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**(2010) 08 AHC CK 0034**  
**In the Allahabad High Court**

Shamsher and Smt. Kusum Devi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 26-08-2010

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 7(3), 82, 9(2), 9A  
Constitution of India, 1950 — Article 191, 243C(5), 272, 277, 278  
Supreme Court Advocates (Practice in High Courts) Act, 1951 — Section 2  
Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 — Section 83  
Uttar Pradesh Land Acquisition Act, 1894 — Section 11A, 6  
Uttar Pradesh Panchayat Raj Act, 1947 — Section 12J, 21A, 27A, 9A

**Citation :** (2011) 113 RD 128

**Hon'ble Judges :** Virendra Singh, J;Ashok Bhushan, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Ashok Bhushan, J.—These two writ petitions raising common question of law, have been heard together and are being decided by this common judgment.

2. Brief facts of the case giving rise to these writ petitions need to be noted. The petitioner in writ petition No. 40262 of 2010 was elected as Senior Up-Pramukh, Kshetra Panchayat, Jahanaganj, District Azamgarh. A no confidence motion against Adhyaksha of the Kshetra Panchayat was passed on 29.11.2007. The amendments were made in the U.P. Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 (hereinafter referred to as Act) on 10.12.2007. Smt. Shanti Devi, the Pramukh challenged the no confidence motion as well as amendments made in the Act by U.P. Act No. 44 of 2007 (hereinafter referred to as "Act of 2007") before the Lucknow Bench of this Court which was decided along with writ petition No. 451 (MB) of 2008 Mamta Kanaujia v. State of U.P. and Ors. on 1.3.2009, dismissing all the writ petitions. An order was passed on 25.6.2010 by the prescribed authority declaring the office of the Adhyaksh vacant. By subsequent order dated 2.7.2010, the District Magistrate passed an order referring to Section 9A of the Act as well as the judgment of the Division Bench

in Smt. Mamta Kanaujia's case authorising the respondent No. 6 an elected member of the Kshetra Panchayat, who was defeated candidate for the office of the Adhyaksha to perform the duties and functions of the Adhyaksha. The said order 2.7.2010 passed by the District Magistrate has been challenged by the petitioner on the ground that the petitioner being senior Up-Pramukh was entitled to discharge the duties and functions of Adhyaksha in accordance with the Act as amended by Act of 2007 and the District Magistrate erred in giving charge to respondent No. 6, who was only an elected member.

3. In writ petition No. 44538 of 2010, the petitioner was elected member of Kshetra Panchayat, Manjhava, Mirzapur. On 22.10.2005, one Smt Shiv Kumari was elected as Pramukh against whom the no confidence motion was passed. A writ petition No. 2869 (MB) of 2008 was filed by Smt. Shiv Kumari before the Lucknow Bench of this Court, wherein an interim order was passed on 7.4.2008. The writ petition of Shiv Kumari was also dismissed on 6.2.2009 along with the case of Mamta Kanaujia against which SLP was filed in the Supreme Court, which too was dismissed by the apex Court. Subsequently, the District Magistrate passed an order on 24.7.2010, declaring the post of Adhyaksha vacant and authorising the respondent No. 7, who was senior Up-Pramukh of Kshetra Panchayat to perform the duties of the Adhyaksha. The petitioner, who was elected as member has challenged the said order claiming that in accordance with the U.P. Amendment Act 44 of 2007, Senior Up-Pramukh is not entitled to function as Pramukh and the order of District Magistrate authorising the Up-Pramukh to function as Pramukh, is contrary to the provisions of the Amendment Act 2007. Writ petition No. 40262 of 2010 is being treated as leading writ petition.

4. Sri U.N. Sharma, learned Senior Advocate, assisted by Sri K.K. Singh has appeared for the petitioner in writ petition No. 40262 of 2010, Sri C.B. Yadav, learned Senior Advocate has appeared on behalf of the respondent No. 6 and Sri Chandra Shekhar Singh, learned Additional Chief Standing Counsel has appeared for the State. Sri R.K. Mathur has appeared on behalf of the petitioner in writ petition No. 44538 of 2010.

5. Sri U.N. Sharma, learned Senior Advocate appearing for the petitioner contends that the petitioner, who was Senior Up-Pramukh elected before amendments made in the Act by U.P. Act No. 44 of 2007, is entitled to discharge the duties of Adhyaksh, the office of Adhyaksha being vacant. Sri Sharma contends that the District Magistrate has wrongly relied on the judgment of the Division Bench in Smt. Mamta Kanaujia" case, which has no application in the facts of the present case. He submits that the order of the District Magistrate is contrary to the provisions of the Act as amended by U.P. Act No. 44 of 2007, which prejudicially affect the rights of the petitioner and is based on misinterpretation of the provisions and deserves to be set aside. He submits that in view of the provisions of Section 7(3) as added by U.P. Act No. 44 of 2007, the petitioner shall continue in the office of the Senior Up-Pramukh along with its

rights and duties and the provisions of U.P. Act No. 44 of 2007 shall not be applicable with regard to the petitioner, Section 7(3) being provision with non-obstante clause. He submits that u/s 7(3) as added by amendments the words "shall continue to hold the office as such" entitles the petitioner to discharge all functions and duties of Senior Up-Pramukh which includes the right to function and discharge duties of Pramukh when the office of the Pramukh is vacant. Sri Chandra Shekhar Singh, learned Additional Chief Standing Counsel appearing for the State raised a preliminary objection that the petitioner has no locus to challenge the impugned order since he is only an elected member and had no right to discharge the duties of Adhyaksha.

