

(2000) 04 KAR CK 0016

In the Karnataka High Court

Case No : Writ Petition Nos. 35456, 38782 and 38783 of 1999 and 1033 and 1034 of 2000

State of Karnataka and Another

APPELLANT

Vs

Lakshmappa Kallappa Balaganur and Another

RESPONDENT

Date of Decision : 10-04-2000

Acts Referred:

Constitution of India, 1950 — Article 243C(4)
Karnataka Panchayat Raj Act, 1993 — Section 120(2)

Citation : (2001) 3 KarLJ 498

Hon'ble Judges : Y. Bhaskar Rao, C.J.;V. Gopala Gowda, J

Judgement

Y. Bhaskar Rao, C.J.-Writ appeals are filed by the State of Karnataka and others assailing the judgment of the learned Single Judge declaring sub-section (2) of Section 159 of the Karnataka Panchayat Raj Act, 1993 (hereinafter called as the "Act") to the extent it prohibits the members of the House of the People, the State Legislative Assembly, the Council of States, the State Legislative Council and Adhyakshas of Taluk Panchayats, referred to in clauses (ii) to (iv) of sub-section (1) of Section 159 of the Act, from participating in the meeting convened for considering the no-confidence motion moved against the Adhyaksha and Upadhyaksha of a Zilla Panchayat under sub-section (3) of Section 179 of the Act, is illegal, void and unconstitutional and declaring that the words "or for considering a no-confidence motion under sub-section (3) of Section 179" contained in sub-section (2) of Section 159 of the Act are struck down as void and unconstitutional; further, declaring sub-section (3) of Section 179 of the Act to the extent it prohibits the members of the House of the People, the State Legislative Assembly, the Council of State, the State Legislative Council and Adhyakshas of Taluk Panchayats, from participating in the meeting convened for considering no-confidence motion against the Adhyaksha and Upadhyaksha of a Zilla Panchayat is illegal, void and unconstitutional in law. Accordingly, the word "elected" found immediately after the words "majority of the total number of" and before the words "Members of a Zilla Panchayat at a meeting specially

convened for this purpose" in sub-section (3) of Section 179 of the Act, is struck down as unconstitutional and quashing the meeting notice dated 25th of February, 1999 issued by the Chief Executive Officer of Bagalkot Zilla Panchayat.

2. Writ appeals are filed aggrieved of the judgment of the learned Single Judge and writ petitions which are filed challenging the validity of some of the provisions of the Act are also posted along with the writ appeals. Since interpretations of the provisions of the Constitution and provisions of the Act arise in all these cases, they are disposed of by a common judgment.

3. For the purpose of convenience, we are referring to the facts in brief by referring the ranking of the parties as petitioners and respondents.

I. Re: W.A. Nos. 4606 to 4609 of 1999:

Petitioners 1 and 2 in Writ Petition No. 7131 of 1999 are the Adhyaksha and Upadhyaksha of Bagalkot Zilla Panchayat (hereinafter referred to as the "Panchayat"). They were elected as Adhyaksha and Upadhyaksha of the Panchayat in the election held on 22nd of April, 1998. The term of office of Adhyaksha and Upadhyaksha is 20 months.

The petitioner in W.P. No. 6870 of 1999 is an elected member of the Legislative Council from Bijapur constituency.

The petitioner in Writ Petition No. 6557 of 1999 is an elected member of the Legislative Council from Bagalkot District representing local body of the district.

The petitioner in Writ Petition No. 6558 of 1999 is a member of the Legislative Assembly from Badami Constituency, which is a part of Bagalkot District.

Bagalkot Zilla Panchayat was earlier part of Bijapur Zilla Panchayat. Consequent upon the bifurcation of Bijapur District as two districts viz., Bijapur District and Bagalkot District, Bagalkot Zilla Panchayat came to be constituted. Bagalkot Zilla Panchayat consists of 27 elected Zilla Panchayat Members; six Taluk Panchayat Adhyakshas; seven members of the Legislative Assembly; four members of the Legislative Council and one member of the Parliament and in all the Panchayat consists of 45 members.

A meeting notice dated 25th of February, 1999 was issued by the Chief Executive Officer of the Bagalkot Zilla Panchayat convening a special meeting of the Panchayat on 6th of March, 1999 to consider the no-confidence motion against petitioners 1 and 2 in W.P. No. 7131 of 1999. Therefore, the writ petition was filed challenging the constitutional validity of sub-section (2) of Section 159 and sub-section (3) of Section 179 of the Act to the extent they prohibit the non-elected members of the Panchayat from participating and voting in the meeting convened for the purpose of electing the Adhyaksha and Upadhyaksha of the Panchayat and also for considering the "no-confidence motion" moved against the Adhyaksha and Upadhyaksha of Bagalkot Zilla Panchayat.

The learned Single Judge allowed the above said writ petitions. Hence, State has

filed these appeals.

