

(2020) 03 J&K CK 0031

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 3580 Of 2019, 284, 383, 663 Of 2020

Prithpal Singh And Others

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 18-03-2020

Acts Referred:

Jammu And Kashmir Panchayati Raj Act, 1989 — Section 4, 6, 12, 12(2), 12(3), 15, 21, 23, 25

Haryana Panchayati Raj Act, 1994 — Section 175, 175(v), 175(1)(v), 175(w)

Jammu And Kashmir Panchayati Raj Rules, 1996 — Rule 48, 48(f), 49, 50, 57, 58, 59, 59(1), 59(2), 59(3), 59(4)

Constitution Of India, 1950 — Article 14, 40, 243(G), 243(H)

Citation : (2020) 03 J&K CK 0031

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : K. S. Johal, Abhinav Sharma, A. P. Singh

Final Decision : Dismissed

Judgement

Rajesh Bindal, J

1. This order will dispose of five petitions bearing WP(C) Nos. 3580/2019 and WP(C) Nos. 284, 383, 496 & 663 of 2020.

FACTS OF THE CASES

WP(C) No. 3580/2019

2. The present petition has been filed by the petitioners who claim themselves to be Sarpanches and Panches of Halqa Panchayat, Gole Gujral, challenging the letter issued by Assistant Commissioner (Development), Jammu dated 18.09.2019, directing that all the allotment of work under RURBAN Cluster Gole Gujral shall be through e-tendering process.

WP(C) Nos. 284, 383, 496 & 663 of 2020

3. The challenge in the aforesaid petitions filed by Sarpanches, Panches is to the Government Order No.267-RD & PR of 2019 dated 04.10.2019, vide which certain guidelines have been issued for execution of works in the Rural Development Department.

ARGUMENTS OF THE PETITIONERS

4. Mr. K. S. Johal, learned Senior Counsel appearing for the petitioners in WP(C) No. 3580/2019 referred to Articles 40 and 243G of the Constitution of India with reference to decentralization of powers to the Halqa Panchayats. Taking his argument further it was submitted that Jammu and Kashmir Panchayati Raj Act, 1989 (for short 'the Act') was framed in line thereof. Preamble to the Act is quite relevant, which talks of conferring powers on the elected bodies in the rural areas. Section 4 of the Act talks of establishment of panchayats. Section 12 of the Act which is quite relevant talks of the powers and functions of the panchayats. Section 25 of the Act was referred to which specifies functions of the Sarpanch, Naib Sarpanch. Referring to the Rule 48 of the J&K Panchayati Raj Rules, 1996 (for short 'the Rules'), it was submitted that this defines the powers and functions of the Halqa Panchayat. Rule 49 of the Rules talks about execution of works and Rule 59 the mode of execution of contract.

5. While referring to the aforesaid provisions of law, it was submitted that once complete procedure has been prescribed in the Act and the Rules, no order or circular can be issued by the Government or any officer thereof to clarify or supplement the same. In case the State finds any deficiency, the only solution is to amend the same and not issue orders. The provisions of the Act and the Rules cannot be done away with while issuing the circulars. The provisions of the Act and the Rules, as have been referred to above, clearly provide that the panchayats being the local bodies in the rural areas duly elected, have complete power to execute the works in their respective areas. The government cannot interfere. In fact the action of the government clearly interferes in the powers of the panchayat and the functions assigned to them in terms of the constitutional scheme. With the issuance of the impugned letter the members of the elected bodies have been totally ignored. Entire work has gone to the government authorities.

6. In the case in hand, the works had been allotted by the Halqa Panchayat, Gole Gujral after due process and the work is being executed. Some of the works have been executed to the extent of 70% and only 30% remains, whereas some of the works are yet to be allotted. If the scheme of the Act and the Rules are considered, the only areas where the government can interfere, are the projects which are highly technical in nature. In rural areas, there can hardly be any such project as these are small-small projects where no expertise as such is required. These can always be executed at the local level. It was not disputed that the projects before execution are required to be got approved from the competent authority. He further submitted that Rule 59 of the Rules has to be interpreted in the manner that the word 'highest' should be read as 'lowest'. Then only it will

give a true meaning. Reliance has been placed on the decision of this court in WP(C) No.3421/2019 titled as Hanifa Akhter v. State and others, decided on 26.06.2019.

7. Mr. Abhinav Sharma, learned counsel appearing for the petitioners in WP(C) No. 496/2020 submitted that in terms of Rule 48(f) of the Rules, the government has power to issue guidelines but not to take over the entire work in its own hands. The participation of the local elected bodies in the rural areas cannot be ignored. Rule 49 of the Rules clearly provides that the works have to be got executed, engaging daily labour. It is only the works technical in nature, for which contracts have to be awarded. The term 'technical nature' has not been defined anywhere. It depends on the facts of each case. He further submitted that the import of the aforesaid Rule is that even for the works above ₹ 3 lakhs, no tendering is required. It is the option considering the fact that the work is of technical nature. But the impugned government order dated 04.10.2019 issued by the State provides that in all works above ₹ 3 lakhs, e-tendering is required. This runs contrary to the spirit of the Act and the Rules. This in fact amounts to re-writing the Rules. Such a power is not vested with the government. He further referred to Rule 50 which provides that even if the project is above ₹ 3 lakhs, monitoring is to be done by the Halqa Panchayat and completion certificate has to be issued by it. This clearly shows the role of Halqa Panchayat. Even if e-tendering is there, the same has to be done by the Halqa Panchayat. Rule 59 was referred to where in auction proceedings, it is Panchayat which is supreme. The rules do not envisage role of the government. The Panchayat should have role in the decision making process.