6. Sri C.B. Yadav, learned Senior Advocate appearing for the respondent No. 6 contends that in view of the provisions of U.P. Amendment Act No. 44 of 2007, the petitioner is not entitled to exercise the rights and duties of the office of Adhyaksha as Sections 82 and 83 of the Act have been omitted by the U.P. Amendment Act No. 44 of 2007. He submits that there is no saving clause in Sections 82 and 83 which make the intention of the Legislature clear that Legislature never wanted Senior Up-Pramukh to continue to discharge the functions of the Pramukh even after the Amendment Act No. 44 of 2007. He submits that the District Magistrate has rightly exercised the power u/s 9-A by appointing the respondent No. 6 to function as Pramukh, she being elected member. He submits that in view of the provisions of Section 9(2) and 9A of the Act as added by U.P. Amendment Act No. 44 of 2007, the petitioner cannot be heard in saying that the petitioner is entitled to function as Pramukh. Sri C.B. Yadav further contended that the office of Adhyaksha was reserved for Scheduled Caste woman to which category Smt. Shanti Devi Adhyaksha belongs. He contends that after removal of Smt. Shanti Devi, even for temporary arrangement a woman belonging to Scheduled Castes category has to be given the charge of Adhyaksha. He submits that the seat of Adhyaksha being reserved for Scheduled Castes woman, the reservation of that category shall also apply even for temporary/casual arrangement. Sri C.B. Yadav has placed reliance on Division Bench judgment of this Court in Mamta Kanaujia's case and has submitted that Division Bench has laid down that District Magistrate, while making the temporary arrangement has to entrust the duties of the office of Adhyaksha to an elected member. Relying on Kunwar Pal Singh (Dead) by L.Rs. Vs. State of U.P. and Others, he submits that when a statute prescribes a particular manner for doing a particular act, that must be done in that manner alone. Reliance has also been placed on Division Bench judgement in the cases of Pushpendra Kumar v. State of U.P. and Ors. (2010) 2 UPLBEC 1062 and Lallan Prasad Verma v. State of U.P. and Ors. 2010 (5) ADJ 153 for the proposition that even in the U.P. Panchayat Raj Act, 1947 the Prescribed Authority has to obtain the wishes of the members of Gram Panchayat before nominating any person on officiating basis to discharge the duties and functions of Pradhan. Reliance has also been placed for the same proposition on the judgment in the case of Udaivir v. State Election Commission of U.P. through its Chairman and Ors. 2009 (106)

RD 151.

7. Sri R.K. Mathur, learned Counsel appearing for the petitioner in writ petition No. 44538 of 2010 has adopted the submissions made by Sri C.B. Yadav and submits that the order of the District Magistrate entrusting the duties of Senior Up-Pramukh is contrary to the provisions of the Act as amended by U.P. Act No. 44 of 2007.

8. We have considered the submissions of learned Counsel for the parties and have perused the record.

9. Before we proceed to consider the submissions of learned Counsel for the parties, the preliminary objection raised by Sri Chandra Shekhar Singh, learned Additional Chief Standing Counsel needs to be considered. Submission of learned Counsel is that the petitioner has no locus to challenge the order by which the District Magistrate has authorised respondent No. 6 to perform the duties of Adhyaksha. The petitioner admittedly was elected as Senior Up-Pramukh before the U.P. Amendment Act No. 44 of 2007 came into force. The petitioner in this writ petition has challenged an order by which the charge has been given to the respondent No. 6, who is an elected member of Kshetra Panchayat, on the ground that he being Senior Up-Pramukh is entitled to function as Adhyaksha. We fail to see any substance in the submission of learned Additional Chief Standing Counsel. The petitioner who has been elected as Senior Up-Pramukh has every right to claim entitlement to function on the post of Adhyaksha. The petitioner, who challenges the order passed by the District Magistrate alleging to be against the provisions of the U.P. Act No. 44 of 2007 has every right to maintain the writ petition. The objection is wholly baseless as well as without any substance and is accordingly overruled.

10. The main issue, which has cropped in these writ petitions is as to whether after amendment made by U.P. Act No. 44 of 2007 in the Act, the right and entitlement of senior Up-Pramukh to discharge the duties of Pramukh has come to an end or survives despite the above amendments. Both the parties have placed reliance on the U.P. Amendment Act, 44 of 2007, amending the Act.

11. For appreciating the submissions of learned Counsel for the parties, it is relevant to look into the scheme of the Act as well as the relevant amendments which have been brought by U.P. Act No. 44 of 2007.

12. The Act was enacted by the State Legislature to provide for the establishment of Kshetra Panchayat and Zila Panchayat in Uttar Pradesh. After 73rd Amendment Act, 1992 in the Constitution of India, the Act was amended by U.P. Act No. 9 of 1994, prior to Amendment Act No. 44 of 2007 (hereinafter referred to as Amendment Act, 2007). Section 7 provided that in every Kshetra Panchayat a Pramukh, a Senior Up-Pramukh and a Junior Up-Pramukh shall be elected. According to Section 9, the term of Pramukh and Up-Pramukh of the Kshetra Panchayat was to extend up to the term of the Kshetra Panchayat. Section 9(2) provided that where the office of the Pramukh is vacant, the Senior

Up-Pramukh shall discharge the functions of the Pramukh. Section 9-A provided for temporary arrangement in certain cases. Section 83 provided for duties of Up-Pramukh. U.P. Act No. 44 of 2007 was enacted to amend the Act. The statements of object and reasons of the Amendment Act, 2007 provides that the Act provided for the offices of Pramukh, Up-Pramukh (Senior Up-Pramukh and Junior Up-Pramukh) in every Kshetra Panchayat. It was decided to amend the said Act to omit the provisions of the offices in respect of which there is no provision in the Constitution namely; the office of Up-Pramukh (Senior Up-Pramukh and Junior Up-Pramukh). Chapter III of Amendment Act, 2007 contains the provisions by which the Act was amended. It is relevant to note certain provisions of the Amendment Act, 2007 namely; general amendments made in Section 7, 9, 9A, Sections 82 and 83 and in Section 88. It is convenient to refer to the provisions of the Act as it stood prior to Amendment Act, 2007 and the Act as it stood after the amendment.