II. Re: W.A. Nos. 6579 and 6580 of 1999:

Petitioners 1 and 2 in W.P. Nos. 27981 and 27982 of 1999 are the Adhyakshas and Upadhyakshas of Dharwad Zilla Panchayat. The total number of members of the said Panchayat is 39, out of that 19 are elected and 20 are not elected members. They sought for quashing the notice of special meeting convened by the Chief Executive Officer with respect of the no-confidence motion against them. They contended that the provisions of Section 180(2) provides that on a written request of not less than rd of total number of members a special meeting is to be convened for considering the no-confidence motion. As per Sections 159(2) and 179(3), the members other than elected members are prohibited from voting and participating in the meeting convened for considering the no-confidence motion, which are contrary to Article 243-C(4) of the Constitution. The learned Single Judge dismissed the petitions. Hence these appeals.

III. Re: W.A. No. 8003 of 1999:

The petitioner in W.P. No. 36731 of 1999 challenged the initiation of no-confidence motion against him by the majority members of the Taluk Panchayat, Harihar, which was fixed for 11-10-1999. He contended that other than the elected members, i.e., the members of the Parliament, M.L.As. representing the whole or part of the constituency, the members of the Councils of State and Legislative Councils and further Chairpersons of the Panchayat will also have right to vote in the meeting of the no-confidence motion. He further contended that the entire proceedings are contrary to the provisions of Section 140(2) of the Act. The learned Single Judge stayed the proceedings initiated against the petitioner. Against that interim order this appeal is filed.

IV. Re: W.A. Nos. 635 and 636 of 2000:

The petitioners in W.P. Nos. 41092 and 41093 of 1999 were Adhyakshas and Upadhyakshas of Bangalore Zilla Panchayat. The second respondent-Chief Executive Officer called a special meeting on 20-11-1999 to consider the no confidence against the petitioners. The petitioners filed the writ petitions seeking to quash the said notice, which is contrary to Section 180(2) of the Act. The learned Single Judge granted the interim order that the meeting may go on and the result of the resolution is stayed. Thereafterwards he vacated the interim order on 10-1-2000, against which order the present appeals are filed.

V. Re: W.P. No. 35456 of 1999:

The petitioner is the elected member and Upadhyaksha of Malur Taluk Panchayat. Since the office of Adhyaksha is vacant, she is also functioning as Adhyaksha under Section 153 of the Act. The meeting notice was issued to consider the no-confidence motion against the petitioner on 1-10-1999. The petitioner contends that as per Section 141(2)(a) read with Section 140(3) the requisition to call a special meeting to move the no-confidence motion signed by requisite number of

members is to be given to the Adhyaksha. The Adhyaksha is given a particular time frame of 15 days to call the meeting. On failure of Adhyaksha to call a meeting, a right accrues to 1/3rd of the total number of members to submit a requisition to the Executive Officer to convene a meeting. This Court granted the interim order that no-confidence motion may go on, but the results will not be given effect to and the same will be subject to the final orders in the writ petitions.

VI. Re: W.P. Nos. 38782 and 38783 of 1999:

The petitioners are the President and Vice-President of the Gulbarga Zilla Panchayat. The Chief Executive Officer issued notice to the members by fixing the date as 22-10-1999 to consider the no-confidence motion against the petitioners. The said notice has not been given to ex officio members of the Zilla Panchayat such as members of the State Legislature, Parliament and Adhyakshas of the Taluk Panchayats. In pursuance of the said notice, the special meeting was held and resolution was passed in the meeting expressing want of confidence in the petitioners by a mere majority of 29 elected members out of 37 elected members present in the meeting, which is contrary to Sections 159(2) and 179(3) of the Act. Therefore, the said notice is illegal. This Court granted the interim order that any decision that may be taken in pursuance of the said notice shall not be given effect to.

VII. Re: W.P. Nos. 1033 and 1034 of 2000:

Petitioners are the Adhyaksha and Upadhyaksha of the Chikballapur Taluk Panchayat. They have challenged the notice Annexure-E, dated 5-1-2000 issued by the Chief Executive Officer, respondent 3 convening the meeting to consider the no-confidence motion against them on 14-1-2000 on the ground that it is issued only to the elected members excluding the non-elected members, which is violative of Sections 120(2) and 140(3) of the Act, insofar as they prohibit the non-elected members from participating and voting in a meeting convened for considering the no-confidence motion and is contrary to Article 243-C of the Constitution. This Court granted the Interim Order that no-confidence motion moved against the petitioners could go on, but any resolution passed by the Panchayat shall not be given effect to.

4. To consider the constitutional validity of the above provisions, it is relevant to state the relevant constitutional provisions and provisions of the Act.

Article 40 of Chapter IV of the Constitution envisages that State shall take steps to organise Village Panchayats and endow them with power and authority to enable them to function as units of self-Government. Though fifty years have elapsed from the date of operation of the Constitution of India Panchayat Raj system has not gained momentum to strengthen grassroot level democracy and in many States they have become weak and indifferent owing to variety of reasons including the failure to hold regular and periodical elections, prolonged suppression and inadequate representation of Scheduled Castes, Scheduled

Tribes and women and lack of financial resources. Therefore, to make the spirit of Article 40 of Directive Principles as reality, vide Constitution (Seventy-third Amendment) Act, 1992, "Part IX consisting of Articles 243 to 243-O" were incorporated and the same have come into force with effect from 24th April, 1993.

Article 243-B of the Constitution provides for the constitution of Panchayats at the village, intermediate and district levels in accordance with Part IX of the Constitution.