8. Mr. A. P. Singh, learned counsel appearing for the petitioners in WP(C) No. 383/2020, while adopting the arguments raised by learned counsel for the petitioners in other petitions, submitted that Panchayats cannot be ousted from its role in the decision making process. With the impugned government order even the right of the panchayat to decide which of the projects have to be taken in the respective areas, has been taken away. It is so evident from the procedure prescribed for tendering in the impugned government order. It is interference in the independent functioning of the Halqa Panchayats.

ARGUMENTS OF THE STATE

9. In response, Mrs. Seema Shekhar, learned Sr. AAG submitted that there is nothing wrong with the impugned communication dated 18.09.2019 issued by Assistant Commissioner (Development) Jammu and the government order dated 04.10.2019 issued by the State subsequently. These are strictly in consonance with the scheme of the Act. The State has not exceeded its power or the jurisdiction while issuing the aforesaid orders. The only idea is to bring competency in quality, rates, transparency in creating durable and tangible assets in the rural areas. It cannot be denied that there is no technical expertise available with the Panchs, Sarpanches in the rural areas, who can evaluate the technical part of various projects and also the financials in any tendering process,

where the contracts awarded are running into lakhs of rupees. These cannot be executed by engaging labour on daily basis. If the contracts are to be awarded, there are detailed procedures to be followed in terms of the guidelines issued by the government. After all it is the public money which is being spent on various projects. The idea is for its better utilization. The participation of the local bodies in the rural areas is not denied. The projects are always prepared by them and thereafter approved by the competent authority in the government. It is only at the stage of award of work beyond rupees three lakhs that the process of e-tendering has been directed to be followed. There is nothing wrong in this. Even in the impugned government order dated 04.10.2019, the schemes under MGNREGA and 14th Finance Commission have been excluded. In both the schemes, the funds directly go to the Halqa Panchayats and in all other cases, it is the State which funds the projects under various schemes. Hence, use of public money can always be monitored. The intention of the Act, which is evident from the Preamble, is the participation in the decision making process and overseeing the development programs. The same has been translated in Section 12 of the Act and Rule 48 of the Rules.

10. In response to the arguments that Rule 59 of the Rules provides for award of contracts and the word 'highest' therein should be read as the 'lowest' for harmonious construction, is totally misconceived. In fact if read in the light of Rules 57 and 58, which have been framed with reference to Sections 15 and 23 of the Act, it talks about recovery of fee, taxes, etc. by the Halqa Panchayat. It is for that purpose that in the auction, the highest bid has to be accepted. This has no relation with the award of contract. Whenever any money is to be earned by Halqa Panchayat, certainly the highest bid has to be accepted. There is no procedure in the Act and the Rules for award of contracts. Hence, there is nothing wrong in prescribing that procedure. This power has been left to the Government. The Halqa Panchayats have ample power to monitor the projects envisaged by them, being executed so as to ensure that there is no wastage or pilferage of public money and further the execution is of high quality. There is no cause of action in fact to the petitioners to invoke jurisdiction of this court.

11. As far as award of contract in RURBAN Cluster is concerned, it was submitted that there are three locations in the State for which government of India had released ₹ 53.29 crores and the same had to be spent properly. Even in the list of contracts awarded by the Halqa Panchayat in WP(C) No. 3580/2019, it is evident that these run into lakhs of rupees. These cannot possible be got executed by engaging labour on daily basis. Even Schedule 1-A attached to the Act also talks of assistance of the government wherever required.

REJOINDER BY THE PETITIONERS

12. In response, learned counsel for the petitioners submitted that in fact with the impugned action, what was given by the government with one hand has been taken with the other. In case all these issues were so important, what was the difficulty in adding these in the Act and the Rules. Such a power cannot be left

with the government. Even if the contracts are to be awarded with e-tendering, the power should remain with the panchayats. They are capable of performing this function as well.

13. Heard learned counsels for the parties and perused the relevant referred records.

RELEVANT PROVISIONS

14. Before the arguments raised by learned counsels for the parties are considered, it would be apt to extract the relevant provisions of the Constitution of India, the Act and the Rules.

RELEVANT PROVISIONS OF CONSTITUTION OF INDIA.

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

Article 243G. Powers, authority and responsibility of Panchayats.- Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self-government 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.?

Relevant provisions of J&K Panchayati Raj Act, 1989.

"Preamble:

An Act to provide for the constitutions of Halqa Panchayats, Block Development Councils and The District Planning And Development Boards and matters concerned therewith.

Whereas it is expedient to promote and develop Panchayati Raj in the State as an instrument of vigorous Local Self Governments to secure the effective participation of the people in the decision making process and for over-seeing implementation of development programmes.

x x x x x

4. Establishment and Constitution of Halqa Panchayat.-

(1) There shall be a Halqa Panchayat for every Halqa.

(2) Every Halqa Panchayat shall bear the name of the place where it is headquartered.

(2-a) Every Halqa Panchayat shall have Halqa Majlis comprising all the persons whose names are included in the electoral roll for such Halqa Panchayat.

(2-b) The Sarpanch shall convene at least two meetings of Halqa Majlis during the financial year.