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| _____              | Provisions prior to    | Amendments made by 2007 |
| Amendment Act 2007 | in relevant provisions | _____                   |

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Pramukh and Up- | In Section 7 of the principal Act, | | Pramukh.-(1) In every |  
after Sub-section (2), the following | | Kshetra Panchayat a Pramukh, | Sub-  
section shall be inserted, namely; | | a Senior Up Pramukh and a | |(3)  
Notwithstanding anything to the | | Junior Up Pramukh shall be | | contrary  
contained in any other provision | | elected by the elected members | | of this  
Act, the persons who have been | | of the Kshetra Panchayat from | | elected to  
the office of the Up-Pramukh | | amongst themselves. | | before the  
commencement of Uttar Pradesh | | (2) The election to the office of | | Panchayat  
Laws (Amendment) Act, 2007 shall | | Pramukh and Up Pramukh may | | continue  
to hold the office as such til the | | be held notwithstanding any | | expiry of their  
term as if the said Act | | vacancy in the office of the | | were not enacted." | |  
elected members of Kshetra | | | Panchayat. | | \_\_\_\_\_

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of Pramukh and Up | In Section 9 of the Principal Act, for | | Pramukh.-(1) Save  
as otherwise | Sub-section (2), the following Sub-section | | provided in this Act  
the term | shall be substituted, namely; | | of office of a Pramukh or Up- | |  
Pramukh of a Kshetra Panchayat | (2) Where the office of the Pramukh is | |  
shall commence upon this elect- | vacant, the District Magistrate may, by | | ion  
and shall extend up to the | order, make such arrangement as he thinks | | term  
of the Kshetra Panchayat: | fit for the discharge of the functions of | | (2)  
Where the office of the | the Pramukh, til the Pramukh is elected. | | Pramukh is  
vacant-(a) the Senior | | | Up-Pramukh shall discharge the | | | functions of the  
Pramukh till | | | the Pramukh is elected. | | \_\_\_\_\_

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Temporary arrangement in | For Section 9-A of the Principal Act, the | | certain  
cases.-When the Pramukh | following section shall be substituted, | | is unable

to discharge his | namely: | | functions owing to absence, | | | illness or any other cause, and | "9-A. Temporary arrangement in certain | | the office of Up-Pramukhs are | cases.-When the Pramukh is unable to | | vacant, or when the Up-Pramukh, | discharge his functions owing to absence, | | if any, acting u/s 83 | illness or any other cause, the District | | during a vacancy in the office | Magistrate may, by order, make such | | of Pramukh is unable to discharge| arrangement, as he thinks fit, for the | | his functions owing to absence, | discharge of the functions of the Pramukh, | | illness or any other cause, the | until the date on which the Pramukh resumes| | District Magistrate may, by order| his duties." | | make such arrangement, as he | | | thinks fit for the discharge of | | | the functions of the Pramukh, | | | until the date on which the | | | Pramukh or Up-Pramukh, as the | | | case may be, resumes his duties. | |

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| 82. Delegation by Pramukh to Up- | Sections 82 and 83 of the principal Act | | Pramukh.-(1) The Pramukh of the | shall be omitted. | | Kshettra Panchayat may by general| | | or special order empower to the | | | Senior of Junior Up-Pramukh to | | | exercise or perform under his | | | general guidance any one or more | | | of his powers, duties or functi- | | | ons except those specified in | | | Clause (a) and (b) of Section 81,| | | 83. Duties of Up-Pramukh.-(1)A | | | Senior Up-Pramukh shall-(a) in | | | the absence of the Pramukh | | | preside at the meetings of the | | | Kshettra Panchayat unless | | | prevented by any reasonable cause| | | from doing so and shall perform | | | all duties and functions and may | | | exercise all powers of the | | | Pramukh when presiding at the | | | meeting. | |

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| 88. Constitution of Committees. | In Section 88 of the principal Act- | | (1) Subject to the provisions of | | | the other Sub-sections the | (a) for Sub-section (2) the following | | Committees specified in Sub- | Sub-sectionshall be substituted namely: | | section (1) of Section 87 shall | | | consist of one member from each | | "(2) ThePramukh shall be ex-officio | | circle within the Khand to be | Chairman of Vitta Evam Vikas Samiti, | | elected by the members of the | Shiksha Samiti and Samta Samiti" | | Kshettra Panchayat from amongst | | | themselves. (2) The Pramukh and | (b) Sub-sections (3), (3-A) and (4) | | the two Up-Pramukhs shall be ex- | shall be omitted. | | officio members of the Karya | | | Samiti, and shall, respectively | | | be its Chairman, Senior Vice- | | | Chairman and Junior Vice-Chairman| (c) For Sub-section (5) the following | | (3) The Senior Up-Pramukh shall | Sub-section shall be substituted, namely: | | be ex-officio member and Chairman| | | of the Vitta Evam Vikas Samiti, | | "(5) As soon as may be after their | | and the Principal of the Agricul-| constitution each committee specified | | tural School, if any, within the | in Sub-section (1) of Section 87, other | | Vitta Evam Vikas Samiti, shall be| than Karya Samiti, shall at its first | | an additional member of the | meeting elect one of their members to be | | Khand. | the Vice-Chairman". | | | | (3-A) The Senior Up-Pramukh shall| | | be ex-officio member and Chairman| | | of the Samata Samiti. | | | | (4) The Junior Up-Pramukh shall be| | | ex-officio member and

Chairman of | | | the Shiksha Samiti and one out of | | | the Principals and Headmasters | | | of Higher Secondary and Junior | | | High Schools situated within the | | | Khand shall be co-opted by a | | | resolution by the Kshettra | | | Panchayat. | | | (5) As soon as may be after their | | | constitution, the Vitta Evam | | | Vikas Samiti of the Shiksha | | | Samiti and the Samata Samiti | | | shall elect one of their members | | | to be the Vice-Chairman of the | | | Samiti. | | |

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13. From the above provisions of the Act and the amendments made by Amendment Act, 2007, it is clear that office of Up-Pramukh, senior Up-Pramukh and Junior Up-Pramukh have been omitted wherever occurring in the Act including marginal headings and schedule. The Legislature however, while omitting the aforesaid offices continued the office the Up-Pramukh, who was elected before the Amendment Act, 2007. The special provision in Section 7(3) beginning with non-obstante clause has been inserted providing that notwithstanding anything to the contrary contained in any other provision of this Act, the persons who have been elected to the office of Up-Pramukh before the the commencement of the Amendment Act 2007 shall continue to hold the office as such till the expiry of their term as if the said Act was not enacted. The words contained in the above provision indicate the intendment and the legislative policy. Section 7(3) is the most important provision which needs to be interpreted for resolving the issues raised herein. Each words used in Section 7(3) has to be looked, its ordinary meaning ascertained and the legislative intendment to be found out for clearly understanding the scheme. Section 7(3) is as follows.

