
(2010) 12 GAU CK 0031

In the Gauhati High Court

Case No : WP (C) 3985, 4287, 4542,4543, 4544, 4570,4571,4572, 4573,4640, 4574, 4767,4771, 4889, 4930,4993, 4934, 4998, 5064, 5081, 5082, 5093, 5206, 5319, 5330, 5331, 5553,5672, 5765, 5785 of 2010

Principal Seat Jahangir Alom & Ors.

APPELLANT

Vs

State of Assam & Ors.

RESPONDENT

Date of Decision : 15-12-2010

Acts Referred:

Assam Panchayat Act, 1994 — Section 123(2), 123(2), 19, 19, 22, 22

Citation : (2011) 5 GLT 454

Hon'ble Judges : T.Vaiphei, J

Bench : Single Bench

Advocate : Advocates appeared for the Petitioners: Md. B. Islam, Mr. M. Haque, Dr. B. Ahmed, Mr. N. Haque, Mr. G. Uddin, Mr. HRA Choudhury, Mr. F. U. Borbhuya, Mr. A. Matin, Ms. R. Choudhury, Mr. A. M. Buzarbaruah, Ms. M. Barman, Mr. I. Hussain, Mr. D. Ghosh, Mr. M. Islam, Mr. A.K. Sarma, Mr. H. Deka, Ms. P. Gogoi, Mr. S.C. Biswas, Mr. S. Das, Mr. M. Biswas, Mr. S. U.Ahmed, Mr. L. R. Mazumder, Mr. E. Ahmed, Mr. N. Dutta, Ms. B. Bhuyan, Mr. B. Talukdar, Mr. M. Das, Mr. J. Islam, Mr. A. M. Mazumder, Mr. M. U. Mondal, Md. B. Rahman, Mr. M. H. Choudhury, Ms. L. N. Choudhury, Ms. D. J. Borah, Mr. B. K. Mahajan, Dr. B. Ahmed, Mr. J. Haque, Mr. A. Choudhury, Mr. R. Ali, Mr. K. Uddin, Mr. S. K. Deori, Mr. H. I. Choudhury, Mr. K. Uddin, Mr. S. R. Barbhuiya. Mr. K. Islam, Mr. R. K. Jain, Mr. J. Abedin, Mr. K. I. Majumdar, Mr. M. Khan, Md. K. Rahman & Mr. I. A. Hazarika, Advocates appeared for the Respondents; GA, Assam, SC, FCI,, Advocates appearing for Parties

Judgement

T. Vaiphei, J.—This batch of 30 writ petitions virtually involving identical facts and a common question of law were heard together on 11.11.2010, and are now being disposed of by this common judgment. In all these petitions, the grievances of the petitioners are directed against the decision of the Staterespondents to entrust the task of identifying the beneficiaries for the scheme under "Mukhiya Mantir Anna Suraksha Yojana, 2010 ("MMAS Y" for short) to a Selection Committee constituted by them and not to Gaon Sabha and Gaon Panchayats constituted under the Assam Panchayat Act, 1994. As the facts

in all the writ petitions are somewhat identical, it is not necessary to deal with individual cases separately. Suffice it to refer to the facts on W. P. (C) No. 4543 of 2010, which are illustrative of the material facts in the remaining writ petitions, for deciding the controversy: this decision will then automatically govern and decide the remaining 29 writ petitions.