(3) Every Halqa Panchayat shall consist of number of Panches not less than seven and not more than eleven including the Sarpanch as the prescribed authority may, from time to time fix in this behalf.

Provided that the Sarpanch and Panch Seats shall be reserved for

(a) the Schedule Castes; and

(b) the Schedule Tribes

in every Halqa Panchayat and the number of Sarpanch and Panch seats so reserved shall bear, as nearly as may be, the same proportion to the total number of Sarpanch and Panch seats to be filled by direct election in that Panchayat as the population of Scheduled Castes in that Panchayat area or of the Scheduled Tribe in that Panchayat area bears to the total population in that area and such Sarpanch and Panch seats may be allotted by rotation to different constituencies in a Halqa Panchayat in such manner and by such authority as may be prescribed. Provided further that-

(a) not less than one-third of the total number of Sarpanch and Panch seats reserved under above proviso shall be reserved for women belonging to the Scheduled Castes or, as the case may be the Scheduled Tribes.

(c) not less than one-third (including the number of Sarpanch and Panch seats reserved for women belonging to Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat by such authority and in such manner as may be prescribed:

Provided also that such reservation shall not affect representation in the existing Halqa Panchayats and shall become effective for purpose of holding the general election to the Halqa Panchayats after the commencement of Jammu and Kashmir Panchayati Raj (Amendment) Act of 2014.

(3-A) The Sarpanch shall be elected directly by the electorate of Halqa Panchayat in such manner as may be prescribed.

(4) The Naib-Sarpanch shall be elected by the Panches of the Halqa Panchayat from among themselves at the first notified meeting of the Halqa Panchayat after its constitution.

(5) The Panches shall be elected from the constituencies delimited by the prescribed authority in accordance with the rules.

(6) There shall be notified the name of the Sarpanch and the names of the Panches duly elected in accordance with the provisions of this Act and rules framed thereunder. Upon the issue of such notification, the Halqa Panchayat shall be deemed to be duly constituted.

(7) The Village Level Worker or Multi Purpose Worker or Gram Savika shall be the Secretary of the Halqa Panchayat.

(8) Every Halqa Panchayat shall be a body corporate known by the name of "The Halqa Panchayat of _____" and shall have perpetual succession and a common seal and may sue and be sued by its corporate name subject to such conditions or restrictions as the Government may specify, in the rules.

x x x x

12. Powers and functions of Halqa Panchayat.-

(1) The Halqa Panchayat shall perform the functions specified in Schedule I-A:

Provided that where the Government provides funds for the performance of any function specified in Schedule I-A, the Halqa Panchayat shall perform such function in accordance with the guidelines or norms laid down for performing such functions.

(2) Notwithstanding anything contained in sub-section (1) and Schedule I-A subject to the provisions of this Act, it shall be the duty of each Halqa Panchayat to make provision for the following subject to, the availability of funds at its disposal -

(i) to prepare the plans for the development of the Halqa in consultation with Halqa Majlis and their timely submission to Block Development Council for consolidation;

(ii) to undertake measures for the implementation of the development plans;

(iii) to specifically deal with the problems of soil conservation, water management, social forestry, rural industrialization, agriculture, sheep and animal husbandry, sanitation, health and other welfare programs;

(iv) regulations of buildings, shops and entertainment houses and checking of offensives or dangerous trades;

(v) construction and maintenance of slaughter houses , regulation of sale and preservation of meat and processing of skins and hides;

(vi) regulation of sale and preservation of fish, vegetables and other perishable articles and food;

(vii) regulation of fairs and festivals;

(viii) preparation and implementation of special development plans for alleviating poverty and employment as may be notified by Government from time to time; and

(ix) all matters involving regulation, supervision, maintenance and support incidental to, or necessary for the more efficient discharge of the above functions and those which may be entrusted to Halqa Panchayat under the provisions of the Act.

(3) The Halqa Panchayat shall also conduct concurrent and quarterly social audit of all works/schemes/projects being implemented in the Panchayat area as per procedure to be notified by the Government.

(4) The Halqa Panchayat shall also perform such other functions and duties as may be assigned to it or entrusted by the Government, the District Planning and Developmental Board and the Block and the Block Development Council within the area in which Halqa Panchayat is constituted.

x x x x

15. Imposition of fee by the Halqa Panchayat.-

(1) Every Halqa Panchayat shall in such a manner and in accordance with such rules as may be notified by the Government, impose a fee on commercial buildings subject to such exemptions as may be prescribed.

Provided that where an owner of the building has left the Panchayat area or cannot otherwise be found, the occupier of such building shall be liable for the fee leviable on such owner.

(2) A Halqa Panchayat may also levy fee on all or any of the following items at such rates as may be determined by the Halqa Panchayat and subject to such exemptions as may be notified by the Government from time to time, namely:-

(a) Fee on entertainment.

(b) Fee on advertisement and hoardings.

(c) Fee on commercial tractors kept in area of the Halqa Panchayat.

(d) Fee on business and professions within the jurisdiction of Halqa Panchayat like on rice Husking mills, saw mills, Flour mill/rice mills, Gharats, Brick Kilns, Oil Mills, Slaughter houses, Petrol Pumps, Private hospitals/labs/ diagnostic-centre, Soda/ice/ice-cream factor, Spice grinding mills, Motor Vehicle/Tractor dealers, Liquor Shops, Hot wet mix plant/Stone Crushers, Poultry/Dairy Farms/Horse Traders, small scale industrial units, Mobile towers, power plants printing presses, Kerosene Oil/Ration dealers etc.