7(3). Notwithstanding anything to the contrary contained in any other provision of this Act, the persons who have been elected to the office of the Up-Pramukh before the commencement of the Uttar Pradesh Panchayat Laws (Amendment) Act, 2007 shall continue to hold the office as such till the expiry of their term as if the said Act were not enacted.

14. The petitioner's submission in the writ petition are founded on Section 7(3). It is contended that those Up-Pramukhs, who have been elected prior to Amendment Act, 2007 i.e. (before 10.12.2007) have been allowed to continue to hold the office of Up-Pramukh till the expiry of their term. Meaning thereby that they will continue to function as Up-Pramukh with their rights and duties as provided in the Act unaffected by Amendment Act, 2007. It is contended that by virtue of Section 9(2) where the office of the Pramukh is vacant, the Senior Up-Pramukh shall discharge the functions of the Pramukh till the Pramukh is elected. It is submitted that by virtue of Section 83, it is the right and duties of the Senior Up-Pramukh in the absence of Pramukh to perform the duties of Pramukh and the petitioner shall continue as Up-Pramukh with all its rights and duties as if the Amendment Act, 2007 has not been enacted. Per contra Sri C.B. Yadav, learned Counsel for the respondent No. 6 contends that the provisions of Sections 82 and

83 having been omitted and Section 9 and 9-A having been amended providing for empowering the District Magistrate to make such arrangement as he thinks fit for the discharge of the functions of the Pramukh, the petitioner has no right to claim to function as Pramukh and the exercise of the powers of the District Magistrate by the impugned order dated 2.7.2010, authorising the respondent No. 6, who is an elected member of the Kshetra Panchayat, is wholly within the jurisdiction of the District Magistrate. He submits that due to omission of Sections 82 and 83, the entitlement of the functions of the petitioner has come to an end. Further submission of Sri Yadav is that in view of the Division Bench judgment of this Court in Mamta Kanaujia's case, it is only an elected member, who is entitled to function in the office of the Chairman after the Amendment Act, 2007.

15. Before we proceed to consider the effect and consequence of the provisions of the Act and Amendment Act, 2007, it is relevant to refer to Division Bench judgment in Mamta Kanaujia's case. In Mamta Kanaujia's case 2009(2) ADJ 446, Constitutional validity of the U.P. Amendment Laws 44 of 2007 was challenged. It was contended that abolition of the office of the Vice Chairman, Up-Pramukh and Upadhyaksha of the Zila Panchayat is against the constitutional scheme and conferring power on the District Magistrate for making temporary arrangement for the office of Pramukh and Adhyaksha is a direct evasion of constitutional mandate of manning the Panchayat only by elected members. Further the power conferred on the District Magistrate and State Government is wholly unguided and unchannelised. There was further challenge to the provisions pertaining to no confidence motion brought by the Amendment with which we are not concerned in the present writ petition. The Division Bench in Mamta Kanaujia's case upheld the constitutional validity of U.P. Act No. 44 of 2007. The Division Bench laid down following in paragraphs 136 and 142:

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

142. On a harmonious and meaningful construction of the provisions of Section 9-A, 21-A, and 27-A in the light of the scheme of the State Act as well as in letter and spirit of the constitutional provisions of Part IX and in particular Article 243C(5)(b) the State or the District Magistrate, as the case may be, can only

entrust the functioning of the office of the Chairperson to an elected member, and not to any other person including an ex-officio or nominated member, while making the temporary arrangement. Thus the abolition of the offices of the Vice Chairperson, does not violate any constitutional provision, nor is arbitrary.

16. The Division Bench in Mamta Kanaujia's case held that District Magistrate while making temporary arrangement can entrust the power to an elected member. The issue which has arisen in the present writ petition has not arisen in the said case nor there is any ratio in the said judgment with regard to the issue which has cropped herein. The Division Bench was not examining the rights of Up-Pramukh, who claim entitlement to function as Pramukh, in the said case there is no ratio which may be said to cover the issues which have arisen herein.

17. The judgments in the case of Pushpendra Kumar v. state of U.P. and Ors. (supra), Lallan Prasad Verma v. State of U.P. and Ors. and Udaiveer v. State Election Commission of U.P. in which cases provisions of Section 12J of U.P. Panchayat Raj Act, 1947 came for consideration are not relevant for the issues which have arisen in the present writ petition. No such ratio has been laid down in the aforesaid cases which may support the submissions of Sri C.B. Yadav.

18. The judgment of the apex Court in Kunwar Pal Singh v. State of U.P. and Ors. (supra) also does not help Sri C.B. Yadav in the present case. In the said cases, the apex court was considering the provisions of Section 6 and 11A of the U.P. Land Acquisition Act, 1894. The apex Court in the said case laid down that mode prescribed u/s 6(2) for publication of a declaration u/s 6 has to be in the manner prescribed thereunder. There cannot be any dispute to the above proposition. However, the said case in no manner helps the respondent in the present case.

19. As noted above, Section 7(3) which begins with non-obstante clause continues the Up-Pramukh who have been elected prior to Amendment Act, 2007 to hold the office as such. The effect and consequence of non-obstante clause i.e. Section 7(3) and Ors. provisions which have been brought by Amendment Act, 2007 specially the provisions omitting the office of Up-Pramukh, the provisions of Section 7(2) Section 7A as well as provisions omitting Sections 82 and 83 have to be considered. Interpretation of non-obstante clause in a Statute came for consideration before the apex Court in several cases. It is useful to refer to certain judgments of the apex Court which are relevant for interpreting Section 7(3).