The State of Karnataka has passed an Act (Act No. 14 of 1993) known as "Karnataka Panchayat Raj Act, 1993", which came into force with effect from 10th of May, 1993.

Section 120(2) of the Act reads as follows:

"The members of the House of People, the State Legislative Assembly, the Council of States and the Legislative Council and the Adhyaksha of Grama Panchayats referred to in clauses (ii), (iii) and (iv) of sub-section (1) shall be entitled to take part in the proceedings of, and vote at, the meetings of Taluk Panchayat except at a special meeting convened for the purpose of election of Adhyakshas and Upadhyakshas under sub-section (1) of Section 138 or for considering a no-confidence motion under sub-section (3) of Section 140".

Section 140(3) provides that:

"Every Adhyaksha and every Upadhyaksha of the Taluk Panchayat shall be deemed to have vacated his office forthwith if a resolution expressing want of confidence in him is passed by a majority of the total number of elected members of the Taluk Panchayat at a meeting specially convened for the purpose".

Section 158 of the Act provides for the establishment of Zilla Panchayat. Section 159 of the Act provides for the constitution of a Zilla Panchayat. The said section has been amended by means of Act No. 29 of 1997, reads as under:

"159. Constitution of Zilla Panchayat.-(1) Every Zilla Panchayat shall consist of:

- (i) the elected members as determined under Section 160;
- (ii) the members of the House of People and the members of the State Legislative Assembly representing a part or whole of the District whose constituencies lie within the district; and (iii) the members of the Council of State and the members of the State Legislative Council who are registered as electors within the district; and (iv) the Adhyakshas of Taluk Panchayats in the district.

(2) The members of the House of People, the State Legislative Assembly, the Council of States and the Legislative Council and the Adhyaksha of Taluk Panchayat referred to in clauses (ii), (iii) and (iv) of sub-section (1) shall be entitled to take part in the proceedings of, and vote at, the meetings of the Zilla

Panchayat except at a special meeting convened for the purpose of election of Adhyakshas and Upadhyakshas under sub-section (1) of Section 177 or for considering a no-confidence motion under sub-section (3) of Section 179.

(3) Notwithstanding anything contained in this section or Sections 160, 161 and 162 but subject to any general or special orders of the Government, where two-thirds of the total number of members of any Zilla Panchayat required to be elected, have been elected, the Zilla Panchayat shall be deemed to have been duly constituted under this Act".

Section 177 of the Act provides for the election of Adhyaksha, Upadhyaksha and term of their office. Section 179 of the Act provides for the resignation or removal of Adhyaksha and Upadhyaksha of a Panchayat. Sub-section (3) of Section 179 of the Act provides for removal of Adhyaksha and Upadhyaksha of a Panchayat by expressing want of confidence in them, which reads:

"179. Resignation or removal of Adhyaksha and Upadhyaksha.-

(1) xxx xxx xxx (2) xxx xxx xxx (3) Every Adhyaksha and every Upadhyaksha of Zilla Panchayat shall be deemed to have vacated his office forthwith if a resolution expressing want of confidence in him is passed by a majority of the total number of elected members of the Zilla Panchayat at a meeting specially convened for this purpose:

Provided that no resolution expressing want of confidence in an Adhyaksha or Upadhyaksha shall be made within six months from the date of his election:

Provided further that where a resolution expressing want of confidence in any Adhyaksha or Upadhyaksha has been considered and negatived by the Zilla Panchayat, a similar resolution in respect of the same Adhyaksha or Upadhyaksha shall not be given notice of, or moved, within six months from the date of the decision of the Zilla Panchayat".

Section 180 of the Act provides for the meetings of Zilla Panchayat. Section 180(2)(a) and (b) reads:

"(a) The date of the first meeting of the Zilla Panchayat after the first constitution or reconstitution or the date of subsequent meeting for the purpose of election of Adhyaksha or Upadhyaksha as the case may be shall be fixed by the Commissioner, who shall preside at such meeting, and the date of each subsequent ordinary meeting shall be fixed at the previous meeting of the Zilla Panchayat, provided that the Adhyaksha of Zilla Panchayat may for sufficient reasons, alter the date of the meeting to a subsequent date. The Adhyaksha may, whenever he thinks fit, and shall, upon the written request of not less than one-third of the total number of members and on a date within fifteen days from the receipt of such request, call a special meeting. Such request shall specify the object for which the meeting is proposed to be called. If the Adhyaksha fails to call a special meeting, the Upadhyaksha or one-third of the total number of members of the Zilla Panchayat may call the special meeting for a day not more

than fifteen days after presentation of such request and require the Chief Executive Officer to give notice to the members and to take such action as may be necessary to convene the meeting.

(b) Ten clear days" notice of an ordinary meeting and seven clear days" notice of a special meeting specifying the time at which such meeting is to be held and the business to be transacted thereat, shall be sent to the members and pasted up at the office of the Zilla Panchayat. Such notice shall include, in the case of a special meeting any motion or proposition mentioned in the written request made for such meeting".

