

(1956) 07 AP CK 0012

In the Andhra Pradesh High Court

Case No : Writ Petns. No"s. 304 etc. of 1956

Panchayat Pandrapadu and Others

APPELLANT

Vs

State of Andhra and Others

RESPONDENT

Date of Decision : 27-07-1956

Acts Referred:

Constitution of India, 1950 — Article 14, 143, 40
Government of India Act, 1935 — Section 256, 40(1)
Road Traffic Act, 1930 — Section 90
Unemployment Insurance Act, 1920 — Section 45

Citation : (1956) 07 AP CK 0012

Hon'ble Judges : Satyanarayana Raju, J; Bhimasankaram, J

Bench : Division Bench

Advocate : M.B. Ramasarma, N. Subramanyam, A. Raghaviah, N.V.L. Narasimharao, T. Lakshmiah, P.A. Chowdary, S. Suryaprakasam, M. Venkata Subbarao, S.V. Kondapi, G. Bhaskara Rao, G.V. Raghavayya, A. Sivarao, K.V. Rangachari, P. Satyanarayana, B.V. Ramanarasu, K.B. krishna Murthy, A. Kuppuswami, Srimathi, K. Amareswari, K.V. Reddi, G. Mallikharjunarao, T. Dhanurbhanudu, N. Rajeswararao, P. Ramarao, T.V. Sarma, K. Suryanarayana, M.S. Ramachandrarao, M. Krishnarao, K. Subrahmania Reddi, T. Rangareddi, P.S.T. Sayee, K. Ramachandra Rao, K.V. Raghunatha Reddi, S. Malkonda Reddi, Srimathi, J. Sithamhalaxmi, K.F. Baba, B. Bheemaraju, I.V. Rangacharya, M. Lakshmanarao, G. Chandrasekhara Sastri, R.V. Subbarao, J.Y. Narayana, G. Suryanarayana, P. Ramachandra Reddy, A. Bhujangarao, Konda Kotayya, M. Srinivasarao, C. Kondiah, B.V. Subrahmanyam, C. Rama Rao, O. Chinnappa Reddy, P.R. ramachandra Rao, R.V. reddipantulu, P. Babula Reddi and T.B. Seshachatyulu, for the Appellant; D. Narasaraju, General M. Seshachalapathi, Govt. Pleader and O. Chinnappa Reddy, for 9th Respondent in W.P. No. 524 of 1956, for the Respondent

Judgement

Bhimasankaram, J.—All the petitions before us raise common question involving the meaning and effect of certain section of the Madras Village Panchayats Act 1950 (hereinafter called the Act) as amended by the Madras Village Panchayats (Andhra Second Amendment) Act, 1955 (hereinafter called the Amendment Act).

Though Petitioners were represented by several counsels only a few of them conducted the arguments before us, each arguing what has not been touched upon before by another. Still the arguments occupied a fairly long time and covered. I am disposed to consider, much wider ground than the necessities of the case demanded in propose to deal with every argument of substance raised before us.

2. The target of attack in the main is G. O. Ms. No. 334, Local Administration, dated 2nd March, 1956. This was issued by the Government of Andhra, because, in their opinion, the conditions created by the Amending Act necessitated it is purported to have been made u/s 22 of the Amendment Act which is as follows:

If any difficulty arises as to the reconstitution or constitution of any panchayat after the commencement of this Act, or otherwise in giving effect to the provisions of this Act, the State Government, as occasion may require, may, by order, do anything which appears to them necessary for the purpose of removing the difficulty.

3. In order that the contentions of the parties may be appreciated, it is necessary to read the following sections of the old Act:

6. (1) The total number of members of a panchayat exclusive of its president shall be notified by the Inspector in accordance with such scale as may be prescribed with reference to population.

(2) The Inspector may, from time to time, by notification, alter the total number of members of a panchayat notified under Sub-section (1).

(3) The number notified under Sub-section (1) or the number as altered by notification under Sub-section (2) shall not be less than five or more than fifteen.

7. The members of the panchayat shall be elected in such manner as may be prescribed, 8.

9. For the purpose of electing members to a panchayat the Inspector shall, after consulting the panchayat, by notification, divide the village into wards and determine the number of members to be returned by each ward.

A Class I Panchayat Village shall be divided into not less than five wards and a Glass II panchayat village shall be divided, if it has a population of 1,000 or less, into two wards and if it has a population of more than 1,000 into not move than five wards.

10. (1) The term of office of the members of every panchayat who are elected at ordinary elections shall, save, as otherwise expressly provided in, or may be prescribed under this Act, be three years beginning at noon on the day on which the vacancies occur:

Provided that the Inspector may, by notification for sufficient cause which shall be stated therein, direct that the term of office of the members of any panchayat

as a whole be extended or reduced by such period not exceeding three months as may be specified in the notification.

(2) Ordinary vacancies in the office of an elected member of a panchayat shall be filled by ordinary elections which shall be fixed by the election authority to take place on such day or days within three months before the occurrence of the vacancies, as he thinks fit:

Provided that the Government may for sufficient cause direct or permit the holding of any ordinary election after the occurrence of the vacancy.

20. There shall be a president and vice-president for every panchayat.

21. The president shall be elected by the persons whose names appear in the electoral roll for the panchayat, from among themselves.

If at an election held under this Sub-section no president is elected, a fresh election shall be held:

Provided that no member shall be eligible to stand for election as president.