2. In WP (C) No. 4543 of 2010, all the petitioners are Gaon Panchayats established under Section 5 of the Assam Panchayat Act, 1994 ("the Panchayat Act" for short) falling within the Pachim Mangaldai Development Block and are represented by their respective elected Presidents. The petitioner No. 1 is the Aula Chowka Gram Panchayat with a population of 12,000, while the petitioner No. 2 is the Jaljali Gaon Panchayat having a population of 10,500. The petitioner No. 3 is the Dahi Gaon Panchayat with a population of 11,500, while the petitioner No. 4 is the Janaram Chowka Gaon Panchayat having a population of 11,000. Similarly, the petitioner No. 5 is the Rangmati Gaon Panchayat with a population of 13,000. All the petitioners admittedly belong to the opposition political party. It is the case of the petitioners that under the provisions of the Act, various functions are assigned to the Gaon Panchayat such as mobilizing voluntary labour and contribution in kind and cash for the community welfare programmes and identification of ("beneficiaries for the implementation of development scheme pertaining to villages, which are implemented by them through Gaon Sobha. The Gaon Panchayats are discharging their duties on the recommendations of their respective Gaon Sobhas, and identification of the beneficiaries for various schemes are also done by them on the suggestions of the Gaon Sobhas. It is also the case of the petitioners that the devolution of activities concerning the public distribution systems among the various Panchayats has also been reiterated by a Gazette Notification published in the Assam Gazette Extraordinary, dated June 25, 2007. By this Notification, it has been made clear that the selection of beneficiaries for various schemes shall be done by the Gaon Panchayat and accordingly all the Gaon Panchayats headed by the petitioners have been identifying and selecting the list of beneficiaries for various schemes till today in consultation with their respective Gaon Sobhas: at no point of time was there any complaint made against the petitioners from any quarter in the identification exercises carried out by them.

3. It is the further case of the petitioners that the Government of Assam has recently introduced the MMASY scheme for the economically backward families who could qualify for inclusion in the BPL (Below Poverty Line) category, but due to the norms prescribed by the Government of India, have remained deprived of the benefits of such BPL scheme. This scheme was proposed to be implemented from 15.08.2010 by the Food and Civil Supplies and Consumer Affairs Department through Public Distribution System (PDS) network. In furtherance of this scheme, the Principal Secretary to the Government of Assam, FCS & CA Department issued the Notification No. FSA42/2010 dated 18.06.2010 constituting the Selection Committee for different Block Development Officer of Darrang District for the purpose of selection of the beneficiaries in accordance

with the Guidelines of the State Government for providing 10 Kgs. of subsidized rice at BPL rates to the poorest of the poor families from the lower strata of the APL (Above Poverty Line) category who were thus left out of the BPL category. As per the said Guidelines, selection of beneficiaries is to be done by the Notified Selection Committee, which comprises of the Block Development Officer of the area as the Chairman with three Members, one of whom will be one PRI (Panchayati Raj Institution) member and two Social Workers, one of whom will be a woman. By the same Notification dated 18.06.2010, Committee for Pachim Mangaldai Development Block was constituted with the following:

(1) BDO Pachim Mangaldai Chairman

(2) Smt. Anupama Kalita, President, Chapoi G. P. Member

(3) Yunus Ali Member

(4) Lakhan Saharia Member 4. It is alleged by the petitioners that all the 3 Members of this Selection Committee belong to the ruling Congress Party: Smt. Anupama Kalita was elected as Chapoi Gaon Panchayat on Congress ticket while Shri Yunus Ali is an active member of Darrang District Congress Committee. Similarly, Shri Lakhan Saharia is the President of Darrang Congress Kishan Morcha. The contention of the petitioners is that the task of selecting the beneficiaries for MMAS Y and other schemes meant for the economically backward families is entrusted by the provisions of the Act upon Gaon Sobhas and Gaon Panchayats and the impugned notification constituting the Selection Committee with members of the ruling party is in contravention of Sections 4 and 19 of the Panchayat Act. It is also contended by the petitioners that the device adopted by the Staterespondents in selecting the members for the said Selection Committee is not only illegal but is also done to ensure selection of the beneficiaries on purely political consideration. The impugned action has also deprived the petitioners of their legitimate functions to select those beneficiaries under the Panchayat Act and is therefore, discriminatory, arbitrary, mala fides, unjust, unfair and unreasonable. Hence, this writ petition seeks the intervention of this Court for safeguarding the legitimate functions and powers of the Gaon Panchayats.