20. In Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another, the apex Court had occasion to consider Section 2 of the Supreme Court Advocates (Practice in High Courts) Act (1951) which contains a non-obstante clause in context of right of practice of an advocate in the original side of the High Court as per Rules framed by Calcutta High Court Section 2 of the Act was to the following effect:

Notwithstanding anything contained in the Indian Bar Councils Act, 1926, or in any other law regulating the conditions subject to which a person not entered in

the roll of Advocates of a High Court may, be permitted to practise in that High Court every Advocate of the Supreme Court shall be entitled as of right to practise in any High Court whether or not he is an Advocate of that High Court: Provided that nothing in this section shall be deemed to entitle any person, merely by reason of his being an Advocate of the Supreme Court, to practise in any High Court of which he was at any time a judge, if he had given an undertaking not to practice therein after ceasing to hold office as such judge.

21. While, interpreting the relevant provisions of Section 2 and Rules framed by Calcutta High Court, the apex Court laid down following in paragraphs 24 and 27:

(24) Turning now to the non obstante clause in Section 2 of the new Act, which appears, to have furnished the whole basis for the reasoning of the Court below and the argument before us closely, followed "that reasoning-we find the learned Judges begin by inquiring what are the provisions which that clause seek-, to supersede and then place upon the enacting clause such Construction as would make the right conferred by-it co-extensive with the disability imposed by the superseded provisions. The meaning of the section will become clearer", they, observe,"

if we examine a little more closely what the, section in fact supersedes or repeals... The disability which the section removes and the right which it confers are coextensive.

This is not, in our judgments a correct approach, to the construction of Section 2. It should first be ascertained what the enacting part of the section provides, a fair construction of the words used according to, their natural and ordinary meaning, and the non obstante clause is to be understood as operating to set aside as no longer valid anything contained in relevant existing laws which is inconsistent with the new enactment. We will revert to this clause again presently.

(27) Nor can we read the non obstante clause as specifically repealing only the particular provisions which the learned Judges below have been at pains to pick out from the Bar Councils Act and the Original Side Rules of the Calcutta and Bombay High Courts. If, as we, have pointed out, the enacting part of Section -2 covers all Advocates of the Supreme Court, the non obstante clause can reasonably be read as overriding " anything contained" in any relevant existing law which is inconsistent with the new enactment, although the-draftsman appears to have had primarily in his mind a particular type of law as conflicting with the new Act. The enacting part of a statute must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously; for, even apart from such clause, a later law abrogates earlier laws clearly inconsistent with it. *Posteriores leges priores contrarias abrogant* (Broome's Legal Maxims, 10th Edn., p. 347). Here, Section 2 entitles every Advocate of the Supreme Court as of right to practise in any High Court in India.

22. The apex Court laid down in the said case that it should first be ascertained what the enacting part of the section provides on a fair construction of the words

used according to their natural and ordinary meaning and the non obstante clause is to be understood as operating to set aside as no longer valid anything contained in relevant existing laws which is inconsistent with the new enactment. In the present case non-obstante clause continues the office of Up-Pramukh notwithstanding anything contained in Amendment Act, 2007. Applying the ratio of the apex court, it is clear that the continuance of the office of the Up-Pramukh as such was by disregarding anything contrary in the Amendment Act, 2007. The apex Court had occasion to consider again a non-obstante clause in A.V. Fernandez Vs. The State of Kerala, The apex Court was considering the Travancore-Cochin General Sales Tax Act. Section 2(j), 2(k) and 26 was added by Travancore-Cochin General Sales Tax Act, 1961 which exempted certain categories of sales tax as provided under Article 286 of the Constitution of India. Section 26 begins with non-obstante clause. The apex Court laid down following in paragraphs 31, 36 and 37.

(31). This object was sought to be achieved in the main bulk of the Sales Tax Acts by adding towards the end of the Acts sections like Section 26 of the Travancore-Cochin General Sales Tax Act, 1125, incorporating therein the terms of Article 286 of the Constitution. The non-obstante provision was thus enacted in the main bulk of the Sales Tax Acts which laid down:

Notwithstanding anything contained in this Act the tax on the sales or purchase of goods shall not be imposed under this Act where...(and the provisions of Article 286 were in terms incorporated therein).

(36) What, then, is the effect of this non-obstante provision? This Court in Aswani Kumar Ghosh v. Arabinda Bose made the following observations in connection with the non-obstante clause:

It should first be ascertained what the enacting part of the section provides on a fair construction of the words used according to their natural and ordinary meaning, and the non-obstante clause is to be understood as operating to set aside as no longer valid anything contained in relevant existing laws which is inconsistent with the new enactment.

The same ratio applies to the construction of the non-obstante provision contained in Section 26 of the Act with reference to all the other provisions of the Act that preceded the same.

(37) In our opinion, Section 26 of the Act, in cases falling within the categories specified under Article 286 of the Constitution has the effect of setting at nought and of obliterating in regard thereto the provisions contained in the Act relating to the imposition of tax on the sale or purchase of such goods and in particular the provisions contained in the charging section and the provisions contained in Rule 20(2) and other provisions which are incidental to the process of levying such tax.

So far as sales falling within the categories specified in Article 286 of the

Constitution and the corresponding Section 26 of the Act are concerned, they are, as it were, taken out of the purview of the Act and no effect is to be given to those provisions which would otherwise have been applicable if Section 26 had not been added to the Act. If these provisions of the Act and the rules made thereunder do not apply to the sales falling within those categories, the value thereof cannot be included in the turnover of the dealer and no question would arise of the applicability of Rule 7(1)(k) and Rule 20(2) at all to these cases. The amount for which the oil is sold in inter-State trade or commerce would not be lawfully included in the turnover of the dealer and if the amount for which such oil is sold cannot thus be included in his turnover no occasion would arise for the deduction under Rule 7(1)(k) of the value of the coconut and/or copra or groundnut and/or kernel purchased and converted by the dealer into such oil and cake.