Provided further that a person who stands for election as president shall not be eligible to stand for election as a member.

2. * * * *

3. Save as otherwise expressly provided in or prescribed under this Act, the term of office of the president who is elected at an ordinary election shall be three years beginning at noon on the day of which the vacancy occurs, and if such election is held after the occurrence, of the vacancy, his term of office shall commence from the date of his election and expire at the time at which it would have expired if he had been elected before the occurrence of the vacancy.

5. * * * *

6. * * * *

7. The president shall be an ex-officio member of the panchayat and shall be entitled to vote at meetings of the Panchayat.

4. Reference may be necessitated to the other sections of the Act in the course of this judgment. But it is not necessary to quote them.

5. Now, it may be noted that the Amendment Act does not touch any one of these sections except Sections 7 and 21. The amendment of Section 7 of the principal Act was necessitated by the insertion of a new subsection numbered and lettered as 10-A, with which I shall deal later. Suffice it to say, for the present, that it provides for the election of a woman member by the members of the panchayat. As regards Section 21 of the principal Act, it is replaced by the following u/s 6 of the Amendment Act:

21. The president shall be elected by the panchayat from among its members.

If at an election held under this section, no president is elected, a fresh election shall be held.

6. It is unnecessary for the purpose of the present discussion to refer to any other amendments made by the Amendment Act, It would be appropriate at this stage to extract the terms of the G. O. Ms. No. 334, Local Administration, 2nd March, 1956:

Section 6 of the Madras Village Panchayats Act, 1950, (Madras Act X of 1950), (hereinafter referred to as the Act), provides that the total number of members of a panchayat, exclusive of its president shall be notified by the Inspector-General of Local Administration or his delegate in accordance with such scale as may be prescribed with reference to population. The strength of most of the panchayats has been notified in accordance with the scale fixed in notification I, published with G. O. Ms. No. 520, dated the 24th March, 1951, in the Rules Supplement to Part 1-A of the Fort St. George Gazette, dated 27th March, 1951. Section 21 of the Act, as now amended, provides that the President shall be elected by the panchayat from among its members. As a result, the President shall also be a member of the panchayat and the strength already notified u/s 6 of the Act, has to be increased by one in order that the provisions of the Act may be given full effect and this additional seat has to be allotted by the Inspector after consulting the panchayat to one of the wards of the panchayat according to the provisions of Sub-section (1) of Section 9 of the Act.

2. The ordinary elections to the Panchayats are to be held from March, 1956, onwards. In view of the close proximity of the date of reconstitution or constitution of panchayats by ordinary elections, the Government consider that there is no sufficient time to revise the scale fixed in Notification I, published with G. O. No. 520, Local Administration, dated 24th March, 1951, bringing it in accord with the provisions of the said Act as subsequently amended and to issue a revised notification fixing the number of members of the panchayat inclusive of the President to be elected by the village. Further, it is not possible for the Inspector-General or his delegate to allot the revised number of members of the panchayat to be so elected after consulting the panchayat. The Government therefore consider that in order to remove the above difficulties it is necessary to increase the already notified number of the members of the panchayat by one and to empower the District Panchayat Officer or Additional District Panchayat Officer having jurisdiction over the panchayat to allot the kingly in exercise of the powers conferred by Section 22 of the Madras Village Panchayats (Andhra Second Amendment) Act, 1955 (Andhra Act XXII of 1955), the Governor of Andhra hereby directs that the number of members of every panchayat notified under . Sub-section (1) of Section 6 of the Act shall be increased by one to admin of the President of the Panchayat to be elected from among the members of the panchayat and that the District Panchayat Officer or the Additional District Panchayat Officer, having jurisdiction over the panchayat, shall allot the aforesaid additional seat to such of the notified wards of the panchayat as he deems fit,

and notify such allotment-

(1) by beat of drum, in, the village and (2) by affixture of copies of the notification in the office of the panchayat, if any, and in not less than, three other conspicuous places in the village.

(3) The order shall come into force at once and shall remain in force upto and inclusive of the 30th June, 1956.

(4) The District Panchayat Officers and the Additional District Panchayat Officers concerned should submit to the Regional Inspectors and the Inspector-General of Local Administration copies of the notification issued by them in pursuance of the above directions.

7. In pursuance of this notification, the authorized officers in the several districts of the State allotted, in the case of each panchayat within their jurisdiction, an additional seat to one of the wards therein. It has been said on behalf of the Government that in making the allocation, the officers were acting under the instructions from the Government which sought to avoid any inequitable distribution of the seats among the several wards of a panchayat. That does not, it is argued for the Petitioners; affect the position taken by them. The principal contentions urged on behalf of the Petitioners, with reference to the above sections and the Government Order, may be stated as follows:

(1) The substitution, of the old Section 21 of the Act by Section 6 of the Amendment Act whereby the president is to be elected by the members from among them does not necessitate, as the Government thought, an addition by one member to the strength of a panchayat as previously notified u/s 6. Therefore the addition of a member to a ward is unauthorized by the Act and the elections held on that basis are illegal.

(2) Even if the Government is right in their construction of Section 21 of the Act as now amended, it is only the Inspector who can add to the strength u/s 6, The addition therefore must be notified by the Inspector under Sub-section (2) of Section 6 of the Act, and it not having been so notified, is contrary to the terms of the Statute.

(3) In any case, the allocation of the number of members to a ward can only be done by the Inspector after consulting the panchayat as enacted in Section 9 and the allocation now made without such consultation is ultra vires.