5. The writ petition is opposed by the Staterespondents. As desired by the learned Additional Advocate General, the affidavit in opposition filed by the Staterespondents in W. P. (C) No. 4767 of 2010 is treated as the common affidavit in opposition for all the writ petitions. Shorn of unnecessary details, the case of the Staterespondents is that the MMASY scheme is the outcome of the Budget Speech, 2010¹¹ made by the Hon'ble Chief Minister on the floor of the Assembly. Under this scheme, 10 Kgs. of Grade "A" rice are intended to be provided to each of the selected 13 lakhs poor beneficiary families of the lowest strata of the APL and other families every month at the rate of Rs. 6/ per Kg. The scheme is meant to provide food security to the deprived families, who, but for the upgradation of Government of India guidelines on poverty identification,

would have been included in the BPL category. With a view to implement the scheme, the Staterespondents have formulated the guidelines stipulating that this special scheme would be done by the Department of Food, Civil Supplies, while the distribution of the subsidized rice would be done through the PDS network. The "mother statute" that would regulate the effective implementation of the scheme is the Essential Commodities Act, 1955 and the control orders framed there under. It is reiterated that the scheme is a special scheme designed to provide food security to the deprived families and the Government took a conscious policy decision to implement the scheme through the Department of Food and Civil Supplies. The answering respondents assert that MMASY is not a rural development scheme under the provisions of the Panchayat Act and, as such, reliance placed by the petitioners upon Section 4 (8) and Section 19(XII) (2) and (3) of the Panchayat Act is misconceived. It is also asserted by the answering respondents that MMASY cannot strictly be construed as a poverty alleviation scheme: it rather is a food security system to provide subsidized rice of 10 Kgs per month per family at the rate of Rs.6/ per Kg to the targeted group. According to the respondents, the Staterespondents, having regard to impracticability aspect also, does not consider it expedient to directly involve the Gaon Sabha in the process of selection of the beneficiaries of this scheme. The answering respondents emphasize the fact that the scheme, which is not otherwise violative of any constitutional or statutory provisions, is a timebound programme which is to be implemented between 15.08.2010 and March, 2011. As the writ petition is devoid of merits, so submits the answering respondents, the same is liable to be dismissed with costs. There are the sum and substance of the case of the Staterespondents.

6. The Constitution of India envisages the establishment of Panchayati Raj Institutions in rural areas to provide institutions of selfGovernment at the grass root level and to give these institutions continuity, certainty and strength. In fact, this is the mandate of the Directive Principles of the State Policy. Article 40 of the Constitution, which is fundamental to the governance of this country, says that the State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of selfgovernment. Part IX of the Constitution containing Articles 243 to 243O has been inserted by the Constitution (Seventythird Amendment) Act, 1992 to make constitutional provisions for setting up institutions of selfgovernment in rural areas to be called Panchayats. Article 243B deals with the constitution in every State of Panchayats at the village, intermediate and district levels. Article 243C provides for the compensation of Panchayats, while Article 243D prescribes reservation of seats for Scheduled Caste and Scheduled Tribes in every Panchayat Article 243E fixes the tenure of Panchayats, while Article 243F prescribes the conditions for disqualification of membership of the Panchayats. Then there is Article 243G, which is the meat of the matter here and is engrafted in the following terms:

"243G. Powers, authority and responsibilities of Panchayats. Subject to the

provisions of the Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of selfgovernment and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to?

- (a) the preparation of plans for economic development and social justice;
- (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule."

7. Thus, under Article 243G of the Constitution, the State Legislatures, subject to the provisions of the Constitution and also subject to such conditions as may be specified therein, may, by law, devolve upon the Panchayats powers and responsibilities at the appropriate levels concerning the preparation of plans for economic development and social justice and the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in eleventh Schedule. In view of the aforesaid Amendment of the Constitution, it became necessary to amend and consolidate the existing laws relating to Panchayats in Assam. Consequently, the Legislative Assembly of Assam enacted "The Assam Panchayat Act, 1994" ("Panchayat Act" for short). The Panchayat Act also envisages the constitution of Zilla Parishad at the district levels, Anchalik Panchayats at the intermediate level and Gaon Panchayat at the village level. It may be noted that the subjects, namely, "poverty alleviation programme" and "public distribution system" are enumerated in item Nos. 16 and 28 respectively of the Eleventh Schedule to the Constitution. In this writ petition, we are primarily concerned with the Gaon Panchayat. Chapter III contemplates the existence of Gaon Sabha, which is defined by Section 2(1) of the Panchayat Act to mean a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of "Gram Panchayat". Section 4(1) of the Panchayat Act says, inter alia, that subject to the general orders of the Government, the Gaon Sabha shall consider the following matters and may make recommendations and suggestions in the Gaon Panchayats concerning the report in respect of Development Programme of the Gaon Panchayat relating to the preceding year and development programme proposed to be undertaken during the current year; the promotion of unity and harmony among all sections of society in the villages and such other matters as may be prescribed. Section 4(2) makes it clear that the Gaon Panchayats shall give due to consideration to the recommendations and suggestions of the Gaon Sabha. The functions of the Gaon Sabha are provided for in Section 4(8), which says:

"(8) Functions: The Gaon Sabha shall perform the following functions namely:

- (a) mobilizing voluntary labour and contribution in kind and cash for the

Community Welfare Programmes;

(b) identification of beneficiaries for the implementation of development scheme pertaining to the villages:

*** The rest omitted as irrelevant***

8. Coming now to the provisions dealing with Gaon Panchayats in the Panchayat Act Sections 19, 21 and 22 which are the relevant provisions, say:

"19. Functions of Gaon Panchayat.: Subject to such conditions as may be specified by the Government from time to time, the Gaon Panchayat shall perform the functions specified below

*** Omitted as irrelevant ***

XII. POVERTY ALLEVIATION PROGRAMME:

(1) Promotion of public awareness and participation in implementation of poverty alleviation programme for fuller employment and creation of productive assets for the community.

(2) Selection of beneficiaries under various programmes including IRDP through Gaon Sabha.

(3) Participation in effective implementation of various schemes and monitoring thereof.

*** Omitted as irrelevant ***

XXII. PUBLIC DISTRIBUTION SYSTEM:

(1) Promotion of public awareness with regard to the distribution of essential commodities .

(2) Monitoring the public distribution system including keeping sharp vigilance to ensure full and equitable distribution of essential commodities allotted by the State Government.

*** Rest omitted as irrelevant ***

"21. General Powers of Gaon Panchayat: A Gaon Panchayat shall have powers to do all acts necessary for or incidental to the carrying out of the functions entrusted, assigned or delegated to it and, in particular, and without prejudice to the foregoing powers, to exercise all powers specified in this Act.

22. Standing Committees: (1) Every Gaon Panchayat shall constitute the following Standing Committees by election from amongst the elected members of the Gaon Panchayat:

(i) development committee for performing functions relating to agricultural production, animal husbandry and rural industries and poverty alleviation programmes;

(ii) *** Omitted as irrelevant ***

(iii) Social welfare committee to perform functions in respect of education, public health, public works and other functions of the Gaon Panchayat.

*** Rest omitted as irrelevant ***

9. The first question which falls for consideration in this writ petition is whether the selection of the beneficiaries belonging to APL category under MMAS Y for subsidized rice is the exclusive function of the Gram Panchayat? It is the contention of Mr. H. R. A, Choudhury, the learned senior counsel for the petitioners, that the provisions, extracted above clearly indicate that the Gram Panchayats are constitutionally and statutorily guaranteed the power to select beneficiaries for any scheme launched by the (jovernment for the economic development of the villagers including 1RDP and MMAS Y: this is in consonance with the legislative intention of Parliament in enacting Part IX of the Constitution to meet one of the Directive Principles of State Policy enshrined in Article 40. According to the learned senior counsel, identification of genuine persons to be the beneficiaries under the MMASY scheme is a onerous task, which can be effectively done only by Gram Panchayats on the recommendation of the Gaon Sabha, who have personal knowledge about the true economic conditions of persons residing within their territorial jurisdictions. The constitution of a separate Committee to the exclusion of the Gram Panchayats for selection of such beneficiaries is, contends the learned senior counsel, violative of Sections 4 and 19 of the Panchayat Act. The learned senior counsel further points out that there are altogether 11 Gaon Panchayats under Pachim Mangaldai Development Block with a population of over one lakh and submits that the Committee with the composition already noticed under the guidance of the State Government sitting at Dispur cannot accurately and fairly identify genuine persons eligible for those beneficiaries, more so, when the members of the Committee are selected on the basis of their political affiliation to the ruling party: the Staterespondents are indulging in colourable exercise of power to deprive the Gaon Panchayats run by the opposition political parties of their statutory rights to make the selection of such beneficiaries. It is vehemently submitted by the learned senior counsel that the Committee constituted under the impugned guidelines is merely a device evolved by the State Government to circumvent the constitutional and statutory mandate of devolution of more powers to the Gram Panchayats and to ensure selection of the beneficiaries purely on political considerations to benefit the ruling party and has the effect of destroying the very fabric of Panchayati Raj Institutions in the State and, is, therefore, unconstitutional. He, therefore, urges this Court to quash the impugned notification to prevent grave public mischief and to safeguard the functional autonomy of the Gram Panchayats conferred by the Seventythird Amendment of the Constitution. The learned counsel appearing for the remaining writ petitioners fully endorse the submissions of the learned senior counsel.