5. A resolution was moved expressing want of confidence against Adhyaksha and Upadhyaksha of the Panchayat. As Adhyaksha of the Panchayat failed to convene a meeting as required, the Chief Executive Officer of the Panchayat, pursuant to the requisition dated 23rd of February, 1999 given by one-third of the members of the Panchayat as provided under sub-section (2)(a) of Section 180 of the Act, issued a notice dated 25th of February, 1999 convening a special meeting of the Panchayat on 6th of March, 1999 to consider the said no-confidence motion moved against petitioners 1 and 2 (vide Annexure-B in W.P. No. 7131 of 1999). Assailing the said notice, writ petitions were filed challenging the constitutional validity of sub-section (2) of Section 159 and sub-section (3) of Section 179 of the Act insofar as they prohibit the non-elected members of the Panchayat from participating and voting in the meeting convened for the purpose of electing the Adhyaksha and Upadhyaksha of the Panchayat and also for considering the no-confidence motion moved against the Adhyaksha and Upadhyaksha. They have challenged the validity of the meeting notice Annexure-B and sought for a direction to the respondents to permit the Members of the Legislative Assembly, Members of the Legislative Council, Members of the Parliament and also Adhyakshas of the Taluk Panchayats, who are members of the Panchayat, to vote in every meeting of the Panchayat.

6. The Panchayat has to be constituted as per the mandate provided in Articles 243-A to 243-D. Article 243-C envisages that subject to the provisions of Part IX of the Constitution, the State Legislature may by law make provisions with respect to the composition of Panchayats. Article 243-C, clause (4) provides the Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayats. Article 243-C, clause (5) provides that the Chairperson of (a) a Panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide and (b) a Panchayat at the intermediate level or district level shall be elected by, and from amongst, the elected members thereof. By reading clauses (4) and (5) of Article 243-C it is evident that the Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election shall have the right to vote in the meetings of the Panchayats; the Chairperson at the village level shall be elected as the Legislature of a State by law provide and a

Panchayat at the intermediate or district level shall be elected by the elected members thereof, that is the persons elected as per clause (2) of Article 243-C, whereas the persons who are provided representation as per clause (3) of Article 243-C are not entitled to vote for election of Chairperson of the Panchayat. There is no sub-clause or an Article providing how the meeting of no confidence has to be convened and who are entitled to vote. The Constitution has left the composition of Panchayat to the State Legislature subject to the provisions of Part IX of the Constitution. Further, the process and method of election of the Chairperson of a Panchayat or village is also left for the State Legislature by making a law, whereas, for the election of Chairperson of the Panchayat at intermediate level or district level, the Constitution specifically provides that the Chairperson shall be elected from amongst the elected members thereof. Earlier to the incorporation of Part IX in the Constitution, the State Government was having full power to enact law for the Constitution of Panchayat and conduct election to Panchayat at all levels by virtue of power conferred under Article 246 read with Entry 5 of List II of the VII Schedule of the Constitution. After incorporation of Part IX of the Constitution, the power of the State Legislature under Entry 5, List II is subject to the Part IX and any other provisions of the Constitution. In Part IX of the Constitution, there is no prohibition to the State to make law regarding the moving of no-confidence motion or method of voting in the no-confidence motion. Articles 245 and 246 provide distribution of legislative power between the Union and the State. Article 245 envisages that subject to the provisions of the Constitution, Parliament may make laws for the whole or any part of the territory of India and the Legislature of a State may make laws for the whole or any part of the State. Article 246 deals with the subject-matter of the laws made by Parliament and State Legislatures. Article 246, clause (3) provides that subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule of the Constitution. Therefore, by reading Article 245 and clause (3) of Article 246 it is manifest that the State Legislature can make laws in respect of any matter enumerated in List II in the Seventh Schedule subject to the provisions of the Constitution.

7. Therefore, now we have to examine whether there is any provision in the Constitution prohibiting the State from making the law regarding the moving of no-confidence motion and the members who participate in the no-confidence motion. In Part IX of the Constitution, there is no such provision. Therefore, there are no fetters on the State Legislature to make the law. Accordingly, the State Legislature enacted the Karnataka Panchayat Raj Act, 1993. Sub-section (2) of Section 159 provides that the members of the House of People, the State Legislative Assembly, the Council of States and the Legislative Council shall be entitled to take part in the proceedings of and vote at the meetings of Zilla Panchayat except at a special meeting convened for the purpose of election of Adhyakshas and Upadhyakshas under sub-section (1) of Section 177 or for

considering a no-confidence motion under sub-section (3) of Section 179. By reading the above clause it is evident that the members of the House of People, the State Legislative Assembly, the Council of States and the Legislative Council are entitled to participate in the meetings of the Zilla Panchayat except at a special meeting convened for the purpose of election of Adhyakshas and Upadhyakshas or for considering a no-confidence motion against them. The State Legislature enacted the section, which is purely in consonance with Article 243-C, clauses (4) and (5)(a) and (b) of the Constitution.

8. It is contended by the learned Counsel for the respondents-writ petitioners that Article 243-C, clause (4) provides that the Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayats. A meeting convened for the no-confidence motion is also a meeting in terms of clause (4) of Article 243-C. Therefore, the State Legislature has no power to make law contrary to clause (4) of Article 243-C.