(4) There was ample time for the Inspector to have followed the procedure laid down by Sections 6 and 9 and Section 22 of the new Act did not enable the Government to get over a difficulty not necessitated by the Amended Act itself and which, in any case, could have been avoided. Even if the assertion in paragraph considered that there was not retirement time to revise the scale fixed in notification (1) published with G. O. No. 520, Local Administration, dated 24th March, 1951 bringing it in accord with the provisions of the Act as subsequently amended and to issue revised notifications fixing the number of members of the

panchayat inclusive of the president to be elected by the village", be true, mere insufficiency of time cannot be said to be a difficulty to be surmounted by the exercise of the powers u/s 22.

(5) It has also been broadly contended that Section 22 embodies an objectionable kind of delegated legislation and constitutes an abdication by the Legislature of its legislative, function, and that as such, it is void and of no effect.

8. Mr. N. V. L. Narasimharao, appearing for some of the Petitioners, impeached the validity of the division of all, panchayats into Classes I and II and the consequential differences in the mode of election of members to the two classes.

8a. Some of these petitions also question the validity of the special provision for the election of a woman member enacted by the Amendment Act.

9. I shall deal with these special contentions towards the end of my judgment.

10. Now, the first point to be considered is whether the fact that under the Amendment Act the President is to be elected by the members among themselves necessitated the addition by one to the strength of the panchayats as previously notified u/s 6. The total number of members of a panchayat notified u/s 6(1), it is clear, is firstly exclusive of its President and secondly, is determined in accordance with the scale prescribed by the Government with reference to population. It may be altered under Sub-section (2), from time to time, but only with reference to such scale. Therefore, when, for instance, such a notification provided that a particular panchayat should consist of ten members, it is clear (1) that this number does not include the President and (2) that it can only be increased or decreased in accordance with the scale prescribed by the Government with reference to population.

Under the old Section 21, the President was to be elected by direct election by all the voters and no member could be a president, though Sub-section (7) of that section provided that he was to be an ex-officio member. Now, in the given case, the strength of the panchayat as notified will certainly be reduced to nine if the President is to be elected from among that number of members. Therefore, the total strength prescribed with reference to population will be reduced by one. In my view, therefore, there is no substance in the contention that the strength formerly notified u/s 6(2) of the Act by the Inspector is unaffected by the new Section 21. It seems to me clear beyond the possibility of argument that the Government was right in its view that the new amendment necessitated the increase of the strength of every panchayat by one.

11. If that is so, the next question is whether it is only the Inspector who can direct the said addition. Sub-section (2) of Section 6 enables the Inspector to alter the total number of members of a panchayat notified under Sub-section (1), that is to say, where the total number of members has been fixed with reference to population, an addition occasioned presumably by a change in the population is to be made by him. But, the present increase is not one of that nature; it is an

addition, without reference to population and merely by virtue of the change in the principal Act effected by the Amendment Act. Hence, it is really not a matter within the power of the Inspector. The second contention, therefore, must also, in my opinion, be rejected.

12. Though the addition, is not one made by the Inspector within the meaning of Section 6 (2), still once the total number of members is increased, the allocation by notification of the extra member to a particular ward may have to be done by the Inspector u/s 9(1). Now that the word "members" in Section 9 (1) includes a prospective president, it is for the Inspector to determine, with reference to the new total number of members, the number to be returned by each ward. Therefore, the point now arises as to whether Sub-section (1) of Section 9 has not been violated by the Government because it is clear from the Government order that not only was the Inspector not consulted but it was not he who determined to which ward in a panchayat the extra member is to be allotted.

Though the Government Order proceeds upon the footing of the practical difficulty of there not being sufficient time to make (the necessary consultation, the learned Advocate-General who appeared for the Government argued that the statutory obligation of consultation did not arise in the circumstances, He contended that Section 9 (1) contemplated (I) the division of the village into wards and (2) the determination of the number of members to be returned by each ward as a single process one followed by the other and when it is a mere question of determination of the number of members without a fresh division of the village into wards, there is no need for such consultation.

He argued alternatively that even if consultation were necessary, the situation created by the Amendment Act together with the necessity of conducting elections in all the panchayats before the 30th June, 1956 (because the term of office of members in the majority of the panchayats in the State expired between some day in January and the 30th of June) gave rise to a difficulty, which the Government had to meet by invoking their power u/s 22 of the Amendment Act. It is true that Section 9 (J) as it stood before the Amendment Act came into force, could only have referred to the members (other than the president) notified u/s 6 (1).

But, after the Amendment Act came into effect, the word "members" in this section must mean the members as determined u/s 6 (I) together with the president. That being so, there can be little doubt that the Inspector would be under a statutory obligation to consult the panchayats when he divides the villages into wards and determines the number of members to be returned by each of them. I am inclined to agree, however, with the learned Advocate General that where the number of members to be returned by each ward is determined without reference to an immediately preceding division of the village into wards, there is no necessity for consultation. I am, also disposed to agree with the argument based upon the terms of the Government Order that in view of the necessity of having to give effect to the Amendment Act in the ensuing

elections there was not enough time to make such consultation practicable.

