduled Tribes, as the case may be, worked out by the Collector is found by him to be correspondingly higher in descending number.

(4) Out of wards reserved for women in accordance with Sub-Section (3) of Section 13 such number of wards shall be reserved for women of Scheduled Castes or Scheduled Tribes as may bear as nearly as may be the same proportion to the total number of seats reserved for women as the total number of wards reserved for Scheduled Castes and/or Scheduled Tribes bear to the total number of wards in the Gram Sabha. Seats for women belonging to Scheduled Castes and/or Scheduled Tribes shall be allotted from out of the wards reserved for Scheduled Castes and/or Scheduled Tribes under Sub-Rule (3). Seats belonging to women of general category shall be reserved from out of the remaining wards. If no reservation of seats is possible according to Sub-Section (4) of Section 13 allotment of seats for women shall be done from out of all the general wards.

(5) (a) The prescribed authority shall, for the purpose of fixing the wards in which seats for women shall be allotted, draw lots separately for the wards reserved for Scheduled Castes and/or Scheduled Tribes and for general wards.

(b) For the purpose of allotting wards for women, the Collector shall publish a notice at a conspicuous place at the headquarter of concerned Gram Panchayat stating that the lots will be drawn in the office to be named in such notice and on the date and at the time specified therein before the persons who are present to witness the drawal of lots.

(c) Separate chits shall be prepared for general wards and wards reserved for Scheduled Castes and/or Scheduled Tribes giving the individual number of wards on each of such chit. All the Chits meant for general ward shall be kept in one pot and those seats for reserved wards shall be kept in separate pot. As many chits as are required for allotment of seats for women of general category shall be drawn out and the number of wards written in the chit, spelt out before the persons witnessing the drawal. Similar procedure shall be adopted for drawing chits from the pot meant for allotment of wards for women belonging to Scheduled Castes and/or Scheduled Tribes.

(d) The proceedings shall be recorded in writing and signed by the Collector. Signatures of at least two non-official persons witnessing the drawal of lots shall also be obtained on such proceedings.

(e) In the subsequent elections of the Gram Panchayat the wards previously allotted for women shall be excluded from drawing of the lots, till all such wards are not exhausted.

Determination of reserved seats of Sarpanch of Gram Panchayats.--

(1) For the purpose of reservation of seats of Sarpanchas--

(i) for Scheduled Castes within the block in accordance with Sub-Section (2) of Section 17, and

(ii) for Scheduled Tribes within the block in accordance with Sub-Section (3) of the said section, the Collector shall--

(a) work out the "percentage of population of Scheduled Castes and Scheduled Tribes of each Gram Panchayat in relation to the total population of such Gram Panchayat;

(b) arrange the Gram Panchayats in order of percentage of population of Scheduled Castes and Scheduled Tribes, as the case may be, in descending order;

(c) reserve the Gram Panchayat in such number as required to be reserved in order of percentage as arranged under Clause (b).

(2) From out of the seats of sarpanchas reserved for women in accordance with Sub-Section (5) of Section 17, the Collector shall reserve such number of seats for women belonging to Scheduled Castes and/or Scheduled Tribes, as may bear as nearly as may be, the same proportion to the total number of seats for women as the total number of seats reserved for Sarpanchas of Scheduled Castes and/or Scheduled Tribes bear to the total number of Sarpanchas in the block.

(3) Seats of Sarpanchas for women of general category shall be allotted in the Gram Panchayats which are not reserved for Sarpanchas belonging to Scheduled Castes and/or Scheduled Tribes. Seats of Sarpanchas for women belonging to Scheduled Castes and/or Scheduled Tribes shall be allotted in the Gram Panchayats which are reserved for Sarpanchas of such Castes or Tribes as the case may be.

(4) Seats for women Sarpanchas shall be allotted in the Gram Panchayats by drawing lots in the manner provided in Clauses (b), (c), (d) and (e) of Sub-Rule (5) of Rule 4 with necessary modifications.

(5) The statement regarding the seats of Sarpanchas reserved for members of Scheduled Castes, Scheduled Tribes and women under this Rule shall be notified by the Collector-

(a) on the notice board of the office of the Collector,

(b) on the notice board of the Janapad Panchayat concerned, and

(c) at a conspicuous place in each village of the concerned Gram Sabha.

The petitioners contention is that the seats thus reserved in favour of the Scheduled Castes and Scheduled Tribes and women may be filled on the basis of population and the procedure for reserving the wards for such purpose by drawing lots, besides being irrational and arbitrary, instead of fulfilling the purpose of the Act, frustrates it. According to the petitioners such provision is prejudicial to the reservation and the procedure prescribed shall work out grave injustice to the persons falling in the general category.