(e) Fee on contractors for executing such works allotted to them by the Government within the jurisdiction of Halqa Panchayat.

- (f) Fee on travel agents/transport agencies.
- (g) For on organizing Melas, festivals etc where necessary arrangement for the water supply, health and sanitation are to be made by the Halqa Panchayat or where such Melas or festivals are held on Panchayat lands.
- (h) Fee on registration of shops/other commercial establishments in the jurisdiction of Halqa Panchayat.
- (i) Fee on Buses, other passenger vehicles and commercial vehicles on account of haltage within the jurisdiction of Halqa Panchayat for providing adequate facilities for the travellers by the Gram Panchayat.
- (j) Fee on cattle pounds.
- (k) Fee on road cutting for laying optical fiber cable.
- (l) Royalty for extraction of minor minerals from local nallahs not falling under the ambit of Geology and Mining Department and not exempted from royalty under any specific provision of law.
- (m) Penalty for use of plastic or polythene and for open defecation.
- (n) Sanitation cases.
- (o) Such other fee as may be approved by the Government.

Provided that the Government may at any time after giving an opportunity to the Halqa Panchayat cancel or alter rate of any fee imposed under this section.

x x x x

23. Levy of fees on market etc.-

It shall be lawful for a Halqa Panchayat to lease by public auction or private contract the collection of any fees which may be imposed under this Act, provided that the lessee shall give security for the due fulfilment of the conditions of the lease.

x x x x

25. Functions of Sarpanch and Naib Sarpanch.-

- (1) The Sarpanch shall preside over the meeting of the Halqa Panchayat and shall be responsible for maintenance of the records of the Halqa Panchayat.
- (2) The Sarpanch shall be generally responsible for the financial and executive administration of the Halqa Panchayat and shall exercise administrative supervision and control in accordance with the rules framed in this behalf over the staff of the Halqa Panchayat.
- (3) In the absence of the Sarpanch, the Naib-Sarpanch shall preside over the meeting of the Halqa Panchayat and discharge the functions of the Sarpanch with

regard to the financial and administrative matters.?

Relevant provisions of J&K Panchayati Raj Rules, 1996.

"48. Powers and functions of the Halqa Panchayat.-A Halqa Panchayat shall execute the works falling within the area of its jurisdiction,

(a) The delegation of authority for sanctioning projects shall be done by the Halqa Panchayat in consultation with Halqa Majlis.

(b) The list of the works to be taken up in the Panchayat Halqa shall be approved by the Panchayat Halqa in consultation with Halqa Majlis.

(c) No works shall be executed without preparation of detailed estimates and the technical clearance from the Rural Engineering Wing.

(d) The mode of payment both on account as well as final shall be determined by the Panchayat Halqa.

(e) It should be the primarily responsibility that the wages are paid within the maximum period of fortnight.

(f) While executing, formulating and monitoring the works programme the Panchayat Halqa shall be responsible for keeping the guidelines and instructions of the State Government and the Government of India into consideration.

49. Execution of works.

All works may be executed by the Halqa Panchayat itself by employing daily labour. However, no contractor shall be employed except for work of highly technical nature or involving financial investment of more than Rs 3 lacs.

x x x x

57. Power to contract for collection of taxes and other dues.-

(1) Every contract or agreement under sections 15 and 23 of the Act shall signed for and on behalf of the Panchayat by the Sarpanch, Naib Sarpanch or a Panch duly authorised by the Panchayat.

Provided that, in the absence of elected Halqa Panchayat, the Block Development Officer concerned shall be authorised to collect the revenue under any already signed contract agreement.

(2) Commission, if any, profit or gain shall be creditable to the Panchayat funds. Any loss in the contract shall be borne by the Panchayat after its verification and assessment by the Panchayat provided that the same was not due to default of any member or servant of the Halqa Panchayat.

58. Joint Committee.--Whenever a Halqa Panchayat on its own motion or on the motion of its voters or inhabitants visualize the necessity of transacting any business with the joint help of any other or more Halqa Panchayats in which they

are jointly interested it shall seek assistance of Block Development Council for arranging the meeting of two or more adjacent Panchayats.

59. Mode of contract.

(1) The Panchayat shall be responsible to get the contract auctioned at highest possible amount by all its means.

(2) The auction shall be concluded by Sarpanch or Naib- Sarpanch, Secretary and other three or more Panches authorised by the Panchayat and while closing the bid all such record their signatures on the bid sheet which should also invariably bear the signatures of the bidders. After the close of the bid the Panchayat shall announce by beat of drums and issue a notice indicating that the bid can be reopened within ten days of the close of the bid; provided the bid is increased by 10% more in each case of the respective previous bid and display the same at least 5 conspicuous places in its area.

(3) No auction of the Panchayat shall be sanctioned in favour of the Panch, Secretary, Officer Servant of the Panchayat or other public servant.

(4) When the bid is closed under sub-rule (3) above it can in no case be reopened unless the closed bid is increased by an amount not less than 10% in each case or the respective previous highest bid and after the fresh bidder or bidders also deposit 10% and 25% of their respective bid/bids with the panchayat in lieu of the security and first instalment of the auctioned respectively on the very day of his/their bid/bids:

Provided no increase shall be allowed beyond 10 days of the date of closing the bid under sub-rule (2) above:

Provided further that every such contract or auction in respect of a sum involving a value detailed below should be undertaken by the Panchayat after obtaining previous approval of the authority as shown against each :-

S.No.