It is to be noted that the number of panchayats to be consulted is in the neighbourhood of 4,000. In some cases the old panchayats were due to go out of office even as early as some date in January and all of them were to cease to exist by the 30th of June. The Government could not make a distinction between the panchayats which would go out of existence in January and those which would do so in June. They could not consult some and avoid consulting others. This situation necessitated a uniform policy. The temporary difficulty thus occasioned in giving effect at once to the principal Act as amended had therefore to be overcome by the exercise of the powers vested in the Government u/s 22 of the Amendment Act.

This argument is attempted to be countered by the Petitioner's counsel by pointing out that the proviso u/s 10 (1) enabled the Inspector to extend the term of office of the members of any panchayat as a whole and that if he had done so, he would have had ample time for consultation. The Inspector was not, however, in my judgment bound to extend the term in all these cases just to go through the process of consultation in regard to the allotment of a single seat when, even after consultation, the ultimate decision rested entirely with him. It is, in my opinion, the division of wards that is really of consequence, and not the determination of the number of members to be elected by each ward. The division into wards depends largely upon a knowledge of local conditions and is not merely to be affected with reference to the number of voters in each ward.

Upon such a matter, the opinion of the panchayats would obviously be valuable. But, as regards the allocation of the number of members to each ward, it could only be more or less with reference to some principle applicable to all panchayats and is not so clearly a matter the decision of which could be said to turn upon local knowledge. In those circumstances, even assuming that the Government might have directed the Inspector to extend the term of all the panchayats and to consult them, it can very well be said that such a consultation solely for the purpose of allotting a single seat would have been not only of little avail but would have involved a serious loss of public time and money. It is true, as pointed out by Mr. N. V. L. Narasimharao who appeared for some of the Petitioners that Article 40 of the Constitution of India enjoins the State to "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.

13. But, I cannot agree that non-consultation on, the present occasion is against the spirit of this Article, assuming that such a consideration can affect our decision.

14. The learned Advocate-General has further argued that at all events, as the elections in all the panchayats where elections were due this year were concluded by the time these petitions before us, even if we should come to the

conclusion that consultation was obligatory, that there, was no real difficulty in meeting that obligation, (as the Government thought there was) and that if, any such difficulty was there, it could have been surmounted by other means than resort to the provisions of Section 22 of the Amendment Act, we must still decline to interfere in all these petitions because of the enormous waste of public money and time that fresh elections would involve. He has argued that similar statutory provisions about consultation have been held to be directory and not mandatory and that a violation of the provision as to prior consultation does not vitiate the elections so as to render them void. He has referred us to AIR 1945 67 (Federal Court) at p. 68 (A), and J. K. Gas Plant Manufacturing Co. v. Emperor, AIR 1947 FC 38 (B). In the earlier case, it is true that the observations of the learned Judges are only obiter, but they are entitled to the greatest weight as they seem to have been advisedly made. The question before them was as to the effect of Section 256 of the Government of India Act, 1935, which ran as follows:

No recommendation shall be made for the grant of magisterial powers or of enhanced magisterial powers to or the withdrawal of any magisterial powers from, any person save after consultation with the District Magistrate of the district in which he is working, or with the Chief Presidency Magistrate, as he case may be.

15. In the first place, they held that there was nothing on record to indicate that no such consultation took place. They then proceeded to add:

We are further of the opinion that the direction laid down in Section 256 is directory and not mandatory and that non-compliance with it would not render an appointment otherwise regularly and validly made ineffective or inoperative. It seems to us that any other view would lead in many cases to results which could not have been intended by Parliament and would entail general inconvenience and injustice to persons who have no control over those entrusted with the duty of making recommendations for the grant of magisterial powers.

16. The second case of the Federal Court was concerned inter alia with the question as to whether Schedule 9, Section 40 (1) of the Government of India Act, 1935, was or was not mandatory. The principles enunciated therein with reference to the determination of the question as to whether a statutory provision is directory or imperative have been recently applied by a "Bench of this Court in Krishnan v. Secretary, R. T. A Chittoor, 1956 AP WR 142 : ((S) AIR 1956 AP 129) (C). The following passage in the judgment of the Federal Court may be usefully extracted (Page 41):

The general principles on which Courts have to decide such cases as this, where a statute requires that something shall be done in a particular manner without expressly declaring what shall be the consequences of non-compliance, are in our judgment accurately and conveniently set out in Section 3-"Imperative or Directory""-on pages 372-374 of Maxwell. It is to be noted that the question

whether the provision is affirmative or negative forms a material bearing. If it is in the affirmative it is a weaker case for heading the provisions as mandatory, *Vita Food Products Incorporated v. Enus Shipping Co., Ltd.*, 1939 AC 277 (D).

17. Then they proceeded to discuss certain questions which, in their judgment, they had to consider before coming to a conclusion as to whether the provision in question was mandatory or directory. The three following questions would arise in the present case, if we adopt that procedure to these facts.

Firstly, would the whole aim and object of the Legislature in making the provision be defeated if elections which took place on the basis of division of wards and allocation of a number of members to each ward without prior consultation of the panchayat be not held to be invalid? Secondly, would the construction contended for by Petitioners involve general inconveniences and injustice without promoting the real aim and object of the Legislature? Thirdly, is the construction suggested in conformity with the whole scope and purpose of the Act? The answers to these questions must, in my opinion, be against the contentions of the Petitioners.

It is true that Section 9 (1) begins by saying for the purpose of electing members to a panchayat. But, is that purpose completely defeated if the process of division into wards and allotment of a number of members to a ward takes place without the panchayat being consulted? I do not think so. The primary object of the statute is to ensure election of members to a panchayat. That cannot be said to have been wholly defeated by any particular arrangement of the wards or distribution of the members as among them. So far as the second question is concerned, it seems to me clear that the failure on the part of the Inspector to do his duty should not affect the members elected to the panchayat nor should it cause loss of public time and money.

