STATE OF U.P. AND ORS. ETC. ETC. A

v.

PRADHAN SANGH KSHETTRA SAMITI AND ORS. ETC. ETC.

MARCH 24, 1995

[P.B. SAWANT AND S.C. AGRAWAL., JJ.] B

Constitution of India—Arts.40 and 243 (g)—Village—Definition of—Governor can declare any populated rural area as a village—It does not stick to any particular concept or any pre-conceived notion of village.

C

Constitution of India—Art.243(g)—U.P. Panchayat Raj Act, 1947—Section 2(t)—Village—Concept of—Villages recorded in revenue records—Power of declaring village with State Government—Whether section 2(t) is violative of Art 243(g)—Held, No—Constitution equates Governor with State Government—Notification issued by Government or a general or special order issued by State Government—Constitutionally both are acts of Governor—Notifications dated 9-5-1994 and 4-8-1994—Legality of. D

Constitution of India—Art.243(b)—U.P. Panchayat Raj Act, 1947—Section 2(g)—Gram Sabha—Definition—Whether definition given in section 2(g) is ultra vires provisions of Constitution—Held, No.

E

U.P. Panchayat Raj Act, 1947—Section 3—Establishment of a gram sabha for a group of villages—Whether results in loss of identity of village with smaller population—Held, No.

Constitution of India—Article 243(e)—U.P. Panchayat Raj Act, 1947—Section 2(11) r/w s 11-F—Panchayat area—Carving out panchayat area on basis of population—Whether provisions of section 2(11) r/w s 11-F are ultra vires Art. 243(e)—Held, No—Art 243(e) does not require that panchayat should be constituted on basis of territorial area alone. F

Constitution of India—Articles 243-D, 243-K—Electoral matters—Bar on interference by courts—Validity of delimitation of panchayat area or of initial area and allotment of seats to constituencies—Challenged—Whether court could have entertained such challenge—Held, No—Even this challenge could not have been entertained after issue of election notification. G

Constitution of India—Articles 243(g), 154(1) and 163—U.P. H

A *Panchayat Raj Act, 1947—Section 96-A—Delegation of power under the Act—Whether Sec. 96-A is ultra vires Art.243(g)Held, No.*

Constitution of India—Art.14—U.P. Panchayat Raj Act, 1947—Sections 3 and 11-F—Determination of Panchayat areas and gram sabhas—Obligatory on State Government to hear objection before panchayat areas are B *finalised—Change in areas of local bodies results in civil consequences—Post decisional hearing—Sufficient compliance in urgent matters.*

U.P. Panchayat Raj Act, 1947—Nyaya Panchayats—Organisation of—Act making provision for—Whether ultra vires the Constitution—Held, C *No.*

On coming into force on 24.4.1993 of the Constitution (Seventy-Third Amendment) Act, 1992, which gives effect to one of the Directive Principles of State Policy, viz., Article 40 of the Constitution of India whereby the State is directed to organise village panchayats as units of self-government, D **the States were required by the Centre to take steps to organise village panchayats on the lines of the said Constitutional Amendment by making a law or amending the existing law suitably. The Uttar Pradesh State Legislature amended the U.P. Panchayat Raj Act, 1947 by enacting the U.P. Panchayat Raj (Amendment) Act, 1994. As per the provisions of the Act,** E **several Government instructions and notifications were issued and rules were framed with a view to hold elections to the panchayats. The declaration of the gram panchayat areas u/s 11-F and the establishment of the gram sabhas u/s 3 were made. The elections to the new panchayats were then notified. In pursuance of this notification the election process was to commence on 29.9.1994.**

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The respondents filed writ petitions in the Allahabad High Court alleging that the Government orders were being violated in the process of re-organization and delimitation of the constituencies. Writ petitioners also challenged the validity of the Constitutional Amendment as well as the vires of the Panchayat Raj Act. The State Government renotified the G **dates of election.**

The High Court held that the definitions of 'village' u/s 2(t), of 'Gram Sabha' u/s 2(g), and of 'Panchayat Area' u/s 2(11) r/w s 11-F of the Act were *ultra vires* the respective definitions given in Articles 243(g), H **243(b), and 243(e) r/w Article 243-C of the Constitution. The High Court**

further held that the village had to be a habitat according to the anthropological concept; that the village for the purposes of the Panchayat could be specified only in accordance with the wishes of the inhabitants of the village as conveyed to the Governor who was obliged to notify it without involvement of the State Government; that the Governor had to act independently of the State Government in the matter of specification of the 'village' and further the village will have to be fixed according to the aspirations, chauvinism and the wishes of the villagers. As regards the 'Gram Sabha', the Court held that although the definition of Gram Sabha referred to a body of persons registered in the electoral rolls, the references to 'establishment u/s 3' and the provision for establishment and notification of Gram Sabha in section 3, were *ultra vires* the Constitution and that the State Government had no power to establish or notify Gram Sabha.