9. On the other hand, it is contended by the other side that in Article 243-C, clauses (4) and (5) it is provided that all members of the Panchayat will participate in voting in every meeting, whereas in the case of election of the Chairperson of the Panchayat at intermediate level or district level, it is specifically provided that they be elected by and from amongst the elected members only and the Constitution is silent regarding the members of Panchayat who have to participate in the no-confidence motion. Therefore, by virtue of the power conferred under Entry 5 of List II of the Constitution, the State has got ample power to make laws and accordingly law is made providing that even for the no-confidence motion only elected members to participate and the same is not in derogation of the constitutional provisions.

10. In view of the above provisions, the important question that arises for consideration is:

Whether the meetings of Panchayat envisaged in sub-clause (4) of Article 243 include the meeting of the no-confidence motion.

11. The Constitution confers the powers on the State Legislature to make law with respect to the composition of the Panchayats subject to the provisions of Part IX. Articles 243-A to 243-H of the Constitution provide for nature of the Grama Sabha; powers to be exercised by the Grama Sabha; constitution of Panchayats; composition of Panchayats; reservation of seats in Panchayats; duration of Panchayats; disqualification of Panchayat Members; powers, authority and responsibilities of Panchayats; powers to impose taxes and funds of, the Panchayats; constitution of Finance Commission to review financial position, audit of accounts of Panchayats and elections of the Panchayats. In none of these provisions of Chapter IX of the Constitution, there is any reference to the no-confidence motion. The constitutional provisions, words and statutes have to be interpreted to achieve the object of Constitution by giving proper meaning to the

words by applying the principle of interpretation of purposeful construction and to make the vision of the father of the Nation, Mahatma Gandhi as provided in Article 40. When the Constitution has specifically referred to the Chairperson of a Panchayat at the village level, intermediate level or district level, but when it is silent about no-confidence motion, it has to be inferred that the same is left to the State Legislature and the meetings of the Panchayat referred in clause (4) of Article 243-C refers only to ordinary meetings other than the meetings for election of Chairperson/Adhyaksha/Upadhyaksha or moving no-confidence motion against them.

By virtue of the power vested with the State Legislature under the Constitution as referred to in the preceding paragraphs of this judgment, it has enacted Sections 141 and 180 to the Act respectively dealing with the meetings of the Taluk Panchayat and Zilla Panchayat respectively. It has made a distinction between the ordinary meeting and special meeting for moving a no-confidence motion against Adhyaksha and Upadhyaksha of either Zilla Panchayat or Taluk Panchayat.

12. It is relevant to refer to the case-laws on the subject.

In *B. Javarayagouda v State of Karnataka*, ILR 1997 Kar. 1153, the Constitutional validity of sub-section (3) of Section 3 and sub-section (3) of Section 5 of the Karnataka Panchayat Raj (Second Amendment) Act, 1996 were challenged on the ground that the State Legislature has no competence to amend the principal Act, as it amounts to exceeding its jurisdiction and the same was contrary to Part IX of the Constitution. Considering the said contentions, a Division Bench of this Court after elaborately considering the provisions of Part IX of the Constitution vis-a-vis the provisions of the Act has held the Amendment Act was not contrary to the constitutional provisions as incorporated in Part IX of the Constitution and the State Legislature is within its jurisdiction in making the amendment to sub-section (3) of Section 3 and sub-section (3) of Section 5 of the Act. The Amendment Act reduced the term of the office of the Adhyaksha/Upadhyaksha/Chairperson of the Panchayat. Considering the said legal question raised in that case, the Division Bench of this Court has found and held that Entry 5 in List II of Schedule VII of the Constitution enables the State Legislature to enact law in regard to the constitution and powers of the Municipal Corporation and is wide enough to include the term and tenure of the office of the local Government; Authority constituted for the purpose of Village Administration. Thus, the Division Bench of this Court held that the amendment is valid and not unconstitutional. Thus, the principle line of the judgment is very clear that where any prohibition is not there in the Constitution nor in any particular law, it is open to the State to enact the law regarding the same.

In *Moti Ram Deka v General Manager, North East Frontier Railway*, AIR 1964 SC 600, the question of interpretation of constitutional provisions arose and Subba Rao, J., as he then was in his separate judgment held that the general rule of interpretation which is common to statutory provisions as well as to

constitutional provisions is to find out the expressed intention of the makers of the said provisions from the words of the provisions themselves. It is also equally well-settled that without exercising violence to the language used, a constitutional provision shall receive a fair, liberal and progressive construction, so that its true objects might be promoted.

It is well-settled principle of law that if the precise words used are plain and unambiguous, the Court is bound to construe them in their ordinary sense and give them full effect (Dr. Ajay Pradhan v State of Madhya Pradesh, AIR 1988 SC 1875). Further, it is well-settled that the constitutional provisions must be interpreted broadly and elaborately (M/s. Goodyear India Limited v State of Haryana and Another, AIR 1990 SC 781).