10. While supporting the contentions of the learned senior counsel, Dr. B.

Ahmed, the learned counsel appearing for the petitioners in WP(C) No. 5206 of 2010, also contends that Clause 15 of the guidelines provides that where local bodies in rural or urban areas are not in existence, the Deputy Commissioner/Principal Secretary shall evolve a suitable mechanism for identification of beneficiaries in an impartial and objective manner, but in Barpeta District where Panchayat and local urban elected bodies are functioning, the constitution of a Committee other than Panchayati Raj Institutions is clearly untenable and illegal. He also submits that in all the schemes launched by the Government of India, it is invariably the local Panchayat which implements such schemes, but a sharp departure has been made in the case of MMAS Y in contravention of Section 4 (8) (b) of the Panchayat Act and Section 22 (1) (i) of the Panchayat Act: MMASY being a scheme for poverty alleviation programme, it is the prerogative of the Gram Panchayat to select the beneficiaries on the recommendation of the Gram Sabha to the exclusion of other bodies or committees. It is also submitted by the learned counsel that the impugned circular issued by the Deputy Commissioner on 29.06.2010 and the Notification issued by the Government on 30.06.2010 are not prescribed by law nor do they have any legal basis thereby warranting the quashing of the circular/order on this ground alone.

11. Mr. K. N. Choudhury, the learned Additional Advocate General, appearing for the Staterespondents in all the writ petitions, refutes the contentions of the learned counsel appearing for the writ petitioners and submits that the scheme under MMASY cannot, by its very nature, by any stretch of imagination be construed to be a poverty alleviation programme. He contends that the opening words of Sections 4 and 19 of the Panchayat Act, namely, "Subject to the general orders of the Government" and "Subject such conditions as may be specified by the Government from time to time" respectively, clearly indicate that all the statutory prescriptions enumerated therein have to be subordinated to the general orders and conditions as may be specified by the Government from time to time and so read, the Government reserves to itself the power to float schemes for bringing about and economic justice and economic development of its citizens otherwise than through the Panchayati Raj Institutions. According to the learned Additional Advocate General, the Government in exercise of its powers under Article 162 of the Constitution read with the aforesaid exceptions carved out in Sections 4 and 19 of the Panchayat Act have taken a policy decision to launch MMAS Y to provide subsidized rice to APL category through the Public Distribution System ("PDS") on the recommendations of the Selection Committees set up by it: the petitioners cannot, therefore, be permitted to contend that the provisions of Section 4(8) and Section 19 (XIII) (2) and (3) of the Panchayat Act would override any policy decision taken by the Government. He further submits that in any case, as per the guidelines, the Selection Committees will comprise of an elected representative of Panchayati Raj Institution thereby removing the apprehensions of the petitioners that there would be no transparency in the selection of the beneficiaries of the scheme: the names of the selected beneficiaries will also be displayed in the notice boards of

the offices of the Gram Panchayats/Municipalities by inviting claims and objections, if any, against the selected beneficiaries by giving seven days" times for disposal of such claims and objections. The learned Additional Advocate General maintains that MMASY is conceived under the Essential Commodities Act, 1955 and the Control Orders framed thereunder from time to time, which specifically requires Family Identity Cards/Ration Cards and the existence of a licensee/trading agency for implementation of PDS and as the PDS is channelized through GPSS/WCCS/LAMPs as intermediate agencies and Fair Price Shops at the grass root level: the Gaon Panchayats can at best play a monitoring and awareness generation role. These are the sum and substance of the contentions of the learned Additional Advocate General in defending the impugned decisions of the staterespondents.