As regards the third question, I cannot see that the scope and purpose of the Act demand a construction giving a mandatory rather than directory effect to the words in question. It appears to me that though the provision now under consideration is a salutary and necessary one and must in all cases, as far as practicable, be complied with, all elections following upon such non-compliance are not necessarily invalidated. In my opinion, considerations of convenience and justice as well as the aim and object of the enactment do not lead to the conclusion that the non-observance of the procedure laid down nullified everything that took place thereafter.

18. The learned Advocate-General also points out that now that the old panchayats have become extinct, it would be futile to direct the Inspector to make the necessary consultation. No writ of mandamus issued by us to that effect could conceivably be obeyed. The contention is also urged by him that this objection is taken in each of these cases not by the panchayat that was not consulted but by either a mere rate-payer or a member or an ex-president of a panchayat that is no more and that a writ should not issue at the instance of any person other than the body who has the right to be consulted. It seems to me

unnecessary to deal with this point for the present purpose, as my decision will rest on other grounds.

19. I shall now turn to the general question whether a provision like Section 22 of the Amendment Act should be struck down as unconstitutional in that it is tantamount to a surrender of the legislative function by the Legislature in favour of the Executive. I may start by saying that if the conclusion above-reached is right that even if the election were improperly held there is no way of remedying what has happened, it would be unnecessary for us to pronounce a final opinion upon this contention. On this point, however, our attention has been drawn to a decision reported in *Sashibhusan Pati Vs. Mangala Biswal*, (E). " In that case, Section 17 of the Orissa Tenants' Protection Act, which is in similar terms, was impugned as invalid. While the learned Chief Justice reserved his opinion on that matter for fuller consideration, Narasimham, J. the other Judge held that it was valid. In doing so, he observed at p. 174 as follows:

It will be noticed that unlimited powers are not given to the Government to do anything which they like for the purpose of removing any difficulty. The section makes it clear that if any difficulty arises ""in giving effect to the provisions of the Act"" the Government may do anything necessary for the purpose of removing the difficulty. A provision of this type usually known as the "Henry VIII clause" is a well-known drafting device which is found in several Acts (Indian and British) such as Section 44 of the Calcutta Municipal Act, 1923, (Beng. Act III of 1923), Section 8(4), Madras Medical Registration (Amendment) Act, 1938 (Mad. Act XVI of 1938), Section 90, Road Traffic Act, 1938 T20 and 21 Geo. V, C. 43) and Section 45, Unemployment Insurance Act, 1920 (10 and II Geo. V, C. 30). The necessity for such a provision will lie clear from the following passage at page 332 of Hart's Introduction to the Law of Local Government and Administration" third edition:

Politically the justification for the use of this type of clause is that Parliament has approved of the general principle embodied in the legislation which contains it, and wishes to see it set into operation immediately. The best brains may fail to foresee some special difficulty which may only arise when the machinery of the Act comes to be put into actual operation. If such a difficulty should arise, it may be assumed that Parliament would be prepared to give its assistance in removing it by passing amending legislation; but this course would involve delay and Parliament accordingly" a priori delegates the power to remove difficulties to Ministers, who have proposed the legislation in question and in whom it has confidence". The impugned Act made drastic changes in the existing tenancy laws mainly in favour of the Bhagchasis and the Legislature could not obviously foresee and make adequate provision for all practical difficulties that may arise in giving effect to its provisions. It, therefore, delegated this power to the Government.

19a. In passing, it may be pointed out that there is a similar provision, viz., Section 138, in the principal Act itself.

20. In re Article 143, Constitution of India and Delhi Laws Act (1912), etc., AIR 1951 SC 332 (F), Fazl Ali J. has laid down the following propositions at p. 355:

(1) The Legislature must normally discharge its primary legislative function itself and not through others. (2) Once it is established that it has sovereign powers within a certain sphere, it must follow as a corollary that it is free to legislate within that sphere in any way which appears to it to be the best way to give effect to its intention and policy in making a particular law, and that it may utilize any outside agency to any extent it finds necessary for doing things which it is unable to do itself or finds it inconvenient to do. In other words, it can do every thing which is ancillary to and necessary for the full and effective exercise of its power of legislation. (3) It cannot abdicate its legislative functions, and therefore while entrusting power to an outside agency; it must see that such agency acts as a subordinate authority and does not become a parallel legislature. (4) The doctrine of separation of powers and the judicial interpretation it has received in America ever since the American Constitution was framed enables the American Courts to check undue and excessive delegation but the Courts of this country are not committed to that doctrine and cannot apply it in the same way as it has been applied in America. There-fore, there are only two main checks in this country on the power of the legislature to delegate, these being its good sense and the principle that it should not cross the line beyond which delegation amounts to "abdication and self-effacement".