Allowing the appeals the Court

HELD : 1.1. Article 40 of the Constitution does not define 'village' as such. It only refers to the organisation of 'village panchayats' as units of self-government. Article 243(g) of the Constitution defines 'village' to mean a village specified by the Governor by public notification to be a village for the purposes of the said part and includes a group of villages so specified. This definition of 'village' on the one hand, does not stick to any particular, much less the vintage concept of village that the High Court had in mind, viz., the anthoropologically evolved and sociologically identifiable habitat and on the other, it gives the Governor power to specify a village as he may deem fit. The village so specified by him may include a group of villages. The Constitution permits the Governor to declare any populated rural area as a village. The village which the Governor has to specify is a village for the purpose of carrying out the provisions of Part IX of the Constitution and not for any other purpose. Hence to bring in any particular concept of village and to read into the said Article any pre-conceived notion of village is unwarranted by law. [1030-E-G]

1.2 There cannot be any immutable social, political, economic or organisational concept of village as a self- governing unit. In a developing country like ours, where the population is growing fast, where the society is in ferment on all fronts, where divisive forces of all kinds abound, where the vast majority of population is illiterate and is the victim of ignorance, superstition, blind - faith, bilases and prejudices, and is shackled by

A tradition, and irrational customs and practices, there is an urgent need to evolve means to unite and integrate the society, to expose the populace to larger and higher goals, to imbibe in them the wider perspectives and to forge a socially cohesive front for breaking the barriers of race, caste, class, religion and region rather than to pander to the age-old, self-centered physical and mental barriers. Article 40 not only does not define "village" but also does not require that the village panchayats should be organised on the basis of any particular concept of village much less the vintage concept which appears to have appealed to the High Court. [1043-C-E]

1.3. If separate identities, chauvinism, divisible sentiments and feelings are nurtured from the grassroot level, they are bound to erode the foundation of the unit and integrity of the country and should be the last thing on the social and political agenda of the country. On the other hand, the need of the day is to create social, political and economic entities crossing all barriers and wedded to the nationhood as the ultimate goal. Anthropological and sociological entities may be natural so far as the blood and familial relationships and attachments go and have their place in certain limited spheres. But they have no place while shaping democratic political and administrative units. Nor are they conducive to social and economic progress. On the other hand, they often prove insurmountable blockades to promoting the ideals enshrined in the Preamble of the Constitution. Sometimes, smaller the social, political and administrative entities, the greater the dominance of one section on the other and deeper the prejudices. The need is to organise viable social, political, economic and administrative units of optimum size at the lowest level on a rational basis keeping in mind the size of the population, the needs of social and economic development, availability of resources, the transport and communication facilities, convenience of administration and other relevant factors. Over the years, not only the population in the rural areas has grown enormously but the complexion of the rural areas has also undergone a change. With the increasing pressure on land, there has been a steady migration from the rural to the urban and semi-urban areas. Some villages are almost deserted while others survive much below the poverty line. At the same time, some have emerged as small pockets of comparative prosperity, thanks to marginal industrial and commercial activities around them and the nearness to the urban and semi-urban areas. There is further a limit to the number of village panchayats which may be constituted with all the overhead expenses involved in the exercise which must have a rational relation to the result

sought to be achieved. In the State of U.P., there are 1,20,000 villages. Before the present exercise of constituting the village panchayats under the Act, there were 74,000 gram sabhas which are now reduced to 55,000. With the nature and range of functions enstrusted to the new village panchayats under the Act, and the expenditure that may have to be incurred in constituting and running them, it can hardly be said that their number, structure and organisation militate in any way against the concept of democracy and the principle of self-governance. Section 11-F(1) by laying down for non-hilly areas a norm of a village panchayat for every 1000 population as far as practicable and for hilly areas, for every 5 kilometers radius-distance, has in fact tried to observe the principle of self-governance as closely as possible. [1043-H, 1044-A-H, 1045-A-C]

1.4 Article 243(g) of the Constitution defines village to mean "a village specified by the Governor to be a village and includes a group of villages so specified". In other words, according to this definition, any existing village or a group of the existing villages may be specified by the Governor as a village for the purposes of organising a village panchayat. The definition begs the question as to what is a village which the Governor can specify as a village for the purposes of constituting the "village panchayat". It is not disputed that almost all villages in the State have been recorded in the revenue records of the respective districts in which they are situated. No material had been placed on record to show that villages had been recorded as such in any other record. There might be some villages and new settlement which were not so recorded. There was, therefore, nothing wrong if the Governor specifies the revenue villages as villages and in addition also those villages and settlements which are not so recorded in the revenue records as villages for the purpose of constituting village panchayats. The "revenue village" is, therefore, a documented ready-made concept of village and the Governor while acting under Article 243(g) for specifying the village may adopt the same as village. No restriction has been placed by Article 243(g) on the Governor for accepting the revenue village as a village for the purposes of constituting village panchayat. In fact, the Governor has been empowered by the said constitutional provision to declare even a group of villages as a village. If this is so, it is not possible to appreciate as to why the definition of village in Section 2(t) will fall foul of the provisions of Article 243(g). Section 2(t) not only speaks of villages recorded in the revenue records as such but also includes in the definition, any area which the State Government may by general or special order declare to be a village for the

A purposes of the Act. The concept of village is not foreign either to the Constitution or to the State legislation. [1045-G-H, 1046-A-E]

1.5 If there is no restriction placed by the Constitution on the Governor in accepting any inhabited rural area as a village, it is difficult to appreciate how the Act is violative of the Constitution when the State B Government declares any area including a revenue village as a village. In any case, the Court cannot substitute its concept of village for that of the State Government. [1046-G]

2.1 As regards the objection of the High Court that whereas Article 243(g) requires the Governor to specify the village, the Act gives this power C to the State Government to do so, the High Court had failed to notice the provisions of the Constitution which equate the Governor with the State Government in exercise of his functions except where he is by or under the Constitution required to exercise the function in the direction. In this connection, provisions of Article 163 of the Constitution state that there D shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions except when they are to be exercised by him under the Constitution in his discretion. It is also not disputed that when a Minister takes action, according to the rules of business, it is both in substance and in form the action of the Governor. Under the Constitution, therefore, while exercising the non-discretionary E functions, the Governor cannot act without the aid and advice of the Council of Ministers. To do so will cut at the very root of the cabinet system of Government we have adopted. [1046-H, 1047-A-C]

Samsher Singh v. *State of Punjab,* [1974] 2 SCC 831, referred to.