12. That the nature of the powers devolved upon the Panchayati Raj Institutions by Article 243 cannot be equated with the distribution of powers between the Centre and States in a federation has been made clear by the Apex Court in Gujarat Pradesh Panchayat Parishad Vs. State of Gujarat, (2007) 7 SCC 718 when it said at paragraph 24 of the judgment.

"24. The argument that the view taken by the High Court has destroyed or considerably eroded constitutional setup in PartIX of the Constitution has not impressed us. In our opinion, it cannot be said that interpretation of various provisions of the Constitution or the Act has disturbed, truncated or adversely affected the status of Panchayat guaranteed by the Constitution. PartIX of the Constitution confers certain powers on local selfgovernment. It promises duration of five years, free and fair election, representation of Scheduled Castes and Scheduled Tribes in the administration of institutions of local selfGovernment, "nointerference" by other organs of the State, including judiciary, etc. In our opinion, however, the High Court was right in observing that "a District Panchayat cannot arrogate to itself the status of a body as independent or autonomous as a Province in a Federation". PartIX of the Constitution or Article 243G makes no change in the essential feature of the Panchayat organization. What was sought to be done by the Seventythird Amendment was that constitutional status to the local selfgovernment was conferred to District Panchayats, Taluka Panchayat, Taluka Panchayats and Village Panchayats. A State Legislature, in the light of constitutional provisions in PartIX, cannot do away with these democratic bodies at the local level nor their normal tenure be curtailed otherwise than in accordance with law nor can the State Government delay elections of these bodies." (Underlined for emphasis)

In other words, It can safely be said that the Panchayati Raj Institutions constituted under Article 243G of the Constitution, unlike State Governments, do not enjoy wide executive powers or plenary powers of legislation nor can it arrogate to itself the status of a body as independent or autonomous as a Province in a federation. It is true that the subjects of "Poverty alleviation programmes" and "public distribution system" are included in the Eleventh

Schedule, for which powers, authorities and responsibilities have been devolved upon the Panchayats under Article 243G. It must not, however, be overlooked that Section 4 of the Panchayat Act dealing with the powers and functions of Gaon Sabha such as identification of beneficiaries for the implementation of development scheme pertaining to the villages is "Subject to the general orders of the Government". The words "subject to" is defined by Black's Law Dictionary, 5th Edn, at p. 1278 as "liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided; answerable for. *Homen Vs. Employers Reinsurance Corpn.*" As already noticed, all the powers and functions enjoyed by the Gram Panchayats under Section 19 of the Panchayat Act are subject to such conditions as may be specified by the Government from time to time. The expression "subject to" conveys the idea of a provision yielding place to another provision subject to which it is made. In *Bashiruddin Ashraf Vs. Bihar Subai Sunni MajlisAwaaf*, AIR 1965 SCI 206, the Apex Court has an occasion to interpret the expression "subject to any order by the competent Court" under the Bihar Wakfs Act, 1948. Section 34 of the Wakfs Act conferred power upon the Maj Us to make temporary appointment in the office of the Mutawalli subject to any order by a competent Court. It was contended therein that the Majlis was not competent to appoint Moulvi on a temporary basis even if there was a vacancy without obtaining prior permission of the Court. Negating the argument, the top Court held:

"6. The two appeals were heard together. The High Court by a common judgment delivered on December 21, 1960 dismiss the appeal of the appellant and accepted that of Maulvi Md. Shoeb. In dealing with the appeal of Maulvi Md. Shoeb the High Court pointed out that Section 32 of the Act was clear in conferring jurisdiction on Majlis to make temporary appointment when there was a vacancy in the office of the Mutawalli and that the words in that Section "subject to any order by the competent Court" did not mean that there had to be either prior permission or subsequent assent before the appointment was complete. The High Court rightly pointed out that those words denoted that the appointment was to endure according to its tenor till an order to the contrary was passed by a competent Court. This conclusion is so patently correct that we need say nothing more than this."