Amount

Authority

1.

Up to Rs 5,000/-

Sarpanch who shall report the matter to the panchayat in its next meeting.

2.

Exceeding Rs.5,000/- up to Rs 1,00,000/-

Panchayat by a formal resolution.

3.

Exceeding Rs 1,00,000/- up to Rs 2,50,000/-

Chairman of Block Development Council with the approval of the Block Development Council.

4.

Exceeding Rs 2,50,000/- up to Rs 5,00,000/-

District Planning and Development Board.

5.

Rs 5,00,000/- and above

Administrative Department with the recommendations of the Director, Rural Development concerned.

DISCUSSIONS

15. Article 40 of the Constitution of India provides that the State shall take steps to organize village Panchayats and confer such powers and authority on them as may be necessary to enable them to function as units of self Government. Constitution of India gives us guidance. It is a mother document. The schemes or the laws framed by the Parliament or the State Legislature are to be examined in the light of the guidance available.

16. Taking the mandate of Article 40, Article 243G further provides that the State may by law achieve the objectives as enshrined in Article 40 of the Constitution of India and such law may contain provisions for devolution of powers and responsibilities on Panchayats, subject to such conditions as may be specific therein. It was in exercise of powers conferred under the Constitution of India that the Jammu and Kashmir Panchayati Raj Act, 1989 was enacted. The Preamble of the Act is in line with the provisions of the Constitution of India. It provides for effective participation of the Sarpanches/Panches in the decision making process and for over-seeing implementation of the development programs. The idea is for participation of the people at grass root level in the development programs as they are the persons who better know the requirements in the area as compared to the senior officers who sometimes plan while sitting in their air-conditioned offices. And further the participation is for the purpose of effective implementation of the schemes. For the development plans the Sarpanches, Panches and other members are available at the ground level to oversee the development work.

17. Section 4 thereof provides for establishment and constitution of Halqa Panchayats. Section 12 of the Panchayati Raj Act provides that the Halqa Panchayat shall perform the functions as specified in Schedule 1A attached to the Act. Proviso to the aforesaid sub-section provides that where the Government provides funds for any of the functions to be performed, Halqa Panchayats shall perform shall functions in accordance with the guidelines or norms laid down for

performing such functions.

18. The important fact to be noticed in the aforesaid proviso is that the role of the government in providing guidelines or laying down norms for performance of such functions is related with the provision of funds by the Government as there are certain revenues generated by the Panchayats at local level also.

19. Sub Section 2 of the Section 12 of the Panchayati Raj Act which starts with non-obstante clause having over riding effect on sub-section 1, casts a duty on each Halqa Panchayat to make provision for certain programs, however, subject to availability of funds at its disposal. These include preparation of plans for development and their submission to the Block Development Council to undertake measures for implementation of development plans to deal with problems of soil conservation, water management, social forestry etc. Regulate Buildings, shops and entertainment houses, construction and maintenance of slaughter houses, regulation of sale and preservation of perishable eatables, Regulation of fares and festivals, preparation and implementation of social development plans and all other matters involving regulation, supervision and maintenance.

20. Halqa Panchayat is also to conduct concurrent and quarterly social audit of all works/schemes/projects being implemented in the panchayat area. The same also has to be done as per procedure notified by the Government.

21. Halqa Panchayat is further to perform such functions and duties as may be assigned to it by the Government, District Planning and Development Board and the Block Development Council.

22. If we move on to Section 25 of the Panchayat Raj Act which enumerates the functions of Sarpanch and Naib Sarpanch, it provides that the Sarpanch shall preside over the meetings of Halqa Panchayat and shall be responsible for maintenance of record of Halqa Panchayat. He is generally responsible for financial and executive administration of Halqa Panchayat and shall exercise administrative supervision and control over the staff. In the absence of Sarpanch, Naib Sarpanch has to discharge those functions.

23. There are certain provisions in the Pachayati Raj Act which enable the Halqa Panchayat to generate its own resources. The enabling provision being Sections 15 and 23 thereof, which provide for levy of fee on certain services or facilities or licenses granted by the Halqa Panchayat. In addition to the items enumerated therein any other fee, as may be approved by the government, can also be levied.

24. This has relevance with reference to control of funds of the Halqa Panchayat in terms of Section 12, where specific provision is that in case the funds are provided by the Government, Halqa Panchayat shall perform such function for utilization thereof in terms of the guidelines and norms laid down for the purpose.

25. In exercise of powers conferred under the Panchayati Raj Act, the J&K

Panchayati Raj Rules, 1996 have been framed. Rule 48 of the Rules prescribes powers and functions of the Halqa Panchayats. It clearly provides that the list of works to be undertaken by the Halqa Panchayats, has to be got approved in consultation with the Halqa Majlis and no work is to be executed without preparation of detailed estimates and technical clearance from the Rural Engineering Wing. Sub rule (f) of Rule 48 clearly provides that while executing, formulating and monitoring the work program, Panchayat Halqa shall be responsible for keeping the guidelines and instructions of the State Government and the Government of India into consideration.

26. Rule 49 of the Rules provides that the work shall be executed by employing daily labour, however, no contractor shall be employed except for work of highly technical nature or involving funds and investment of more than Rs 3 lakh. Meaning thereby in case the work is of technical nature or the project is worth more than Rs 3 lakh, a contractor can be employed.