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2.2 Admittedly, the function under Article 243(g) is to be exercised by the Governor on the aid and advice of his Council of Ministers. Under the rules of business made by the Governor under Article 166(3) of the Constitution, it is in fact an act of the Minister concerned or of the Council of Ministers as the case may be. When the Constitution itself thus equates G the Governor with the State Government for the purposes of the relevant function, the provision in section 2(t) which realistically gives the power of declaring the village to the State Government, cannot be said to be inconsistent with or contrary to Article 243(g). Further, Section 3(60)(c) of the General Clauses Act, 1873 defines 'State Government' to mean H Governor which definition is in conformity with the provisions of the

Constitution. The conclusion of the High Court that Section 2(t) was *ultra vires* Article 243(g) of the Constitution was, therefore, not sustainable. [1048-D-E] A

2.3 Reasoning of the High Court that under the Act the State Government could not declare the village by special or general order as required by section 2(t) because Article 243(g) of the Constitution required the Governor 'to specify the village by a public notification' was not sustainable. Admittedly, the general or special order issued by the State Government is always published in the official gazette. In any case, the order declaring the villages for the purposes of section 2(t) in the present case was gazetted. There is a hierarchy of legal instruments such as law, ordinance, order, bye-law, rule, regulation and notification. It is recognised even by Article 13 (3)(a) of the Constitution and Section 3(29) of the General Clauses Act, 1897. All the orders, rules, regulations and notifications when made or issued by the State Government are made or issued in the name of the Governor by the functionary of the concerned Ministry named in the rules of business as per the provisions of Article 166 of the Constitution. In view of the provisions of Article 154 and of Article 163 read with Article 166 of the Constitution. 'Governor' means the Government of the State and all executive functions which are exercised by the Governor except where he is required under the Constitution to exercise the functions in his discretion, are exercised by him on the aid and advice of the Council of Ministers. Hence, whether it is a notification issued by the Government or a general or special order issued by the State Government, constitutionally both are the acts of the Governor. [1048-F-H, 1049-A-B] B C D E

2.4 In the present case, by the notification dated 9th May 1994 issued under Section 96-A of the U.P. Panchayat Raj Act by the Governor, the powers of the State Government under Section 3 and Section 11-F of the Act were delegated to the Director, Panchayat Raj, U.P., Lucknow. Pursuant to this delegation, on 4th August, 1994 the Director issued notification establishing gram sabhas u/s 3 and declaring Panchayat areas u/s 11-F of the Act. This was a composite notification both for establishing gram sabhas and declaring panchayat areas. Neither in the notification dated 9th May, 1994 delegating powers u/ss 3 and 11-F to the Director nor in the notification dated 4th August, 1994 establishing gram sabhas and declaring the panchayat areas, there was a mention either of Section 2(t) of the Act or of the power delegated to declare the village under the said provision. However, keeping in mind the scheme of the Act and the F G H

A provisions of Sections 2(t), 3 and 11-F, it is clear that Section 2(t) merely defines 'village' and by itself does not give power to the State Government to declare the village. It states that village in the revenue records of the district in which it is situate and includes any area which the State Government may by general or special order declare to be a village for the purposes of the Act. The said section is, therefore, in two parts. By the first B part, it adopts the villages recorded in the revenue records of the districts as villages for the purposes of the Act. By the second part, it accepts as village any area which the State Government may for the purposes of the Act declare as such village. There is no separate provision giving power to the State Government to declare any area as village for the purposes of C the Act. The legislature, probably rightly thought that since the power given to the State Government by Section 3 to establish a gram sabha and by Section 11-F to declare the panchayat area comprise in them the power to declare the village within the meaning of Section 2(t) and particularly of the second part of it, it was not necessary to make an independent provision to enable the State Government to declare the village for the D purposes of the Act. It could not be said that this view of the State Government was wrong for it was not possible to establish a gram sabha or declare the panchayat area unless the village for which such gram sabha is to be established and its area are first determined. The notification which was issued on 4th August, 1994 further showed that the gram sabha E which was inappropriately titled as gram panchayats were established for villages within the meaning of Section 2(t) and they comprised the area either of one revenue village or of more revenue villages than one. Although, therefore, the criticism by the High Court with regard to both the notifications dated 9th May, 1994 and 4th August, 1994 delegating the power, and establishing gram sabhas and declaring panchayat areas might F be justified in that they did not refer to Section 2(t) and the latter notification had given inappropriate titles in columns 2 and 3 thereof, the said defects did not in any way affect the legality of the said notifications. All that could be said in that connection was that they could have been correctly and adequately worded. However, in construing legal documents, it is not their form but their substance which has to be taken into G consideration. Thus construed, the two notifications were in substantial compliance with the provisions of the act and had to be construed as such. [1049-C-H, 1050-A-E]

2.5 There was no merit in the contention that the first part of Section H 2(t) which defines 'village' to mean any local area recorded as a village in

the revenue records of the district in which it is situate, goes counter to the provisions of Article 243(g) in that it forecloses the authority of the Governor to specify the village for the purposes of establishing a gram panchayat as envisaged by Part IX of the Constitution. The argument ignores that whereas the Constitution permits the Governor to specify village by a notification, it does not prevent the State from enacting a law for the purpose. The notification issued by the Governor was in fact a notification issued by the State Government. An enactment of the legislature is certainly a higher form of legal instrument than a notification. Moreover, the Act has received the assent of the Governor on 22nd April, 1994. Hence, there is not only no conflict between the provisions of Section 2(t) of the Act and those of Article 243(g) but there is an over-compliance with the provisions of the Constitution. [1050-F-H]