13. It may be noted that the expression used in Section 4(1) of the Panchayat Act is also "Subject to the general orders of the Government", which clearly gives the impression that the functions of the Gram Panchayat in relation to poverty alleviation programme such as selection of beneficiaries under various programmes including IRDP through Gaon Sabha and participation in effective implementation of various schemes and monitoring thereof and of the function of public distribution system conferred upon them by Section 19(XII) and (XXIII) can be carried on by them only till general orders to the contrary are specified by the Government. In my opinion, looking at the scheme of the Panchayat Act, the expression "Subject to the general orders of the Government" appearing in clause (1) of Section 4 will also qualify the provisions of clause (8) of Section 4.

Therefore, under Section 4, the State Government has the power to take away those functions of the Gaon Sabha and Gaon Panchayat as and when it pleases. In my opinion, as the impugned decision of the State respondents has now constituted a Selection Committee for identification of the beneficiaries for scheme under MM AS Y, the powers and functions of the Gaon Sabha and Gaon Panchayat in this behalf are deemed to have been taken away. The alternative question to be considered is whether the scheme under MMAS Y for granting the subsidized rice is a scheme under the poverty alleviation programme or under the public distribution system. In the case of public distribution system, the functions of the Gaon Sabhas and Gaon Panchayats are limited to promotion of public awareness with regard to the distribution of essential commodities and of monitoring the public distribution system including keeping sharp vigilance to ensure full and equitable distribution of essential commodities allotted by the State Government. In other words, identification of beneficiaries for MMASY is not apart of the function of the Gaon Panchayat. Similarly the functions of the Gaon Panchayats in respect of poverty alleviation programme are concerning fuller employment and creation of productive assets for the community, selection of beneficiaries under various programmes including IRDP through Gaon Sabha and participation in the effective implementation of various schemes and monitoring thereof. True, there may be overlapping between the functions and powers given to the Gaon Panchayat and the powers and functions of the State Government, but it must be remembered that the relationship between the two bodies is not that of Central Government and Provincial Government in a federation wherein both the bodies enjoy wide executive powers and plenary powers of legislation in respect of the functions assigned to each of them. Therefore, in my opinion, the rule of widest interpretation in of a subject/entry, applicable to the Centre and the States under Constitution cannot be placed upon Section 19(XII) and (XXIII) of the Panchayat Act. Necessarily, the powers and functions of the Gram Panchayats shall have to be, and are expressly limited by, the provisions of the Panchayat Act which created them and they can do nothing beyond the limits which circumscribe their powers and functions. It is beyond the domain of this Court to enlarge constructively the functions and powers of the Gram Panchayats.

14. That apart, the power of the Government to amend or add the functions of the Gram Panchayats is provided for in Section 123(2) of the Panchayat Act, which reads thus:

"(2) The Government may, by notification in the Official Gazette, amend or add any activity, programme or scheme covered or mentioned under Section 19, Section 49 and Section 90 and on the issue of such notification, the relevant Panchayat functions list shall be deemed to have been amended accordingly. Every such notification shall be placed before the House of State Legislature."

Thus, the term "amend" include, among others, the act of alteration and deletion. Undoubtedly, the State Government, in exercise of its power under

Section 123(2) of the Panchayat Act has the power to alter or delete any of the functions of the Gaon Panchayats. The scheme and the guidelines of the MMAS Y have admittedly been published in the Gazette notification. In my opinion, the impugned notification has the effect of anieding, or, at any rate, by necessary implication, has amended, Section 19(XII) and (XXIII) of the Panchayat Act. Though the Staterespondents did not mention the provision under which the impugned notification was issued by them, this is hardly of any significance. The law is now well settled without reference to cases that so long as the impugned power is traceable to the statute concerned, mere omission or error in reciting the provision of law or the correct provision of law does not denude the power of authority to take a statutory action so long as its action is legitimately traceable to a statutory power governing such action. In such cases, this Court will rely on Section 114 III. (e) of the Evidence Act to draw a statutory presumption that the official acts are regularly performed and if satisfied that the action in question is traceable to a statutory powers the Court will uphold such State action. As already noted, the Gram Panchayats or. for that matter, even Zilla Parishads, cannot arrogate to themselves the status of a body as independent and autonomous as a province in a federal setup.