23. The Apex Court in the above case, laid down that construction of the non-obstante provision contained in Section 26 has to be made in reference to all other provisions of the Act which have the effect of setting at naught and of obliterating in regard thereto the provisions contained in the Act relating to the imposition of the Tax. The ratio of the above case is also attracted in the facts of the present case. Non-obstante clause in Section 7(3) has to be read as setting at naught obliterating other provisions of the Amendment Act, 2007. Dealing with interpretation of non-obstante clause, the apex Court in Union of India (UOI) and Another Vs. G.M. Kokil and Others, has laid down following in paragraph 10:

Section 70, so far as is relevant, says "the provisions of the Factories Act shall, notwithstanding anything contained in that Act, apply to all persons employed in and in connection with a factory". It is well-known that a non-obstante clause is a legislative device which is usually employed to give over-riding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions. Thus the non-obstante clause in Section 70, namely, "notwithstanding anything in that Act" must mean notwithstanding anything to the contrary contained in that Act and as such it must refer to the exempting provisions which would be contrary to the general applicability of the Act. In other words, as all the relevant provisions of the Act are made applicable to a factory notwithstanding anything to the contrary contained in it, it must have the effect of excluding the operation of the exemption provisions. Just as because of the non-obstante clause the Act is applicable even to employees in the factory who might not be "workers" u/s 2(1), the same non-obstante clause will keep away the applicability of exemption provisions qua all those working in the factory. The Labour Court, in our view, was, therefore, right in taking the view that because of the non-obstante clause Section 64 read with Rule 100 itself would not apply to the respondents and they would be entitled to claim overtime wages u/s 59 of that Act read with Section 70 of the Bombay Shops and Establishments Act, 1948.

24. The apex Court had again considered the non-obstante clause in Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram, The apex court laid down that non-obstante clause is appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non-obstante clause. Following was laid down in paragraphs 68 and 69:

68. A clause beginning with the expression "notwithstanding any thing contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract" is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non-obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non-obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non-obstante clause would not be an impediment for an operation of the enactment. See in this connection the observations of this Court in The South India Corporation (P) Ltd. Vs. The Secretary, Board of Revenue Trivandrum and Another,

69. It is well settled that the expression "notwithstanding" is in contradistinction to the phrase "subject to", the latter conveying the idea of a provision yielding place to another provision or other provisions to which it is made subject. This will be clarified in the instant case by comparison of Sub-section (1) of Section 15 with Sub-section (1) of Section 15A. We are therefore unable to accept, with respect, the view expressed by the Full Bench of the Bombay High Court as relied on by the learned single judge in the judgment under appeal.

25. In The South India Corporation (P) Ltd. Vs. The Secretary, Board of Revenue Trivandrum and Another, the Constitution Bench of the Supreme Court had occasion to consider non-obstante clause as contained in Article 278 of the Constitution of India in reference to Articles 277 and 372 of the Constitution of India. The apex Court held that Article 278 opens out with a non-obstante clause. The phrase "notwithstanding anything in the Constitution" is equivalent to saying that in spite of the other articles of the Constitution, or that the other articles shall not be an impediment to the operation of Article 278. Following was laid down in paragraphs 18 & 19:

(18) With this background let us now consider the following two questions raised before us: (1) Whether Article 372 of the Constitution is subject to Article 277 thereof; and (2) whether Article 372 is subject to Article 278 thereof. Article 372 is a general provision and Article 277 is a special provision. It is settled law that a special provision should be given effect to the extent of its scope, leaving the general provision to control cases where the special provision does not apply. The earlier discussion makes it abundantly clear that the Constitution gives a separate treatment to the subject of finance, and Article 277 saves the existing

taxes etc. levied by States if the conditions mentioned therein are complied with. While Article 372 saves all pre-Constitution valid laws, Article 277 is confined only to taxes, duties, cesses, or fees lawfully levied immediately before the Constitution. Therefore, Article 372 cannot be construed in such a way as to enlarge the scope of the saving of taxes, duties, cesses or fees. To state it differently, Article 372 must be read subject to Article 277. We have already held that an agreement can be entered into between the Union and the States in terms of Article 278 abrogating or modifying the power preserved to the States under Article 277.

(19) That apart, even if Article 372 continues the pre-Constitution laws of taxation, that provision is expressly made subject to the other provisions of the Constitution. The expression "subject to" conveys the idea of a provision yielding 20-2 S.C. India/64 298 place to another provision or other provisions to which it is made subject. Further Article 278 opens out with a non- obstante clause. The phrase "notwithstanding anything in the Constitution is equivalent to saying that in spite of the other articles of the Constitution, or that the other articles shall not be an impediment to the operation of Article 278. While Article 372 is subject to Article 278, Article 278 operates in its own sphere in spite of Article 372. The result is that Article 278 overrides Article 372; that is to say, notwithstanding the fact that a pre-Constitution taxation law continues in force under Article 372, the Union and the State Governments can enter into an agreement in terms of Article 278 in respect of Part B States depriving the State law of its efficacy. In one view Article 277 excludes the operation of Article 372, and in the other view, an agreement in terms of Article 278 overrides Article 372. In either view, the result is the same, namely, that at any rate during the period covered by the agreement the States ceased to have any power to impose the tax in respect of works contracts.

26. The submission has been made by Sri C.B. Yadav that other provisions which have been enacted by Amendment Act, 2007 Section 9(2), 9A and omission of Sections 82 and 83, have to be taken into consideration while interpreting the Section 7(3) and the clear provision empowering the District Magistrate to make temporary arrangement for the office of the Pramukh by authorising any member of the Kshetra Panchayat cannot be ignored. His submission is that in view of the express provisions as above, the right of the petitioner to discharge the function of the Adhyaksha is no more in existence.

27. The apex Court in *Iridium India Telecom Ltd. Vs. Motorola Inc.*, had occasion to consider Section 129 of the CPC in context of power of Chartered High Courts to regulate their proceedings in original side. The question was as to whether by virtue of Section 129 of the Code of Civil Procedure, the whole CPC becomes in applicable for proceedings in the High Court. Section 129 of the CPC provided as under:

129. Power of High Courts to make rules as to their original civil procedure.- Notwithstanding anything in this Code, any High Court not being the Court of a

Judicial Commissioner, may make such rules not inconsistent with the Letters Patent or order or other law establishing it to regulate its own procedure in the exercise of its original civil jurisdiction as it shall think fit, and nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code.