3. Article 243 (b) of the Constitution defines 'gram sabha' to mean "a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of panchayat at the village level" whereas Section 2(g) of the Act defines 'gram sabha' to means "a body established under Section 3 of the Act consisting of persons registered in the electoral rolls relating to village comprised within the area of a gram panchayat". The High Court had taken exception to the word 'established' in Section 2(g) of the Act. There is no provision in Part IX of the Constitution such as Section 3 of the Act for establishing a gram sabha for a village or a group of villages by such name as may be specified, and to name the gram sabha in the name of the village having the largest population when the gram sabha is established for a group of villages. One may have quarrel with the use of the expression 'established' in this connection. For it is true to say that gram sabha is nothing but the electorate of the village or villages comprised within the area of a gram panchayat and in that sense there is nothing to be established as for as gram sabha is concerned. What is to be established is the panchayat for a particular area and for the electorate constituted in that area. The moment the panchayat area is declared the electorate comprised in it gets automatically constituted into the gram sabha. It no longer remains merely an electorate. Whether such constitution is called establishment is immaterial. These are matters of description. Having followed a particular pattern, the legislature has used the expression 'established' also in connection with the gram sabha along with the panchayat. There is no reason why the use of the said expression makes any difference to the intendment of the said provision and how the

A said provision goes counter to the provisions of the Constitution. Surely, it is not suggested that the gram sabha that the Act seeks to establish does not consist of the entire electorate in the panchayat area or excludes some of it. Therefore, so long as, the definition given in Section 2(g) and the provisions of Section 3 of the Act do not in any way detract from the provisions of Article 243 (b) or their intendment, they cannot be held *ultra* B *vires* the provisions of the Constitution. [1051-C-H]

4. When villages are united to form a gram sabha and a village panchayat, they do not lose their name and identity as separate villages. They come together only for the purpose of running the gram panchayat. C In that process, they may also stand to gain inasmuch as they may have access to more resources, and benefit from bigger schemes and projects and availability of better infrastructure and equipment to implement the projects and schemes. It was not, therefore, possible to agree with the High Court that the identify of the smaller villages is lost because they are grouped together for establishing a common gram sabha or gram D panchayat. [1052-C-D]

5.1 Article 243(e) defines 'panchayat area' to mean "territorial area of a panchayat" and Article 243-C speaks about the composition of panchayats and leaves it to the legislature of a State to make provisions E with respect to it. The only conditions that the latter Article imposes on the composition of panchayat is firstly, the ratio between the population of the territorial area of the panchayat at any level and the number of seats in the panchayat to be filled by election shall, as far as practicable, be the same throughout the State. Secondly, the seats in the panchayat have to F be filled by direct election from the territorial constituencies in a panchayat area and for this purpose the panchayat area has to be divided into territorial constituencies in such a manner that the ratio between the population of each constituency and the number of seats allotted to it have as far a practicable to be the same throughout the panchayat area. So long as these conditions are complied with, the composition of the panchayat G that may be evolved by the State legislature cannot be faulted. There was no material suggesting that these two criteria were breached or were sought to be breached. On the other hand, section 11-F of the Act has made three provisions to conform to the norms laid down by the said Article, viz. (i) the panchayat area would be such that as far as practicable, it will H have a population of 1000 throughout the state; (ii) for the purpose of the

declaration of the panchayat area, no revenue village or any hamlet thereof shall be divided and (iii) in the hill districts which are sparsely populated and spread over a vast terrain, an area within a radius of 5 kms. from the centre of the village should be declared as the panchayat area, though the population comprised in the area may be less than 1000. When Article 243(e) defines, the "panchayat area" to mean the territorial area of panchayat, it does not require that the panchayat should be constituted on the basis of the area alone. The High Court had read otherwise in the said definition and had, therefore, fallen in an obvious error. When the panchayat area is determined on the basis of population inhabiting a particular area, that area will also be a panchayat area within the meaning of the said Article. The provisions of the Act, viz., Section 2(11) read with Section 11-F do not more than give effect to the definition of panchayat area in Article 243(e). When the area includes the whole of the village or a group of whole villages including the hamlets thereof, keeping in view the uniform norm of the population of 1000 as far a practicable, the panchayat area gets automatically demarcated by the areas of the village or villages comprised therein. [1052-H, 1053-A-G]

5.2 It is for the Government to decide in what manner the panchayat areas and the constituencies in each panchayat area will be delimited. It is not for the court to dictate the manner in which the same would be done. So long as the panchayat areas and the constituencies are delimited in conformity with the constitutional provisions or without committing a breach thereof, the courts cannot interfere with the same. [1053-H, 1054-A]

The Hingir-Rampur Coal Co. Ltd. and Others v. *The State of Orissa and others,* [1961] 2 SCR 537, referred to.

6. Neither the delimitation of the panchayat area nor of the constituencies in the said areas and the allotments of seats to the constituencies could have been challenged or the Court could have entertained such challenge except on the ground that before the delimitation, no objections were invited and no hearing was given. Even this challenge could not have been entertained after the notification for holding the elections was issued. The High Court not only entertained the challenge but had also gone into the merits of the alleged grievances although the challenge was made after the notification for the election was issued. [1055-B-C]