Mahajan, J., (as he then was) who was in a minority in this case and was inclined to hold that Section 7 of the Delhi Laws Act was invalid and ultra vires of the Legislature that passed it, in a later case, however, reported in Harishankar Bagla and Another Vs. The State of Madhya Pradesh, (G) in pronouncing the judgment of the Supreme Court, did not depart from the principles enunciated above. One of the questions decided in this later case was whether Section 6 of the Essential Supplies (Temporary Powers) Act, 1946 was invalid. Under an earlier section of that Act, viz., Section 3, powers were conferred upon the Central Government to pass orders providing inter alia for regulating or prohibiting the production, supply and distribution of any essential commodity and trade and commerce therein and also for regulating by licenses, permits or otherwise the production or manufacture of any essential commodity. Section 6 which followed it was as follows:

Any order made u/s 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

In repelling the contention that this provision was unconstitutional, the learned Judge observed as follows at p. 469:

In the view of the High Court the power to-do something which may have the effect of repealing by implication, an existing law could not be delegated in view of the majority decision of this Court in. AIR 1951 SC 332 (F) where it was held that to repeal or abrogate an existing law is the exercise of an. essential

legislative power. The learned Judges of the High Court thought that the conferment of power of the widest amplitude to make an order in consistent with the pre-existing laws is nothing short of a power to repeal.

In our opinion, the construction placed on Section 6-by the High Court is not right. Section 6 does not either expressly or by implication repeal any of the provisions of pre-existing laws; neither does it abrogate them. Those laws remain untouched & unaffected so far as the statute book is concerned. The repeal of a statute means as if the repealed statute was never on the statute book. It is wiped out from the statute book. The effect of Section 6 certainly is not to repeal any one of those laws or abrogate them. Its object is simply to bypass them or where they are inconsistent with the provisions of the Essential Supplies (Temporary Powers) Act, 1946 or the orders-made there under. In other words, the orders made u/s 3 would be operative in regard to the essential commodity covered by the Textile Control Order wherever there is repugnancy in this Order with the existing law's and to that extent the existing laws with regard to those commodities will not operate. Bypassing a certain law does not necessarily amount to repeal or abrogation of that law. That law remains unrepealed but during the continuance of the order made u/s 3, it does not operate in that field for the time being. The ambit of its operations thus limited without there being any repeal of any one of its provisions.

Conceding, however, for the sake of argument, that to the extent of a repugnancy between an order made u/s 3 and the provisions of an existing law, to the extent of the repugnancy, the existing law stands repealed by implication, it seems to us that the repeal is not by any act of the delegate, but the repeal is by the legislative act of the Parliament itself. By enacting Section 6, Parliament itself has declared that an order made u/s 3 shall have effect notwithstanding any inconsistency in this order with any enactment other than this Act. This is not a declaration made by the delegate but the Legislature itself has declared its will that way in Section 6. The Abrogation or the implied repeal is by force of the legislative declaration contained in Section 6 and is not by force of the order made by the delegate u/s 3. The power of the delegate is only to make an order u/s 3. Once the delegate has made that order its power is exhausted. Section 6 then steps in wherein the Parliament has declared that as soon as such an order comes into being that will have effect notwithstanding any inconsistency therewith contained in any enactment other than this Act. Parliament being supreme, it certainly could make a law abrogating or repealing by implication provisions of any pre-existing law and no exception could be taken on the ground of excessive delegation to the act of the Parliament itself. There is no delegation involved in the provisions of Section 6 at all and that section could not be held to be unconstitutional on that ground.

21. Prof. Schwartz in his Law and the Executive in Britain (Edn. 1949) points out that a power to remove difficulties arising with respect to the holding of the first Parish meeting or the first election of Parish or District councillors was conferred

on the executive in England under the Local Government Act of 1894 and a few other Statutes of that kind.

22. It seems to me that the Legislature has not, in enacting Section 22 transgressed the limits of permissible delegation. The boundaries of the power granted to the Government are clearly defined and demarcated and it can only act in order to remove difficulties of the nature specified, viz., those that may arise in implementing the scheme of constitution of panchayats, shaped and determined by the Legislature. I may notice in this connection that in America the rule seems to be that legislative power can be conferred upon the executive branch provided that the grant of such authority is limited by prescribed standards. But, as pointed out by the abovementioned author in his American Constitutional Law, 1955 "edition at p. 290:

The American law on the subject of permissible delegation of legislative power has been tending to approach that which prevails in Britain." He adds:

Provided that there is no abdication of the confessional function, the enabling law will be upheld, even though the only standard which the federal courts can find is so broad as to be almost illusory.

I do not think that the power to remove difficulties of a particular character is so vague and indefinite as to make it an unconstitutional delegation.

23. For the foregoing reasons, I am inclined to accede to the argument of the learned Advocate-General that, in enacting Section 22 of the Amendment Act, the Andhra Legislature did not abdicate its legislative authority.

24. To conclude, I hold that a difficulty arose in giving effect to the principal Act as amended by the Amendment Act and that the Government was justified in taking the action that they did by issuing, through the impugned G. O., directions to their subordinates to do certain things in order to get over the difficulty. I am also of the opinion that the provisions of , Section 9 (1) are not imperative and non-compliance therewith does not entail invalidity of the elections that have been held and that, in any case, that there is no use in now directing the Inspector to comply with the provisions of Section 9 (1) because the panchayats whom he should have consulted are all to-day defunct. Therefore, I consider that all the contentions urged on behalf of the Petitioners must fail.

25. I have mentioned at the outset two contentions specially raised by Mr. N. V. L. Narasimharao - (1) attacking the division of all panchayats into two classes and (2) the consequential differences particularly in the mode of election of members. Now, Section 5 of the Act deals with the classification of panchayats in these terms:

5. (1) (a) Classification of Panchayats.-The Government shall classify panchayats with jurisdiction over a population estimated at not less than five thousand and with an estimated annual income of not less than ten thousand rupees as Class I panchayats.