15. It is next contended by the learned counsel for the petitioners that there are altogether 17 Gaon Panchayats under Mandia Development Block comprising of over two lakhs population and a single Committee constitutted at the block level will not be in a position to properly identify the beneficiaries from the population covered by 17 Gram Panchayats and that the respondent No. 1 by constituting a Selection Committee consisting of persons belonging to a particular party has not only taken away the statutory rights of the petitioners to identify the beneficiaries under the MMASY scheme as they belong to opposition political parties but will also bring about the selection of beneficiaries purely on political consideration. The learned counsels, therefore, submit that the impugned decision of the Staterespondents is arbitrary, illegal and smacks of political bias. In my judgment, these contentions are devoid of merits for more than one reason. In the first place, as found by me earlier, Article 243G of the Constitution and the Panchayat Act do not indicate in any manner that selection of beneficiaries under MMASY is to be undertaken only by the Gram Panchayats. Therefore, there is no illegality or arbitrariness on the part of the Staterespondents in devising separate mechanism for identifying the beneficiaries for the scheme under MMASY. Secondly, to avoid arbitrariness and to ensure transparency in selecting the beneficiaries of the scheme, the following decisions, among others, were taken by the Group of Ministers in the minutes of their meeting held on 07.07.2010, namely, (i) the application for the scheme under the MMASY are to be distributed and accepted through Gram Panchayat offices apart from Block offices (ii) applications forms on plain paper are also to be accepted at the Gaon Panchayat and Block offices for consideration if submitted in prescribed format and (iii) the Deputy Commissioners are required to arrange wide publicity of the scheme of displaying its criteria, inclusion and

exclusion lists of beneficiaries: such publicity are being done through Public Address System and in official website of DC office, P&RD Deptt., CEO, ZillaParishad offices. It was also indicated therein that the Deputy Commissioners should take all possible action to ensure that only eligible beneficiaries should get benefits of the scheme. Displaying the list of beneficiaries in the notice boards of the officers Gaon Panchayats/Municipalities is one definite way of ensuring transparency in the process of selection of beneficiaries. In addition to that, the minutes of Group of Ministers held on 23.08.2010 clearly stipulates that seven days¹ time is to be allowed for filing of claims and objections against the list of beneficiaries. In so far as the composition of the Selection Committee is concerned, the Block Development Officer, who is the Chairman of the Committee, has not only the machinery and manpower to help the Committee in identifying the beneficiaries: the resolution adopted by the Group of Ministers on 07.7.2010 also associate the Gram Panchayats in the selection process.

16. Ideally speaking, any process of selection should be made through an independent and impartial committee without the involvement of members belonging to any political parties, elected or otherwise, but this Court cannot substitute its opinion for the opinion of the Government unless the opinion of the Government suffers from the vice of illegality or arbitrariness or procedural impropriety, which is not the case here. An alternative view can also be taken that when the Gram Panchayats are already entrusted with the task of identifying the beneficiaries for various development schemes including IRDP, IAY, etc. and of monitoring public distribution system, there is no earthly reason as to why the task of selecting the beneficiaries for the scheme under MMASY should not also be entrusted to these bodies. But then, it is a wellsettled proposition of law, which was reiterated by the Apex Court in *State Financial Corporation Vs. M/s Jagdamha Oil Mills*, AIR 2002 SC 834, that more than one choice is open to the administrative authorities; they have a certain amount of discretion available to them. They have a right to choose between more than one possible course of action upon which there is room for reasonable people to hold different opinions as to which is to be preferred. The Court cannot substitute its judgment for the judgment of the administrative authorities in such cases. Thus, on considering the matter from all angles, the impugned decision of the State respondents does not call for the interference of this Court.

17. The offshoot of the foregoing discussion is that there is no merit in any of these writ petitions. The writ petitions are accordingly dismissed. The interim orders also stand vacated. However, on the facts and in circumstances of the cases, the parties are directed to bear their respective costs.