Meghraj Kothari v. *Delimitation Commission & Ors.,* [1967] 1 SCR

A 400, relied on

7. Under the Constitution, Governor means the State Government. Article 154(1) enables the Governor to exercise the executive power of the State either directly or through officers subordinate to him in accordance with the Constitution. Hence by virtue of Articles 163, the State Government can exercise the power through its officers. Neither Article 243 (g) nor any other provision in Part IX of the Constitution prevents the Governor and, therefore, the State Government from delegating its power mentioned in the said Part to any subordinate officer. The Act makes a specific provision by Section 96-A thereof for the State Government to delegate all or any of its powers under the Act to any officer or authority subordinate to it subject to such conditions and restrictions as it may deem fit to impose. The State Government by a notification issued on 9th May, 1994 under Section 96-A delegated its powers under Sections 3 and 11-F of the Act to the Director. The power delegated under Sections 3 and 11-F of the Act would impliedly include the power to declare "village" under Section 2(t) of the Act although the said section is not mentioned in the notification specifically. [1055-E-H]

8. The original delimitation of the panchayat areas having been made much prior to the election notification of 31st August, 1994, the respondent-writ petitioners could not have challenged the same after the said notification and the Court could not have entertained the challenge. There was, therefore, no invalidity in the action taken by the State Government by its notification of 31st August, 1994 to commence the election process. However, it was obligatory on the State Government to hear the objections before the panchayat areas were finalised. A reasonable opportunity for raising the objections and hearing them ought to be given in such matters since the change in the areas of the local bodies results in civil consequences. The action of bringing more villages than one under one gram panchayat when they were earlier under separate gram panchayats, does involve civil consequences. However, in matters which are urgent even a post-decisional hearing is a sufficient compliance of the principle of natural justice, viz., *audi alterem partem*. [1058-G-H, 1059-B-C]

Visakhapatnam Municipality v. *Kandregula Nukaraju & Ors.*, [1976] 1 SCR 545; *S.L. Kapoor* v. *Jagmohan & Ors.*, [1980] 3 SCC 379; *Baldev Singh & Ors.* v. *State of Himachal Pradesh & Ors.*, [1987] 2 SCC 510, *Sundarjas*

Kanyalal Bhatija & Ors. v. *Collector, Thane, Maharashtra & Ors.*, **[1989] 3 SCC 396, and** *Atlas Cycle Industries Ltd.* v. *State of Haryana & Ors.*, **[1993] Supp. 2 SCC 278, relied on.** A

9. The nyaya panchayats are in addition to the gram panchayats. Whereas the amended provisions of the Constitution do not direct the organisation of such panchayats, the Constitution does not prohibit their establishment. The organisation of the nyaya panchayats will be in promotion of the directive principles contained in Article 39A of the Constitution. B **[1060-C]**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3771-78 of 1995 Etc. Etc. C

From the Judgment and Order dated 2.12.94 of the Allahabad High Court in C.M.W.P. Nos. 26812, 29984, 30003, 31248, 31069, 30989, 31048 and 29682 of 1994.

Ashok H. Desai, R.N. Trivedi, Gopal Subramaniam, G.L. Sanghi, P.P. Rao, Dushyant Daye, R.B. Misra, P. Sisodia, M/s. Nalin Tripathi, Ashish Shukla, S.M.A. Nazani, Arvind Verma, Aseem Mehrotra, Rameshwar Tripathi, Vijay Narain Singh Sagar, A.K. Gupta, P.H. Parekh, Goodwill Indeevar, Ms. B.K. Brar, J.M. Sharma, A.N. Bardiyar, Ashok Gurnani, M/s. Indu Gurnani, Arun K. Sinha, M.K. Singh, A. Sharan, Abha R. Sharma, P.K. Bajaj, I.B. Gaur, Dileep Tandon, R.N. Tripathi and Brij Bhushan with them for the appearing parties. D E

The following Judgment of the Court was delivered by

SAWANT, J. Special leave granted. F

The Constitution [Seventy-Third Amendment] Act, 1992 came into force on 24th April, 1993 to give effect to one of the Directive Principles of the State Policy, viz., Article 40 of the Constitution of India which directs the State to organise village panchayats as units of self-government. G

On coming into force of the said Constitutional Amendment, the States were required by the Centre to take steps to organise village panchayats on the lines of the provision of the said Constitutional Amendment by making law or amending the existing law suitably. The Uttar Pradesh State Legislature amended its Panchayat Raj Act, 1947 H

A [hereinafter referred to as the 'Act'] by enacting the U.P. Panchayat Raj [Amendment] Act, 1994 which came into force on 22nd April, 1994. As per the provisions of the Act, several government instructions and notifications were issued and rules were framed between 22nd April, 1994 and 31st August, 1994 with a view to hold elections to the panchayats. In particular
B the declaration of the gram panchayat areas under Section 11-F and the establishment of the gram sabhas under Section 3 were made between 2nd and 5th August, 1994. The term of the gram panchayats constituted under the unamended provisions of the Act was to expire on 23rd April, 1993. The Governor extended their term till 23rd April 1995 or till new
C panchayats were constituted, whichever was earlier. The elections to the new panchayats were then notified on 31st August, 1994. In pursuance of this notification the election process was to commence on 29th September, 1994.

The respondents approached the High Court by writ petitions be-
D tween 1st and 9th September, 1994 making a grievance that the Government orders were being violated in the process of re-organisation and deliminatation of the constituencies. A few of the respondent-writ petitioners also challenged the said Constitutional Amendment as well as the vires of the Act. The High Court heard all the petitions together. The
E State Government, by filing an affidavit as well as through publications in the press from 9th September to 19th September, 1994, offered a fresh time-schedule of the elections and also to remove the grievances after considering the representations. On 24th September, 1994, the State Government cancelled the notification dated 31st August, 1994. On 26th September, 1994, the High Court reserved its judgment. In the meantime,
F under compulsion and pressure from the Centre including a threat to stop the release of funds unless the process of election was completed by 31st December, 1994, conveyed in the Center's communication dated 12th November, 1994, the State Government renotified the dates of elections on 26th November, 1994 in pursuance whereof the process of election was to
G commence on 3rd December, 1994.