27. From the scheme of the aforesaid provisions of the Act and the Rules, what is evident is that it is not that the Halqa Panchayat is the final authority in case the funds are to be provided by the Government as against the funds which are self-generated by the Halqa Panchayats. The fact cannot be disputed that there are no qualifications prescribed in the law for election of Panches and Sarpanch. They are not technically qualified people who can evaluate and plan for execution of any project for the purpose. Even as per the scheme of the Act, the technical evaluation has to be got done from the Rural Engineering Wing. The participation of the members of the Halqa Panchayats or the Halqa Majlis is for the purpose of identification of the projects which should be executed in the area concerned for creation of better facilities as against the plans imposed on them by the higher authorities without realizing the real needs. All what has been done by the State by issuing the communication dated 18.09.2019 and Government Order dated 04.10.2019, is to prescribe the procedure for sanction of plan, evaluation of tenders if the project is more than Rs 3 lakhs.

28. The argument of the petitioners that in the rural area, the projects are not of technical nature, is totally misconceived. Even construction of a drain or even a road also requires technical evaluation and knowledge for execution thereof. For example, natural flow of water has to be ensured in any drain and similarly for the purpose of construction of road, it has to be ensured that the water does not accumulate on any portion besides the strength of the road considering the load of traffic for which the same is to be used. These cannot be executed by the daily rated laborers only. The idea is to best utilize the funds. It is the tax payers money which is ultimately utilized. It is the responsibility of all of us to ensure that there is no pilferage. It is not a secret that as compared to population of more than 130 crores in the country only 1.5 crore people pays income tax. And the assesseees who file return of income above Rs 50 lakhs is about 3 lakhs only.

29. We are at the initial stage of decentralization of powers to the grass-root level. It cannot be denied that there is no expertise available at present with the

local bodies in the rural areas. The Scheme of the Constitution and the enactment of the then State has a laudable object to be achieved but in the absence of technically qualified persons available there, the object cannot be achieved unless proper guidance is available from the authorities in the Government.

30. Section 6 of the Act provides for disqualifications to be a member of the Halqa Panchayat. None of these provide for any minimum qualification to be elected to the aforesaid body. Meaning thereby, even an illiterate person can be elected. By way of Haryana Panchayati Raj (Amendment) Act, 2015 (for short ? 2015 Haryana Amendment Act') certain amendments were carried out in the Haryana Panchayati Raj Act, 1994. Section 175 thereof provides for disqualifications to be a Sarpanch or Panch of a Halqa Panchayat or Zila Parishad or continue as such. There were number of disqualifications initially prescribed. However, with the amendment carried out vide the 2015 Haryana Amendment Act, five more categories were added in the list of disqualifications which included the persons with criminal background, the persons who had failed to pay the arrears of loans raised by them, the persons who are in arrears of electricity bills, the persons who do not possess specified educational qualifications and the persons who did not have functional toilet at their place of residence. The minimum qualification prescribed for a candidate to be eligible was matriculation or its equivalent for males and middle pass for females. Provisions of Section 175 of the Haryana Act, as existed after the aforesaid amendment is extracted below for reference:

"175. Disqualifications.-(1) No person shall be a Sarpanch or a Panch of a Gram Panchayat or a member of a Panchayat Samiti or Zila Parishad or continue as such who-

- (a) has, whether before or after the commencement of this Act, been convicted-
- (i) of an offence under the Protection of Civil Rights Act, 1955 (Act 22 of 1955), unless a period of five years, or such lesser period as the Government may allow in any particular case, has elapsed since his conviction; or
- (ii) of any other offence and been sentenced to imprisonment for not less than six months, unless a period of five years, or such lesser period as the Government may allow in any particular case, has elapsed since his release; or
- (aa) has not been convicted, but charges have been framed in a criminal case for an offence, punishable with imprisonment for not less than ten years;
- (b) has been adjudged by a competent court to be of unsound mind; or
- (c) has been adjudicated an insolvent and has not obtained his discharge; or
- (d) has been removed from any office held by him in a Gram Panchayat, Panchayat Samiti or Zila Parishad under any provision of this Act or in a Gram Panchayat, Panchayat Samiti or Zila Parishad before the commencement of this Act under the Punjab Gram Panchayat Act, 1952 and Punjab Panchayat Samiti

Act, 1961, and a period of five years has not elapsed from the date of such removal, unless he has, by an order of the Government notified in the Official Gazette been relieved from the disqualifications arising on account of such removal from office; or

(e) has been disqualified from holding office under any provision of this Act and the period for which he was so disqualified has not elapsed; or

(f) holds any salaried office or office of profit in any Gram Panchayat, Panchayat Samiti, or Zila Parishad; or

(g) has directly or indirectly, by himself or his partner any share or interest in any work done by order of the Gram Panchayat, Panchayat Samiti or Zila Parishad;

(h) has directly or indirectly, by himself or, his partner share or interest in any transaction of money advanced or borrowed from any officer or servant or any Gram Panchayat; or

(i) fails to pay any arrears of any kind due by him to the Gram Panchayat, Panchayat Samiti or Zila Parishad or any Gram Panchayat, Panchayat Samiti or Zila Parishad subordinate thereto or any sum recoverable from him in accordance with the Chapters and provisions of this Act, within three months after a special notice in accordance with the rules made in this behalf has been served upon him;