In *Gajanan Narayan Patil and Others v Dattatraya Waman Patil and Others*, (1990)3 SCC 634, the question arose was whether expert co-opted nominee and nominees of financial institutions were also members of the Co-operative Society and are entitled to vote at the no-confidence motion against the Chairman of a Co-operative Society (sugar mill). Considering the provisions of Sections 2(7), 27(9), 73 and 73-ID of the Maharashtra Co-operative Societies Act, 1960 and Rule 57-A of the Rules, the Supreme Court held that the right to participate in the special meeting as well as to vote for such meeting is a statutory right and it flows from the provisions of the Act, Rules and Bye-laws of the Society. It has nothing to do with the democracy. The only express bar as provided in Section 27 is that the members, that is, the Directors, representatives of the financial institutions as well as the Expert Director (co-opted) are not competent to participate only in the election of members of the Society. That section does not prohibit the said Directors to participate in any meeting including the special meeting of the Board of Directors or of the Managing Committee of the Society. Nor does Bye-law 29 of the Society (the co-operative sugar mill) contain such a prohibition. Thus, in view of the specific provisions of the Act, the Rules and the Bye-laws, the Directors representing the financial institutions as well as the expert nominee (co-opted) are entitled to participate in the special meeting of the Committee and also to vote at the same meeting as regards the no-confidence motion. Therefore, the non-service of the notice of the special meeting on the aforesaid Directors rendered the meeting illegal as there has been an infringement of the concerned provisions of that Act, Rules and Bye-laws of the Society.

In the above judgment, the provisions of the Act, Rules and Bye-laws themselves provide that members of the Managing Committee are entitled to sit and vote at any meeting of the Committee including the co-opted nominee and nominees of financial institutions. Interpreting that provision, the Supreme Court has laid down the law in that case as stated supra.

In *Sunil Batra v Delhi Administration*, AIR 1978 SC 1675, it is held that constitutional defence to the Legislature and the democratic assumption that people's representatives express the wisdom of the community led Courts into

interpretation of statutes which preserves and sustains the validity of the provision. That is to say, Courts must, with intelligent imagination, inform themselves of the values of the Constitution and, with functional flexibility, explore the meaning or meanings to adopt that construction which humanely constitutionalises the statute in question. In *State of Rajasthan v The Mewar Sugar Mills Limited*, Bhopalsagar, AIR 1969 SC 880, it is held that a statute or statutory rule has to be so read as to make it valid; it has to be construed "*ut res magis valeat quam pereat*". The reason is that no intention can be imputed to the legislative authority that it would exceed its own jurisdiction.

In *Advance Insurance Company v Gurudasmal*, AIR 1979 SC 1126, it is held that provisions must be read as far as possible with a view to their validity and not to render them invalid.

13. Keeping in view the above principle laid down by the Apex Court, it is manifest that as there is no bar in Article 243 or in any other Articles of Part IX of the Constitution for limiting the voting of the no-confidence motion against Adhyaksha/Upadhyaksha only to the elected members, it cannot be said that the provisions of the Act are contrary to Article 243-C, clause (4). When the Constitution has specifically left the choice to the State Legislature regarding the motion of no-confidence against the Adhyaksha/Upadyaksha, therefore, it cannot be said that the same is also covered by Article 243-C. For the reasons stated supra, the legal contentions urged by the petitioners in the writ petitions, while justifying the impugned orders and assailing the relevant provisions of the Act, referred to in this judgment, cannot be accepted, as the same are not tenable in law.

14. Therefore, to consider whether particular members are entitled to vote or not in a no-confidence motion or in an election of Adhyaksha/Upadhyaksha of Zilla Panchayat or Taluk Panchayat has to be decided referring to the provisions of the concerned Act and in the light of the constitutional provisions under Part IX of the Constitution. We have already held in the preceding paragraph of this judgment regarding the State Legislature power to enact the law regarding the right of elected members of Zilla Panchayat and Taluk Panchayat to elect the Adhyaksha and Upadhyaksha and to move no-confidence motion against them.

14-A. By reading the Article 243-C in a correct perspective taking all the sub-clauses together, it is manifest that the main intention of the provision is to democratise the process of election at grassroot and other levels of the Panchayat system and introduce a continuous democratic process of administration. While envisaging such process, the Constitution mandates that the Chairperson of the Panchayat at intermediate level and district level shall be elected by and from amongst the elected members thereof. Once the Chairperson is elected, if he loses the confidence and the members wish to elect another person to dethrone the existing Chairperson, they have to move no confidence and after removing him from office, they have to elect another Chairperson from elected members. Therefore, the process of no-confidence

motion is part and parcel of the election process of the Chairperson of the Panchayat either at intermediate level or district level. So the meeting convened for the purpose of no-confidence motion to remove the existing Chairperson for the purpose of electing another Chairperson has to be understood as a meeting in the process of election of a Chairperson and not an ordinary meeting. Therefore, the meeting of no-confidence motion held to remove the existing Chairperson is in the process of election of another Chairperson on whom the members have got the confidence. So, the meeting convened for the no-confidence motion has to be construed as a part and parcel of the meeting of election.

15. Therefore, keeping in view the above principles in mind and the provisions of Chapter IX of the Constitution along with Sections 120(2), 140(3), 159(2) and 179(3) of the Act, the only conclusion one can reach is that the Constitution has not provided anything regarding the moving of no-confidence motion or how to move the no-confidence motion or who are entitled to vote in the no-confidence motion, it is entirely left to the State Legislature. Merely because in Article 243-C, clause (4), it is provided that all the members of the Panchayat whether elected or not shall have the right to vote in the meeting of the Panchayat, it cannot be held that the non-elected members are entitled to vote in the meeting of the no-confidence motion, which is a special meeting to be convened to dethrone the Chairperson/Adhyaksha/Upadhyaksha of Zilla Panchayat and Taluk Panchayat.