The High Court by its impugned judgment delivered on 2nd December, 1994 has held, among other things, that the definitions of 'village' under Section 2(t), of 'Gram Sabha' under Section 2(g) and of 'Panchayat
H Area' under Section 2(11) read with Section 11-F of the Act were *ultra*

vires the respective definitions given in Articles 243(g), 243(b) and 243(e) read with Article 243-C of the Constitution. The High Court has further held: (i) that the village has to be a habitat according to the anthropological concept, (ii) that the village for the purposes of the Panchayat can be specified only in accordance with the wishes of the inhabitants of the village as conveyed to the Governor who is obliged to notify it without involvement of the State Government, (iii) that the Governor has to act independently of the State Government in the matter of specification of the "village" and (iv) further the village will have to be fixed according to the aspirations, chauvinism and the wishes of the villagers. As regards the Gram Sabha, the Court has held that although the definition of Gram Sabha refers to a body of persons registered in the electoral rolls, the reference to "establishment under Section 3" and the provision for establishment and notification of Gram Sabha in Section 3, are *ultra vires* the Constitution and that the State Government has no power to establish or notify Gram Sabha.

It will appear from the impugned judgment that its main thrust is against the definition of 'village' in Section 2(t) of the Act. The other findings are directed more against the procedure laid down in the Act to take the various steps for constituting the panchayats than against the substantial provisions. Before we deal with the findings of the High Court, we may usefully refer to the relevant provisions of the Constitution and the Act.

2. The provisions of Article 40, to give effect to which the 73rd Constitutional Amendment was effected read as follows :

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

The aforesaid provisions neither define 'village' nor give guidelines for organising village panchayats. All that they require is that the village panchayats howsoever organised have to be equipped with such powers and authority as may be necessary to enable them to function as units of self-government. There is, however, no doubt that when the Article speaks of village panchayats as units of self-government, it has in view the or-

A ganisation of the lowest level units of self-governance in the heirarchy of self-governing, democratic, policy making and administrative units. In other words, the village panchayats are envisaged by the Article as the base democratic institutions of a pyramid of the democratically organised and functioning self- governing units. This being so, while organising the village
B panchayats, what is necessary to be kept in mind is (a) that they are to be the self-governing units at the lowest end of the democratic polity, (b) that being self-governing units, those who are governed by the said units and for whose benefit they are going to operate, will have either a direct or an elective indirect representation in them; (c) that they will have an effective say in the conduct of their affairs including its plans, policies and program-
C mes and their execution and (d) that thus they will have not only a sense and satisfaction of participation but also an experience in the governance of their own affairs. So long as the village panchayats are organised to achieve the said objectives, the requirements of the said Article will have been complied with both in their spirit and in letter.

D

3. We may now turn to the provisions of the 73rd Constitutional Amendment by which Part IX consisting of Articles 243 to 243-O has been introduced in the Constitution.

E Article 243 (g) defines 'village' to mean a village specified by the Governor by public notification to be a village for the purposes of the said Part and includes a group of villages so specified. It will be apparent from this definition of 'village' that on the one hand, it does not stick to any particular, much less the vintage concept of village that the High Court has in mind, viz., the anthropologically evolved and sociologically identifiable
F habitat and on the other, it gives the Governor power to specify a village as he may deem fit. The village so specified by him may include a group of villages. The Constitution permits the Governor to declare any populated rural area as a village. The village which the Governor has to specify is a village for the purpose of carrying out the provisions of Part IX of the
G Constitution and not for any other purpose. Hence to bring in any particular concept of village and to read into the said Article any pre-conceived notion of village is unwarranted by law.

4. Article 243 (b) defines 'Gram Sabha' to mean a body consisting of
H persons registered in the electoral rolls relating to a village comprised

within the area of panchayat at the village level. In other words, it is the electorate of the village panchayat whether the panchayat is for one village or a group of villages. Article 243 (d) defines 'panchayat' to mean an institution (by whatever name called) of self-government constituted under Article 243-B for the rural areas. This provision further makes it clear that even the expression 'panchayat' is not of any particular significance. What is of essence is that the institution so called must be of self-government in the rural area since the panchayat raj envisaged by the said Part of the Constitution is for the rural as against the urban areas for which a provision is made in another part of the Constitution. Much sentiment may not, therefore, be wasted on the expression 'panchayat'. The attention on the other hand, has to be focussed on the question whether the institution so constituted is self-governing or not.

The panchayats are to be constituted at the village, intermediate and district levels and the "panchayat area" as defined by Article 243(e) means the territorial area of the panchayat whether at the village, intermediate or district levels. What is necessary to remember further is that while as per Article 243(c) "intermediate level" is a level between the village and district levels, as specified by the Governor, the 'district' as per Article 243(a) means a district in a State the boundaries of which may be changed by the State Government. The district is not required to be specified by the Governor whereas village and intermediate levels have to be specified by him for purposes of the said Part of the Constitution.

Article 243-A states that a Gram Sabha which, as stated above, is the electorate of the village panchayat, may exercise such powers and perform such functions at the village level as the legislature of the State may be law provide. In other words, the powers and functions of the village panchayat are to be determined by a State enactment. Article 243-B states that there shall be constituted panchayats at the village, intermediate and district levels in accordance with the provisions of the said Part of the Constitution. However, in a State having a population not exceeding 20 lakhs, it is not obligatory to constitute panchayats at the intermediate level.