(j) is servant of Government or a servant of any Local Authority; or

(k) has voluntarily acquired the citizenship of a Foreign State or is under any acknowledgement of allegiance or adherence to a Foreign state; or

(l) is disqualified under any other provision of this Act and the period for which he was so disqualified has not elapsed; or

(m) is a tenant or lessee holding a lease under the Gram Panchayat, Panchayat Samiti or Zila Parishad or is in arrears of rent of any lease or tenancy held under the Gram Panchayat, Panchayat Samiti or Zila Parishad; or

(n) is or has been during the period of one year preceding the date of election, in unauthorised possession of land or other immovable property belonging to the Gram Panchayat, Panchayat Samiti or Zila Parishad; or

(o) being a Sarpanch or Panch or a member of Panchayat Samiti or a Zila Parishad has cash in hand in excess of that permitted under the rules and does not deposit the same along with interest at the rate of twenty-one percentum per year in pursuance of a general or special order of the prescribed authority within the time specified by it; or

(p) being a Sarpanch or Panch or a Chairman, Vice-Chairman or Member, President or Vice-President or Member of Panchayat Samiti or Zila Parishad has in his custody prescribed records and registers and other property belonging to,

or vested in, Gram Panchayat, Panchayat Samiti or Zila Parishad and does not handover the same in pursuance of a general or special order of the prescribed authority within the time specified in the order; or

(q) x x x

(r) admits the claim against Gram Panchayat without proper authorization in this regard;

(s) furnishes a false caste certificate at the time of filing nomination:

Provided that such disqualifications under clauses (r) and (s) shall be for a period of six years.

(t) fails to pay any arrears of any kind due to him to any Primary Agriculture Co-operative Society, District Central co-operative Bank and District Primary co-operative Agriculture Rural Development Bank; or (u) fails to pay arrears of electricity bills;

(u) fails to pay arrears of electricity bills;

(v) has not passed matriculation examination or its equivalent examination from any recognized institution/board:

Provided that in case of a woman candidate or a candidate belonging to Scheduled Caste, the minimum qualification shall be middle pass:

Provided further that in case of a woman candidate belonging to Scheduled Caste contesting election for the post of Panch, the minimum qualification shall be 5th pass; or

(w) fails to submit self declaration to the effect that he has a functional toilet at his place of residence.

Explanation 1. - A person shall not be disqualified under clause

(g) for membership of a Gram Panchayat, Panchayat Samiti or Zila Parishad by reason only of such person,--

(a) having share in any joint stock company or a share or interest in any society registered under any law for the time being in force which shall contract with or be employed by or on behalf of Gram Panchayat, Panchayat Samiti or Zila Parishad; or

(b) having a share or interest in any newspaper in which any advertisement relating to the affairs of a Gram Panchayat, Panchayat Samiti or Zila Parishad may be inserted; or

(c) holding a debenture or being otherwise concerned in any loan raised by or on behalf of any Gram Panchayat, Panchayat Samiti or Zila Parishad; or

(d) being professionally engaged on behalf of any Gram Panchayat, Panchayat

Samiti or Zila Parishad as a Legal Practitioner; or

(e) having any share or interest in any lease of immovable property in which the amount of rent has been approved by the Gram Panchayat, Panchayat Samiti or Zila Parishad in its own case or in any sale or purchase of immovable property or in any agreement for such lease, sale or purchase ; or

(f) having a share or interest in the occasional sale to the Gram Panchayat, Panchayat Samiti or Zila Parishad of any article in which he regularly trades or in the purchase from the Gram Panchayat of any article, to a value in either case not exceeding in any year one thousand rupees.

Explanation 2. - For the purpose of clause (1)-

A person shall not be deemed to be disqualified if he has paid the arrears or the sum referred to in clause (i) of this sub-section, prior to the day prescribed for the nomination of candidates.?

31. The constitutionality of the aforesaid Amendment was challenged by the aggrieved persons before Hon'ble the Supreme Court by filing a writ petition. The same came to be decided vide judgment reported as (2016) 2 SCC 445 titled ? Rajbala and others v. State of Haryana and others?. In his leading judgment, Chalameswar, J held the amendment to be intra-vires to the Constitution. The observations with reference to prescription of a minimum qualification as contained in paras 78 to 80 are reproduced hereunder:

"78. The question is - whether the impugned provision which disqualifies a large number of voter population and denies their right to contest for various offices under the Act is discriminatory and therefore constitutionally invalid for being violative of Article 14 of the Constitution.

79. The learned Attorney General referred to Section 21 of the Act which catalogues the functions and duties of Gram Panchayat falling under 30 broad heads. To demonstrate the range of those heads, he pointed out some of the duties of a Gram Panchayat and submitted that in the light of such responsibilities to be discharged by members elected to the Gram Panchayat, the legislature in its wisdom thought it fit to prescribe a minimum educational qualification and such a prescription cannot be said to be making an unreasonable classification among the voters attracting the wrath of Article 14. Several judgments of this Court are referred to emphasise the importance of education.