16. The learned Counsel for the writ petitioners relied on the following decisions:

In *S.L. Chancha Reddy v S. Muniraju and Others*, 1961 Mys. L.J. 210, Mysore Village Panchayats and Local Boards Act (10 of 1959) arose for consideration. The constitutional validity of Sections 96(2) and 113, which deal with the legislators right to vote at election of President and Vice-President of Taluk Boards were challenged. Considering the said contentions, the Division Bench of this Court held that as per the language of the said sections, all the members of the local Board are entitled to vote in the meetings of the Taluk Board. Section 96(1) contemplates the elected members of the Taluk Board and sub-section (2) of Section 96 provides that members of the Legislative Assembly representing part or whole of the Taluk and members of the Legislative Council shall be entitled to take part in the proceedings of and vote at the meetings of the Taluk Board. In that Act, there was no special provision contemplating that only the elected members have to vote for the post of President or Vice-President. Considering, those provisions, the Division Bench of this Court held that all the members of the Taluk Board are entitled to vote in the election of the President or Vice-President of the Taluk Board. Sections 120(2), 140(3), 159(2) and 179(3) of the Panchayat Raj Act are quite different when compared to Section 96 of the repealed Act of 1959.

In *S.S. Gundiah v State of Karnataka*, ILR 1987 Kar. 906, the question arose was whether the members of the Legislative Assembly, the Legislative Council and

the Parliament were entitled to participate in the proceedings and vote at the meeting of the Zilla Parishad. Considering the provisions of the Act and Rules framed thereunder, in that case it was contended that members of the Legislative Assembly, the Legislative Council and the Parliament representing part or whole of the district and whose constituencies lie within the jurisdiction of the Zilla Parishad and such members of the Legislative Council not elected from the territorial constituencies and ordinarily resident in the district though entitled to take part in the proceedings and to vote at the meetings of Zilla Parishad, but they are not entitled to participate and vote at the election of Adhyaksha and Upadhyaksha of Zilla Parishad. Therefore, the rules insofar as they enable the members of the State Legislature and Parliament falling under sub-section (3) of Section 139 of the Act, to participate and vote at the election of Adhyaksha and Upadhyaksha are beyond the rule-making power of the State and as such the same are ultra vires of the Act. Section 138 of the Act envisages for establishing Zilla Parishad at each district level. Section 139 contemplates for constituting Zilla Parishad composed of three categories. The third category consists of members of the State Legislative Assembly and the State Legislative Council and members of Parliament representing a part or whole of the district whose constituencies lie within the jurisdiction of the Zilla Parishad and the members of the State Legislative Council not elected from territorial constituencies and ordinarily resident in the district. As far as this category is concerned, sub-section (3) of Section 139 of the Act provides that they are entitled to take part in the proceedings of and to vote at the meetings of the Zilla Parishad. However, they are disabled from becoming or holding the office of the Zilla Parishad. Considering the said provision, the learned Single Judge of this Court held that as there is no bar in the Act or in any of the provisions of the Act for voting of the third category of members in the meeting of the election of Adhyaksha or Upadhyaksha, they are entitled to vote. The facts of that case are quite different from the facts of the present case. Therefore, this judgment also does not render any assistance to the writ petitioners.

In *Ram Beti v District Panchayat Rajadhipari and Others*, AIR 1998 SC 1222, the validity of Section 14 of the Uttar Pradesh Panchayat Raj Act was challenged. The said section empowers the members of the Gram Panchayat to remove the Pradhan of a Gram Sabha by moving a motion of no confidence. The Act provided a provision for establishment and constitution of Gram Sabha and Gram Panchayats, election of Pradhans and Upa-pradhans. The election to the office of the Pradhan or Upa-pradhan of a Gram Sabha and a member of a Gram Panchayat is required to be held by secret ballot in the manner prescribed under the Act. The Pradhan was elected by the members of the Gram Sabha, that is by all the persons whose names are for the time being included in the electoral roll of a Gram Sabha, whereas Section 14 of the Act empowered the members of the Gram Sabha to remove the Pradhan by vote of no-confidence motion. Therefore, Section 14 which provided for the removal of Pradhan of a Gram Sabha by moving a motion of no confidence, were challenged on the ground that when he

was elected as the member of the Gram Sabha, represent the same electorate which has elected the Pradhan. Hence, the same is not unconstitutional and void being violative of the concept of democracy. The Supreme Court held that the elected members of the Panchayat put together will represent the Gram Sabha. Therefore, when the State empowered the members of the Gram Panchayat to remove the Pradhan by moving the no-confidence motion, it is not unconstitutional, undemocratic as all members of the Panchayat are elected by the Gram Sabha. Thus, the Supreme Court upheld the power of the Legislature to frame such provision and held that the said Section 14 is valid and not unconstitutional and void being violative of the concept of democracy or is not arbitrary and unreasonable so as to be hit by Article 14 of the Constitution of India.