Article 243-C gives direction with regard to the composition of panchayats at different levels. What is necessary for our purpose to note from the said provisions is that throughout the State the number of seats on each panchayat have to have, as far as practicable, a uniform ratio to

A the population comprised in the panchayat area. The panchayat area is further to be divided into territorial constituencies and the constituencies are to be so delimited as to maintain throughout the panchayat area a uniform ratio between the population of each constituency and the number of seats allotted to it, as far as practicable. Further, the seats in the panchayat are to be filled by direct election from the territorial constituen-
B cies. The chairpersons of the panchayats at the village level have to have representation in the panchayats at the intermediate level if constituted and at the district level, if not constituted, and the chairpersons of the panchayats at intermediate level where they are constituted are to have representation in the panchayats at the district level. In addition, the
C Article directs that the State enactment may also provide for the representation of the Members of Parliament and of the State Legislature. Chairpersons of the panchayat at the village level have to be elected in such manner as the State legislation may provide while the chairpersons of the panchayat at the intermediate level or district level are to be elected by and from amongst the elected members thereof.
D

Article 243-D makes provision for reservation of seats for the Scheduled Castes, Scheduled Tribes including women belonging to Scheduled Castes/Scheduled Tribes and also for other women in the panchayats at all the levels. Article 243-E provides for the term of the
E panchayat which is five years. Article 243-F provides for disqualifications for the membership of the panchayat. Article 243-G speaks of powers, functions and responsibilities of the panchayat to be determined by the legislature of the State. It states that the legislature of a State may by law endow the panchayats with such powers and authority as may be necessary
F to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon panchayats at the appropriate level, subject to such conditions as may be specified therein with respect to (a) the preparation of plans for economic development and social justice; and (b) the implementation of schemes for economic development and social justice as may be entrusted
G to them including those in relation to the matter listed in the Eleventh Schedule. The Eleventh Schedule mentions as many as 29 matters some of which are necessary to be enumerated here to point out that it is only a financially and administratively viable unit which can undertake the schemes of development relating to them. They are : [1] Minor irrigation,
H water management and watershed development, [2] Social forestry and

farm foresty, [3] Small scale industries, including food processing industries, [4] Khadi, village and cottage industries, [5] Rural housing, [6] Roads, culverts, bridges, ferries, waterways and other means of communication, [7] Rural electrification, including distribution of electricity, [8] Non- conventional energy sources, [9] Poverty alleviation programme, [10] Education, including primary and secondary schools, [11] Technical training and vocational education, [12] Markets and fairs, [13] Health and sanitation, including hospitals, primary health centres and dispensaries, [14] Women and child development [15] Social welfare, including welfare of the handicapped and mentally retarded, and [16] Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.

Article 243-H speaks of power that the State legislature may give to the panchayats to levy, collect and appropriate taxes, duties, tolls and fees and also of assigning such of them as are levied and collected by the State Government, to provide for grants-in-aid from the Consolidated Fund of the State and also to provide for the constitution of Funds for crediting all money received, respectively by or on behalf of the panchayats and for the withdrawal of the moneys therefrom. Article 243-I, among others, provides for the constitution of Finance Commission by the Governor of the State to review the financial position of the panchayats at the end of every five years. Article 243-J requires the State to make law to make provision with respect to the maintenance and auditing of the accounts of the panchayats.

Article 243-K provides for a State Election Commission to conduct, supervise, direct and control the elections including the electoral rolls. Article 243-O states that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under Article 243-K, shall not be called in question in any court, and no election to any panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State. It is in the light of the aforesaid provisions of the Constitution that we have to examine the provisions of the State Act.

5. As stated earlier, The State enactment, viz., the U.P. Panchayat Raj Act, 1947, has been amended and brought upto dates to bring it in conformity with the amended provisions of the Constitution, viz., Article

A 243 to Article 243-O. Section 2(g) of the Act accordingly defines 'Gram Sabha' to mean a body established under Section 3 of the Act consisting of persons registered in the electoral rolls relating to a village comprised within the area of a gram panchayat, and 'gram panchayat' has been defined under Section 2(h) to mean the gram panchayat established under Section 12 of the Act. Section 2(hh) of the Act defines Finance Commis-
B sion to mean the Finance Commission constituted under Article 243-I. Section 2 [hhh] defines 'Kshettra Panchayat' which is the panchayat at the intermediate level, and it has the same meaning as is assigned to it under clause [6] of Section 2 of the Uttar Pradesh Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961 whereas 'Zila Panchayat' which is the district
C level panchayat will have the meaning assigned to it under the said Adhiniyam by clause [11] of Section 2 thereof. Section 2[kk] defines 'State Election Commission' to mean the State Election Commission referred to in Article 243-K of the Constitution.

D Section 2[t] of the Act defines 'village' to mean any local area recorded as a village in the Revenue record of the district in which it is situate and includes any area which the State Government may, by general or special order, declare to be a village for the purpose of the Act.

Section 3 of the Act provides for the establishment of Gram Sabha
E for a village or a group of villages by such name as may be specified. It also states that where the gram sabha is established for a group of villages, the name of the village having the largest population, shall be specified as the name of the gram sabha.