(b) Other panchayats shall be known as Class II panchayats.

(2) The Government may alter the classification of a panchayat if in their opinion the panchayat satisfies or ceases to satisfy the conditions referred to in Sub-section (1), Clause (a).

It will be noticed that it is the policy of the Act to declare every revenue village of not less than 500 in a village for the purpose of having a separate panchayat. But, there are villages of varying population and of varying income. In the case of Class I panchayats, the executive authority will be the Executive Officer appointed while in the case of Class II panchayats, unless they are notified, the executive authority is the president. It is only small villages that are classified as Class II panchayats. The original Act provided by Section 71 that "the Government shall set apart every year a sum not being less than twelve and a half per cent, of the total land revenue (including watercess) collections of the province and distribute such sum in the prescribed manner as grants to Class II panchayats.

On the basis of their population presumably because they would be unable to collect sufficient funds for local purposes. In the case of Class I panchayats, the funds were primarily to come out of local taxation and a portion of the, land cess collected in the villages. Having regard to the population and the local income, the Government made a necessary distinction between the nature of the assistance it has to render to the one class or the other. The classification is, therefore, not unreasonable and cannot be assailed as not being related to any rational purpose. Indeed, it was so held by the Madras High Court in *Madathil Ahmed Haji Vs. Muthana Kunhirama Kurup and Another*, (H).

26. As regards the difference in the mode of election, it is said that in the case of second class panchayats, under the new rules, every voter has to declare to the Election Officer his preference between the rival candidates for president ship in their presence. This rule is said to have superseded the earlier one whereby the election was by open voting instead of by secret ballot. In the above-noted case it was also held that open voting, so prescribed, was not invalid though their Lordships observed as follows:

While we are prepared to hold that the rules providing the method of open voting for election to the smaller panchayats are neither invalid nor unconstitutional, we cannot refrain from expressing the hope that the Government will be able to devise cheaper machinery for the conduct of elections by secret voting, so that it may be possible to introduce that method to every panchayat irrespective of its population or income.

It is urged by Mr. N. V. L. Narasimharao that the present change is for the worse and that we should strike it down as invalid. I cannot see my way to accept this contention. We are bound by the decision quoted above and if open voting be not invalid then there can be no objection either, to the present procedure, I, therefore, reject the contentions raised by Mr. N. V. L. Narasimharao.

27. Mr. Chirmappa Reddy following the learned Advocate-General has stated that in some of these cases, the Petitioners took part as candidates in the recent elections and, having been defeated, are now seeking to impeach them, and that they should not be allowed to question the legality of these elections because that would be allowing them to blow hot and Cold. He referred us to this connection to a decision reported in A.R.V. Achar Vs. Madras State and Another, (I). There, it was pointed out that "where a man with the knowledge of the irregularity of particular course nevertheless concurs in it, he cannot afterwards take advantage of the irregularity.

Their Lordships held that the Petitioner in that case had, by his conduct, precluded himself from obtaining any relief in the petition before them. As most of these petitions are being decided on other grounds it is unnecessary to deal particularly with the case of the Petitioners affected by such conduct. I how-over respectfully concur in the principle enunciated by that decision.

28. Some of these petitions attack the validity of Section 10-A inserted by the Amendment Act, the material portion of which is as follows:

10-A (1) (a). The members of the panchayat shall elect in the manner prescribed a woman residing in the village to be a member, of the panchayat.

It is urged that this section makes a discrimination between man and woman which is not justified by the Constitution. The contention has no direct bearing upon the validity or the invalidity of the elections that have taken place in all the panchayats and can only be raised in cases where a woman member has already been elected in accordance with this provision. However, I do not think that there is any force in the argument so raised. It is well-known that in this country women, generally speaking, do not take much part in public life. It is necessary, in order to encourage them to do so, to make special provisions facilitating and if possible, necessitating their entry into these units of self-Government. Most of these bodies consist only of men and even a public spirited woman would find it difficult to get an entry therein without a statutory privilege of this sort. I fail to see how such a provision violates the rule of equality embodied in Article 14 of the Constitution.

29. We now propose to deal with each of the cases separately on the basis of these findings.

Satyanarayana Raju, J.

30. I am in general agreement with the conclusions reached by my learned brother, Bhimasankaram J.

31. The Madras Village Panchayats Act, 1950, was amended by the Madras Village Panchayats (Andhra Second Amendment) Act, 1955 (hereinafter referred to as "the Amendment Act"). The arguments advanced by the learned Counsel appearing on behalf of the several Petitioners covered a wide ground. The main target of attack, however, has been Section 22 of the Amendment Act and the

order of the Government which purports to have been made pursuant to the power conferred by that section.

32. Section 22 runs thus:

If any difficulty arises as to the reconstitution or constitution of any panchayat after the commencement of this Act, or otherwise in giving effect to the provisions of this Act, or of the principal Act as amended by this Act, the State Government, as occasion may require, may, by order, do anything which appears to them necessary for the purpose of removing the difficulty.

33. This section contains words of remarkable comprehensiveness and empowers the State Government to do anything which appears to them necessary for the purpose of removing any difficulty which arises in giving effect to the provisions of the Act. This kind of broad rule-making power has been classified by Bernard Schwartz as the blank cheque type where Parliament gives the rule-making authority a blank cheque to do anything it thinks proper for securing a certain object. The extreme form of such delegation is the "Henry VIII Clause" named after that monarch "in disrespectful commemoration of his tendency to absolutism".