28. The apex Court after considering the relevant provisions have laid down following in paragraphs 31,32 and 32. It was laid down by the apex Court that there cannot be any doubt about the principle of harmonious constructions. The argument was rejected that non-obstante Clause in Section 129 was merely declaratory and not intended to operate as an exception to the general body of the Code of Civil Procedure.

31. It is next contended for the appellant that merely because Section 129 of the CPC begins with the non obstante clause, "notwithstanding anything in this Code", the section cannot be construed as a departure from the entire body of the CPC so as to render the rules made by the High Courts to regulate its own procedure in the exercise of its original civil jurisdiction into a "stand alone body of rules". Our attention was drawn by the learned Counsel to pages 318-320 of Justice G.P. Singh's Principles of Statutory Interpretation (Ninth Edition), and it was contended that

the non obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the Legislature by way of abundant caution and not by way of limiting the ambit and scope of the operative part of the enactment.

Reliance was placed on the observations of this Court in *Aswini Kumar Ghosh v. Arabinda Bose* where it was said:

the enacting part of the statute must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously.

32. The observations of this Court in *Sri Venkataramana Devaru and Ors. v. State of Mysore and Ors.*, *R.S. Raghunath v. State of Karnataka and Anr.*, *Krishan Kumar v. State of Rajasthan and Ors.*, *Sultana Begum v. Prem Chand Jain and Maharashtra State Board of Secondary and Higher Education and Anr. v. Paritosh Bhupesh Kurmarsheth*, were also relied upon to contend that when there is an apparent conflict between different provisions of a statute, the Court must give effect to all of them by adopting the principle of harmonious construction.

33. There cannot be any doubt about the principle of harmonious construction. However, what confronts us is not a mere question of two independent provisions of the CPC being in conflict. The provisions of the CPC, which we have extracted, and the historical development of the different sections to which we have referred, do not suggest a situation of mere conflict. They seem to suggest that, throughout, the Legislature had made a distinction between the proceedings in other civil courts and the proceedings on the Original Side of the Chartered High

Courts. This distinction was made for good historical reasons and it had continued unabated, as we have noticed, through the consolidating Acts, and continued unaffected even through the last amendment of the CPC in the year 2002. In the face of this body of evidence, it is difficult to accede to the contention of the appellant that the force of the non obstante clause is merely declaratory and not intended to operate as a declared exception to the general body of the CPC.

29. The ratio of the above noted judgments, if applied in the present case, it is clear that Legislature intended that Up-Pramukh who were elected prior to Amendment Act shall continue to hold the office as if the Amendment Act, 2007 has not been enacted. Non-obstante Clause 7(3) clearly contemplates to disregard of the provisions of the 2007 Amendment Act which affects the functioning of Up-Pramukh as such.

30. It may be contended that even if the Up-Pramukh is allowed to complete his tenure, he might continue as Up-Pramukh but that itself may not give any right to the Up-Pramukh to claim to function as Pramukh in the event the office of the Pramukh is vacant. The words in Section 7(3) are; "shall continue to hold the office as such". It is further provided in the section that he shall continue to hold the office as such till the expiry of their term as if the said Act were not enacted. The words "hold the office as such" clearly contemplates the continuance of Up-Pramukh in the same manner and in the same capacity as he was continuing prior to the Amendment Act 2007.

31. The word "office" has been defined in Law Lexicon (1997) Edition P. Ramanatha Aiyar in following words.

The "office" denotes a duty in the office holder to correspondent duty, to execute a public or private duty and to take the emoluments belonging to it. (9 MLT 355.) Webster defines an office to be the place where a particular kind of business or service for others is transacted; a house or apartment in which public officers and others transact business; as a registrar's office, a lawyer's office.

A position or place to which certain duties are attached more or less of a public character. A sort of permanent position held by successive incumbents. May be with or without remuneration. It is a right to exercise a public or private employment or to hold a position which has certain duties attached to it.

Office means a position which requires the person holding it to perform certain duties and discharge certain obligations. An office may not depend on any law, or any contract or any mandate from the State or any authority.

32. In State of Assam and Others Vs. Shri Kanak Chandra Dutta, the apex Court had occasion to consider the word "office" in context of Articles 309, 310 and 311 of the Constitution of India. Following was observed in paragraph 10:

A post under the State is an office or a position to which duties in connection with the affairs of the State are attached, an office or a position to which a

person is appointed and which may exist apart from and independently of the holder of the post.

33. In *Srimati Kanta Kathuria Vs. Manak Chand Surana*, the apex Court had occasion to consider the word "office" in context of Article 191 of the Constitution of India. In paragraph 6 of the judgment, the apex court noted with the approval the observations of Lord Wright in *Macmillan v. Guest*, 1942 AC 561 which was to the following effect:

The word "office" is of indefinite content. Its various meanings cover four columns of the New English Dictionary, but I take as the most relevant for purpose of this case the following:

position or place to which certain duties are attached, especially one of a more or less public character.

33. The office of Up-Pramukh is office with which certain duties of public nature are attached. The existence and continuance of the office without performance of duties attached to it is meaningless and redundant exercise. When the Legislature continued the office of Up-Pramukh it is to be assumed that such continuance is with performance of duties attached to the office.

34. The word "as such" which has been used in Section 7(3) connotes the idea that Up-Pramukh shall continue as such. The word "as such" has been defined in Law Lexicon at page 149 as follows:

As such. The words "as such" connote that the service rendered must be connected with the discharge of the official duties of the other public servant. *Ram Charan Bhatt Vs. State*,

35. Thus the continuation of the Up-Pramukh in capacity of Up-Pramukh has to be treated to be continuance along with performance of the duties attached with the office. As noted above, the continuance of Up-Pramukh after the Amendment Act, 2007, who were elected prior to Amendment is in disregard to the provisions of Amendment Act, 2007 which has been specifically provided for in Section 7(3). Thus, the functions and duties of the Up-Pramukh as provided in Section 9(2) unamended and Section 83 as it existed prior to 2007 Amendment have to be conceded to a Up-Pramukh who is continuing by virtue of Section 7(3). The provisions of Section 9(2) and 9A as amended by U.P. Amendment Act 2007 are applicable in case the office of Adhyaksha is vacant or any temporary arrangement in all other cases except one which is provided in Section 7(3).