80. The impugned provision creates two classes of voters-those who are qualified by virtue of their educational accomplishment to contest the elections to the panchayats and those who are not. The proclaimed object of such classification is to ensure that those who seek election to panchayats have some basic education which enables them to more effectively discharge various duties which befall the elected representatives of the panchayats. The object sought to be achieved cannot be said to be irrational or illegal or unconnected with the scheme and

purpose of the Act or provisions of Part IX of the Constitution. It is only education which gives a human being the power to discriminate between right and wrong, good and bad. Therefore, prescription of an educational qualification is not irrelevant for better administration of the panchayats. The classification in our view cannot be said either based on no intelligible differentia unreasonable or without a reasonable nexus with the object sought to be achieved." (Emphasis supplied)

32. In his concurring judgment, Abey Manohar Sapre, J further added the reasoning. The relevant paras from 99 to 105 are extracted below:

"99. Coming now to the question of constitutional validity of Section 175(1) (v) of the Act which provides that candidate must possess certain minimum educational qualification if he/she wants to contest an election. In my opinion, introduction of such provision prescribing certain minimum educational qualification criteria as one of the qualifications for a candidate to contest the election has a reasonable nexus with the object sought to be achieved.

100. In fact, keeping in view the powers, authority and the responsibilities of Panchayats as specified in Article 243-G so also the powers given to Panchayats to impose taxes and utilization of funds of the Panchayats as specified in Article 243-H, it is necessary that the elected representative must have some educational background to enable him/her to effectively carry out the functions assigned to panchayats in Part IX. It is the legislative wisdom to decide as to what should be the minimum qualifications, which should be provided in the Act.

101. No one can dispute that education is must for both men and women as both together make a healthy and educated society. It is an essential tool for a bright future and plays an important role in the development and progress of the country.

102. In my view, therefore, Section 175 (v) of the Act is intra vires the Constitution and is thus constitutionally valid.

103. Now coming to the question regarding constitutionality of Section 175(w) of the Act, which provides that if a person has no functional toilet at his place of residence, he/she is disqualified to contest the election. In my view, this provision too has reasonable nexus and does not offend any provision of the Constitution.

104. Indeed, there are no grounds, much less sustainable grounds, available to the petitioners to question the validity of this provision. This provision in my view is enacted essentially in the larger public interest and is indeed the need of the hour to ensure its application all over the country and not confining it to a particular State. Moreover, the State having provided adequate financial assistance to those who do not have toilet facility for construction of toilet, there arise no ground to challenge this provision as being unreasonable in any manner. Since this issue has already been elaborately dealt with by my learned brother,

therefore, I do not wish to add anything more to it.

105. In the light of the foregoing discussion agreeing with my learned brother, I also hold that Section 175 (v) is intra-vires the Constitution and is thus constitutionally valid." (Emphasis supplied)

33. A perusal of the aforesaid judgment shows that the legislation in Haryana was progressive. Reference has been made to various duties assigned to the Panchayats in the constitutional scheme and those cannot be properly discharged unless we have qualified people at place. No doubt, there are some panches/Sarpanches, who are well qualified but we are examining the legal position and not the cases in isolation. Once we have proper qualified persons at the grass-root level for discharge of various duties assigned to them, with the passage of time many of the functional may be assigned to them.

34. The role of the Halqa Panchayat is not taken away with the impugned circular or the government order whereby they can identify the project to be executed and also carry out concurrent and quarterly social audit of all works/schemes/contracts being implemented in the Panchayat area as per the procedure notified by the Government (Section 12(3)). This is how they can effectively participate in the developmental projects and ensure that every penny earmarked for the purpose of development in their area is used properly and the money is not thrown in drain. But the effort should not be to hold the projects for oblique motives. After all the infrastructure is to be created for the use of the residents of the area. They are the most affected persons in case the project is not properly implemented or delayed. In fact all concerned to work by joining their hands together to ensure proper development in the areas concerned.

35. The argument raised that the words 'highest possible amount' as mentioned in Rule 59(1) of the Rules should be read as the 'lowest possible amount' is totally misconceived and in fact is evident of the frustration on the part of the petitioners. No tools of interpretation of statutes can be put in service for reading the provisions of the Rule in the manner suggested by the petitioners. It will be doing violence with the provisions and the rules and will take the same beyond the scheme and the Rules and the purpose for which the aforesaid Rule has been framed. Rule 59 has continuance with Rules 57 & 58 of the Rules which talk of collection of revenue by the Halqa Panchayat with reference to Sections 15 and 23 of the Act. Naturally where any collection has to be made by the Halqa Panchayat by whatever means, the effort always is to generate more revenue from any contract to be awarded. Normally the persons who offer the highest amount should be the successful bidders. This is further evident from the scheme of Rule 59, if read with Sub Rules (2) to (4) in conjunction with Sub Rule (1). It talks about bids and auctions.

36. The fact cannot be denied that for execution of any project wherever the tenders have been called, these are normally in two parts- namely the technical bid and the financial bid. The capacity of a person who bids for the project is

examined first before opening the financial bid. All this expertise are not available with the Halqa Panchayat. There are norms laid down even for the projects to be executed by any of the agencies of the Government which are to be followed for the purpose. This highly technical work cannot be left at the hands of Halqa Panchayats, which are presently lacking technical qualifications and the expertise for the purpose.

37. It is relevant to add here that in WP(C) No. 3580/2019, the details of projects which have been placed on record by the petitioners shows that these run into crores of rupees. Even a single project runs into Rs 50 lakhs. Such type of project cannot be executed by merely employing daily labour as appropriate procurement of material and regular evaluation of the execution of work is required during its execution.

38. For the reasons mentioned above, I do not find any merit in these petitions and the same are accordingly dismissed.