34. In general this type of delegation of power is to be found in statutes which have either enacted some far-reaching scheme of administrative reform or have created some entirely new piece of State machinery. In legislation of this kind no matter how careful and exact the preliminary work may have been, it is practically impossible not to overlook some special or exceptional cases which ought to have been dealt with, or to foresee every difficulty which may arise in the course of bringing into operation a new and complicated administrative machine. As has been pointed out by Bernard Schwartz in *Law and the Executive in Britain*, "the task of translating the statutory scheme into practical reality is greatly facilitated by the Power to deal with unforeseen contingencies arising out of the execution of the legislative programme Without the need of statutory amendment."

35. The following passage from Martts' Introduction to the law of Local Government and Administration, at page 332, contains what all can be said in support of such a provision:

Politically the justification for the use of this type of clause is that Parliament has approved of the general principle embodied in the legislation which contains it, and wishes to see it set into operation immediately. The best brains may fail to foresee some special difficulty which may only arise when the machinery of the Act comes to be put into actual operation. If such a difficulty should arise, it may be assumed that Parliament would be prepared to give its assistance in removing it by passing amending legislation, but this course would involve delay and Parliament accordingly "a priori" delegates the power to remove difficulties to Ministers, who have proposed the legislation in question and in whom it has confidence.

36. As has been rightly pointed out by the learned author, this modern legislative device is adopted to meet difficult situations which could not have been foreseen and could not have been provided for and as an insurance against possible oversight. Although constitutional experts are convinced that this device is a regrettable necessity, it has been found in practice that with a little forethought, a form of delegation so widely criticized, need not in fact be employed.

37. This form of delegation has excited the most vehement criticism in England. The Donoughmore Committee, without proposing the total abolition of this type of clause, recommended that it should be abandoned in all but the most exceptional cases, and should not be permitted by Parliament except upon special grounds stated in the Ministerial Memorandum to the Bill. Allen in his Law and Orders points out that actually the recommendation by the Donoughmore Committee has, up to the present time, resulted in the virtual abolition of the clause, that it has not been used since the report and in various big and complicated Acts since 1932, such as the Local Government Act, 1933, and the Public Health Act, 1936, the executive has achieved what it declared to be impossible. In a democracy like ours, it is of the utmost importance that parliamentary control should be more effective than in a country like England where parliamentary institutions have been in existence for a very long time. A power like the one conferred u/s 22 should be used only very sparingly and to resolve some difficulty which the best brains may fail to foresee. I am not altogether convinced that a situation like the one that has now arisen could not have been foreseen.

38. On the general question as to the permissible limits within which the Legislature can delegate its power, we have the judgment of their Lordships of the Supreme Court in AIR 1951 SC 332 (F), which contains a clear and exhaustive enunciation of the principles. Fazl Ali, J, summarised his conclusions at page 571 as follows:

1. The Legislature must normally discharge its primary legislative function itself and not through others,
2. Once it is established it has sovereign powers, within a certain sphere it must follow as a corollary that it is free to legislate within that sphere in any way which appears, to it to be the best way to give effect to its intentions and policy in making a particular law and that it may utilize any outside agency; to any extent it finds necessary for doing things which it is unable to do itself or finds it inconvenient to do. In other words it can "do every thing which is ancillary to and necessary for the full and effective -exercise of its power of legislation".
3. It cannot abdicate its legislative functions and therefore while entrusting power to an outside agency, it must see that such agency acts as a subordinate authority and does not become a parallel Legislature.
4. There are only two main checks in India on the power of the Legislature to delegate, these being its good sense and the principle that it should not cross the

line beyond which delegation amounts to. "abdication and self-effacement".

39. Judged by the principles laid down by their Lordships of the Supreme Court Section 22 of the Amendment Act does not, in my opinion, amount to an abdication of power by the Legislature.

40. On the basis of the judgments just now delivered, it is stated that W. P. No. 304 of 1959 fails. This petition is therefore dismissed; but, in the circumstances, without costs.

41. On the basis of the judgments delivered in W. P. No. 304 of 1956, W. P. Nos. 349, 350, 352, 353, 364, 366, 388, 390, 404, 413, 414, 415, 416, 423, 425, 430, 441, 443, 445, 446, 447, 448, 450, 452, 454, 455, 456, 462, 464, 465, 467, 468, 473, 474, 475, 479, 481, 482, 483, 484, 485, 486, 487, 488, 489, 491, 492, 497, 498, 500, 503, 506, 507, 510, 512, 513, 520, 522, 523 to 529, 533 to 536, 538, 542, 544, 547, 548, 550, 551, 554 to 557, 560 to 565, 568, 569, 572, 575, 576, 578, 581, 582, 583, 586, 587, 590, 594, 596, 597, 599, 601, 603, 605 to 611, 617 to 622, 624, 625, 626, 628, 629, 637, 638, 640, 642, 644, 646, 647, 648, 651, 653, 654, 656 to 659, 662, 664, 665 to 668, 672, 674, 677 to 681, 683, 688, 690, 691, 694, 695, 696, 700, 701, 703, 717, 729, 743, 413, 707, 711, 712, 715, 736, 737, 738, 742, 730, 732, 733, 413, 492, 527 and 572 of 1956 are dismissed.