36. Our above view finds support from the scheme of the Act as amended by 2007 Amendment as hereinafter to be noted. Section 15 of the Act provide for motion of no confidence and Section 16 provides for removal of Pramukh. Prior to Amendment Act, 2007, Sections 15 and 16 contained Up-Pramukh which has been now deleted from both the Sections 15 and 16. After Amendment, Section 15(1) and Section 16(1) are to the following effect:

15(1). Motion of non-confidence in Pramukh or. A motion expressing want of confidence in the Pramukh or any of a Kshettra Panchayat may be made and proceeded with in accordance with the procedure laid down in the following sub-sections.

16(1) Removal of Pramukh or. (1) If in the opinion of the State Government the Pramukh or any of a Kshettra Panchayat wilfully omits or refuses to perform his duties and functions under this Act, or abuses the powers vested in him or is found to be guilty of misconduct in the discharge of his duties or becomes physically or mentally incapacitated for performing his duties, the State Government may, after giving the Pramukh or such as the case may be, a reasonable opportunity for explanation and after consulting the Adhyaksha of the Zila Panchayat concerned in the matter and taking into consideration his opinion, if received within thirty days from the date of the despatch of the communication for such consultation, by order, remove such Pramukh or as the case may be, from office, and such order shall be final and not open to be questioned in a Court of law.

Provided that where, in an enquiry held by such person and in such manner as may be prescribed, a Pramukh or is prima facie found to have committed financial and other irregularities, such Pramukh or shall cease to exercise and perform the financial and administrative powers and functions, which shall, until he is exonerated of the charges in the final enquiry, be exercised and performed by a committee consisting of three elected members of the Kshettra Panchayat appointed in this behalf by the State Government.

37. The question may be posed as to whether Sections 15 and 16 as amended after 2007 exclude the Up-Pramukh from facing a motion of no confidence or removal. If the amended provisions are applied to Up-Pramukh and it is accepted that they are beyond the reach of no confidence or removal, the said interpretation shall not advance the purpose and object of the Amendment. The Up-Pramukh, who is continuing till the expiry of the term of Kshettra Panchayat cannot be said to be excluded from the motion of no confidence or removal. If the said interpretation is accepted, the Up-Pramukh despite committing serious misconduct neither can be removed by no confidence or removed by the State Government, which is not the intend and purpose of the Act. Thus, for the Up-Pramukh also provisions of Sections 15 and 16 as it existed prior to amendment has to be applied which supports the construction that Section 7(3) continues a Up-Pramukh in the office as if the Amendment Act, 2007 has not been enforced.

38. The above construction is also reinforced by considering the provisions of Section 88 unamended and amended. Under the unamended provisions of Section 88, the Up-Pramukh was contemplated to be ex-officio member and Chairman of Vitta Evam Vikas Samiti and the Chairman of the Samta Samiti. After the amendment in Section 88 Up-Pramukh has been deleted from Section 88. The question is as to whether a Up-Pramukh, who had been continuing as ex-officio member and Chairman of Vitta Evam Vikas Samiti and Samta Samiti

cannot be ex-officio member and Chairman after the amendment. If it is accepted that he will cease from the aforesaid offices and shall not be able to discharge his duties as ex-officio member and Chairman, the said construction militates against the provisions of Section 7(3) which continues an Up Pramukh in office as such.

39. In view of the aforesaid discussions, we are of the view that Up Pramukh is entitled to function as Pramukh when the office of Pramukh is vacant due to temporary absence, illness or any other cause. In the present case, the District Magistrate taking an erroneous interpretation of the provisions of Section 9(2) and 9-A has passed an order authorising the respondent No. 6 to discharge the functions of Pramukh in presence of Up-Pramukh continuing in the office who has right to function in the office of Adhyaksha in his absence.

40. One more submission of Sri C.B. Yadav, learned Counsel for the respondents needs to be considered. The submission of Sri C.B. Yadav is that even if the functions of Adhyaksha are to be entrusted, the same can be entrusted to a person, who belong to reserved category of Pramukh. He submits that the post of Pramukh being reserved for Scheduled Castes woman casual/temporary arrangement has to be made of the member of the above category. It is true that reservation is provided of the post of Pramukh by virtue of Section 7-A. Section 9 and 9A as existed prior to Amendment 2007 and as it existed after the Amendment 2007, do not contemplate that charge of the office of the Pramukh be given to a member belonging to reserved category. Section 9 and 9A before its amendment in 2007 gave the right to Senior Up Pramukh to discharge the functions of Pramukh in his absence which provision clearly negated the submission that in vacancy of the office of the Pramukh or in the temporary absence, the charge has to be given to a person belonging to reserved category of Pramukh. In Section 9 and 9-A, there is no contemplation for giving charge to the category of which Pramukh belongs. For accepting the aforesaid interpretation, we have to read in Section 9 and 9A, the words which are not there. It is well accepted principle of statutory interpretation that in Statute no words are to be read which are not provided therein and the plain and ordinary meaning of the words has to be accepted. Thus, there is no force in the submission of Sri C.B. Yadav that the charge of the office of the Pramukh is to be given only to a Member, who belongs to the reserved category of Pramukh.

41. In view of the foregoing discussions, the order passed by the District Magistrate dated 1/2.7.2010 authorising the respondent No. 6 to function as Pramukh cannot be sustained and is hereby set aside. The petitioner, who is continuing as Up Pramukh is entitled to discharge the functions of the Pramukh. The writ petition No. 40262 of 2010 is thus allowed quashing the order dated 1/2.7.2010 and further directing the respondents to permit the petitioner to discharge the duties of Pramukh till the Pramukh is elected.

42. In writ petition No. 44538 of 2010, the District Magistrate by the impugned order dated 24.7.2010 has permitted the Up-Pramukh to function as Pramukh,

which is fully in accordance with the provisions of the Act as amended by 2007 Amendment. For the reasons given above, the writ petition No. 44538 of 2010 is dismissed.