In the return exhibited on behalf of the State this aspect of the matter has been very elaborately explained with reference to the result of the previous census and the data collected. It is stated that the reservation on the basis of percentage of women voters in each ward for taking a decision on reservation of wards for women was subject of challenge before this Court and it was held therein that any reservation for women candidates does not offend against Articles 14 and 16 of the Constitution of India and is valid. (See *Umesh Pandey v. State of M.P.* 1989 MPLJ 668). Referring to the compendium published by the Directorate of Economics and Statistics, Madhya Pradesh with reference to the census of the years 1971 and 1981, it is stated that the population of males and females in different villages has been found to be practically equal, i.e., in the ratio of 1 : 1 (compendium is Annexure R/3). With a view to give women their due representation, the earlier time consuming process of determining percentage of women in each ward, lot system to be applied by rotation has been adopted. The return further includes the statement that such rotation system has been accepted in the conference of Chief Ministers on Panchayat Raj held on 11th and 12th June, 1990 at Delhi (Extract is Annexure R/5). Such system was in vogue in Maharashtra in constituting panchayats and Zila Parishads (Annexure R/5). Reference has also been made to the Constitution (74th Amendment) Bill, 1990. Although the Bill could not be passed into an Act, yet it contains a provision for reservation for women in different constituencies of Panchayats, Municipalities based on such "lot" system,

To us, there appears to be force in what the respondent-State contends. The petitioners really are not averse to the reservation of wards in the Panchayats for women, though they seem to be critical only of the method adopted under the Adhiniyam. We do not see how the rotating system employed for reservation offends against the spirit of the Adhiniyam, i.e. to ensure effective involvement of Panchayat in the local administration and developmental activities. Instead, we feel that it shall ensure due and proper representation to women in the Panchayat. Such a provision had worked well in Maharashtra and we do not find any fault with such a provision. This contention is, therefore, rejected.

It has also been the contention on behalf of the petitioners that permitting political parties registered by the Election Commission of India under the Representation of the People Act, 1951, to contest elections to the office of Panch etc. on party lines and making it obligatory to allot the symbol reserved for a

political party under the Election Symbol (Reservation and Allotment) Order, 1968, to such candidates does not subserve the purpose for which the institution of Panchayats has been set up. The argument is that such a provision incorporated in Section 36. of the Adhiniyam and Rules 36 and 37 framed u/s 37 thereof will embitter the local atmosphere and shall be a vitiating factor in achieving the very purpose of the Panchayat Raj institution. A suggestion also has been that the immediate object of introducing such a provision is to destabilise the existing panchayats and remove the office bearers with a view to assume power by the ruling party (Bharatiya Janta Party) at the lower level. The contention, therefore, is that Section 36 and Rules 36 and 37 should be struck down. We are unable to accept this contention either. To us, there does not appear to be any rationale behind such a contention. One of the declared objects of enacting the Adhiniyam is to hold elections on party basis realising it as an important requirement of the present era. From para 13 of the return in Misc. Petition No. 3537 of 1990, it is reflected that this provision has been brought in after taking into consideration the views of the Election Commission expressed earlier as also after studying and referring to similar provisions in force in the State of West Bengal, Kerala and Tamil Nadu and in all the municipal laws in vogue practically in all the States. Annexure R/9 filed with the return shows that the rules are in force in West Bengal since the year 1974 and have been working well without any objection. Annexures R/10 and R/11 show that the Election Commission has approved such a pattern. We also do not see how and in what manner the elections recognised on party basis and on symbols allotted to such parties for the election of the Parliament or the State Assemblies and the municipalities shall be against the spirit of Article 40 of the Constitution, envisaging Panchayat as the unit of self-administration. We do not find force behind this contention which is also rejected.

In M.F. No. 4/91 and M.P. No. 47/91, it is also urged that a particular symbol was refused to be allotted to the petitioners because the request for that purpose was made after the scheduled time, i.e. after 3 p.m. This is controverted by the petitioners, who allege to have presented the necessary application for allotment of symbol well within time. This being a question of fact cannot be permitted to be agitated in this petition. However, if the petitioners feel that the result of the election has been or may be materially affected for want of allotment of particular symbol to them, their remedy may be to question the result of the election through an election petition. No relief to them on this score can be granted.

Although reference to Rules 27 and 28 had also been made in some of the petitions and the rules are said to be ultra vires the Rule making power and also unworkable, yet this point was given up at the stage of arguments. We, therefore, leave the matter at that only, without expressing any opinion as to the validity or otherwise of these rules.

No other point was urged. The petition fails and is dismissed, but without costs.

Security amount, if deposited, shall be returned to the petitioners.