In *Raees Ahmad v State of Uttar Pradesh and Others*, AIR 2000 SC 583, a no-confidence motion against President of Nagar Panchayat was moved. 13 elected members voted in favour of the motion. It was contended that since three ex officio members could not vote, their number could not be taken into consideration for the purposes of the no-confidence motion. The High Court dismissed the writ petition. Assailing that order, appeal was filed before the Supreme Court. Section 87-A of the Uttar Pradesh Municipalities Act, 1916, provided that the motion shall be deemed to have been carried only when it has been passed by a majority of two-third of the total number of members of the municipality. Section 9(D) of the said Act deals with the composition of a Municipality and states that it shall consist of a President, elected members, ex officio members and nominated members. Considering the said provisions, the Supreme Court held that the High Court was not right in throwing out the writ petitions and allowed the appeal.

17. Therefore, to consider whether particular members are entitled to vote or not in a no-confidence motion against Adhyaksha and Upadhyaksha of Zilla Panchayat or Taluk Panchayat or in an election has to be decided by referring to the constitutional provisions under Part IX and the legislative power of the State Legislature and the concerned provisions of the Act.

18. Ours is a Federal Government, that is, there is a Central and State Governments under the Constitution. The law making power is distributed between the Centre and the State by virtue of Articles 245 and 246 of the Constitution and Lists I to III of VII Schedule earmark the legislative subjects for enactment of various Acts with reference to the relevant entries in the respective list of the Schedule. Part IX of the Constitution deals with the Panchayats. Articles in Part IX specifically deal with the constitution of Panchayats, composition of Panchayats, mode of election of Chairperson/Adhyaksha/Upadhyaksha of Panchayats, reservation for Scheduled Castes and Scheduled Tribes in Panchayats and other subjects. The Entry 5 of List II of the Constitution empowers the State to make law regarding constitution of Panchayats and their function. By reading Part IX along with Entry 5, List II and Articles 245 and 246

of the Constitution together, it is evident that where the Constitution is silent regarding the aspect of no-confidence motion against the Adhyaksha and Upadhyaksha, the same is left to the State Legislature, unless the same is contrary to List I or List III without obtaining the assent of the President of India.

19. Therefore, keeping in view the law enunciated and the principles laid down in the above judgments of the Apex Court and Division Bench of this Court and the constitutional provisions, it has to be held that the Constitution of India has left the choice of convening of meeting of the Panchayat "to move no-confidence motion" and method of voting in no confidence against the Adhyaksha and Upadhyaksha is entirely to the State Legislature and the right of vote is conferred upon every member of the Panchayat as provided in Article 243-C, therefore it has to be construed that the nominated members under the provisions of the Act are excluded to participate and vote in the special meeting of moving no-confidence motion as envisaged under the provisions of the Act.

20. The State Legislature taking the constitutional mandate enacted the Act incorporating Sections 120(2), 140(3), 159(2) and 179(3), which provided that Chairperson/Adhyaksha/Upadhyaksha of the Panchayat either at district level or intermediate level will be elected by the elected members of the Panchayat and for the removal of the said persons by no confidence, the same collegium is empowered to vote. Composition of Panchayat constitutes elected and non-elected members. When Adhyaksha and Upadhyaksha of the Zilla Panchayat and Taluk Panchayat are elected by only elected members, there is nothing wrong for providing right to participate and vote in the no-confidence motion by the same members. When Adhyaksha and Upadhyaksha are elected only from among the elected members and they will have vote, when the no-confidence motion is moved, if all the members, that is elected and non-elected members are allowed to vote, it leads to anomaly.

21. The Panchayat concerned in W.A. Nos. 635 and 636 of 2000 have 18 elected members out of total 65 members including the nominated members, that is non-elected and elected. When elected 18 members will vote for electing Adhyaksha and Upadhyaksha, if all 65 members are allowed to vote in no-confidence motion against the Adhyaksha and Upadhyaksha by interpreting the provisions of the Constitution, Article 243-C(4) and the provisions of the Act as submitted by the learned Counsel for the writ petitioners, it would result in anomaly, that is, elected person will be thrown out within a short time as elected by the lesser members and will be voted by large majority of members. Therefore, the Legislature taking into consideration all relevant facts and circumstances of the election process that would be in the democratic country and the constitutional mandate in Article 243-C, it has incorporated the relevant provisions referred to above, entitling only elected members of the Panchayat to elect Chairperson/Adhyaksha/Upadhyaksha and the said members above are entitled to move the no-confidence motion and vote against them.

22. In view of the above stated facts and circumstances of the case, we hold that

sub-section (2) of Section 120, sub-section (3) of Section 140, sub-section (2) of Section 159, sub-section (3) of Section 179 and sub-section (2) of Section 180 are not unconstitutional and not ultra vires clause (4) of Article 243-C. Therefore, we allow W.A. Nos. 4606 to 4609 of 1999 filed by the State and set aside the order passed by the learned Single Judge in W.P. Nos. 7131, 6557, 6558 and 6870 of 1999.

23. Since we have upheld the constitutional validity of the impugned provisions, the other writ appeals and writ petitions are dismissed.

Parties to bear their own costs.