F Section 5-A gives the disqualifications of a person from being chosen as and for being a member of gram panchayat. Section 6 states that a member of the gram panchayat shall cease to be such member if his name is deleted from the electoral roll of the constituency. Section 9 states that for each territorial constituency of a gram sabha an electoral roll shall be prepared in accordance with the provisions of the Act under the superin-
G tendence, direction and control of the State Election Commission and that it shall be published in the prescribed manner and shall, subject to any alteration, addition or modification made under or in accordance with the Act, be the electoral roll for the territorial constituency concerned. It also gives the qualifications for being an elector and states that every person
H who is not less than 18 years of age on the first day of January of the year

in which the electoral roll is prepared, will be entitled to be registered in the electoral roll for the territorial constituency. It is not necessary to refer to the other provisions of the said section regarding the qualifications, except to sub-section [11] thereof which states that the State Election Commission may for the purpose of preparation of the electoral roll for a territorial constituency adopt the electoral roll for the Assembly constituency prepared under the Representation of the People Act, 1950 for the time being in force so far as it relates to the area of that territorial constituency. Section 9-A provides that a person whose name is entered in the electoral roll for the territorial constituency is entitled to vote in any election and is eligible for election, nomination or appointment to any office in the gram panchayat. However, a person who has not completed the age of 21 years shall not be qualified to be elected as a member or office bearer of the gram panchayat.

Section 11 provides for the meetings and functions of gram sabha. Sub-section [3] thereof speaks of the functions of gram sabha which, among others, consist of considering [a] the annual statement of accounts of the gram panchayat, the report of administration of the preceding financial year and the last audit note and replies, if any, made thereto, [b] the report in respect of development programmes of the Gram Panchayat relating to the preceding year and the development programmes proposed to be undertaken during the current financial year; [c] the promotion of unity and harmony among all sections of society in the village, [d] programmes of adult education within the village, and [e] such other matters as may be prescribed. Sub-section [5] thereof requires gram sabha to perform the functions of [a] mobilising voluntary labour and contributions for the community welfare programmes; [b] identification of beneficiaries for the implementation of development schemes pertaining to the village; and [c] rendering assistance in the implementation of development schemes pertaining to the village.

Section 11-A provides for Pradhan and Up-Pradhan of gram panchayat who are to be chairperson and vice-chairperson respectively thereof under the Act. It also provides for reservation of offices of Pradhans for the Scheduled Castes, Scheduled Tribes and the backward classes. Section 11-B provides for the direct election of Pradhan or chairperson by the electorate in the panchayat area from amongst themselves. Section 11-C provides for election of Up-Pradhan by the members of the gram

A panchayat from amongst themselves. The term of both the Pradhan and Up-Pradhan is co-terminus with that of the gram panchayat.

Section 11-F provides for declaration of panchayat area and states that the State Government may by notification declare any area comprising a village or group of villages having so far as practicable, a population of
B 1000 to be a panchayat area by such name as may be specified. The first proviso to the said section, however, states that for the purposes of declaration of a panchayat area, no revenue village or any hamlet thereof shall be divided. The second proviso makes a provision for the hill districts of the State and states that if a village or group of villages does not have
C population of 1000, the State Government may declare the area within a radius of 5 kms. from the centre of the village to be panchayat area though such area may have a population of less then 1000. Sub-section [2] of the said section also gives power to the State Government to modify the panchayat area or to alter the name of the area or to declare that any area
D shall cease to be a panchayat area on the request of a gram panchayat concerned or otherwise.

Section 12 provides for the establishment of gram panchayat for every panchayat area. Section 12[1](c) states that the gram panchayat shall consist of a panchayat and in case of a panchayat area having a population
E of [i] one thousand, the panchayat will have nine members, [ii] where the population is more than one thousand but not more than two thousand, it will have eleven members, [iii] when the population is more than two thousand but not more than three thousand, it will have thirteen members; and [iv] when the population is more than three thousand, it will have
F fifteen members. Thus Section 12[1](c) read with Section 11- F [1], gives a parameter of the size of the panchayat area mainly on population basis in the non-hill areas and on geographical basis in the hill areas and provides that there shall be a panchayat of a Pradhan and nine members for at least every village in the non-hill area having a population of 1000, and of even less in the hill area. The territorial constituencies for election as members
G to the gram panchayat are to be formed in such a manner that the ratio between the population of each concenstituency and the number of seats allotted to it, shall so far as practicable, be the same throughout the panchayat area. Each territorial constituency of a gram panchayat is to be represented by one member in the gram panchayat. Not less than 1/3rd of
H the seats earmarked for Scheduled Castes, Scheduled Tribes and backward

classes under sub-section [5](a) are to be reserved for the women of these categories whereas not less than 1/3rd of the total number of seats in the gram panchayat shall be reserved for women. A

The superintendence, direction and control of the conduct of the election to the office of the Pradhan and Up-pradhan or a member of the gram panchayat is entrusted by section 12-BB to the State Election Commission. An application for questioning the elections is to be made to such authority as may be prescribed. Section 12- I bars the jurisdiction of civil courts to question the legality of any action taken or any decision given by an officer or authority. Section 14 provides for the removal of Pradhan and Up- Pradhan in certain circumstances. Section 15 mentions, as many as 30 functions of gram panchayat which are of the same pattern as those mentioned in the Eleventh Schedule of the Constitution, to some of which we have made a reference earlier. The only additional function entrusted under the Act is of the preparation of plan for economic development of the area of the Gram Panchayat. B C D

Section 15A requires the gram panchayat to prepare every year a development plan for the panchayat area and to submit it to the Kshettra panchayat concerned and Section 16 makes provision for assigning to it any or all the following functions, viz., [a] management and maintenance of a forest situated in the Panchayat area; [b] management of wastelands, pasture lands or vacant lands belonging to the Government situated within the Panchayat area; [c] collection of any tax or land revenue and maintenance of related records. Section 17 refers to the powers of gram panchayat as to public streets, waterways and other matters. Section 18 provides for the improvement of sanitation. Section 19 provides for maintenance and improvement of schools and hospitals. Section 20 provides for establishment of primary school, hospital, dispensary, road or bridge for a group of gram panchayats. Section 24 provides for power of a gram panchayat to contract for collection of taxes and other dues. Section 25 gives power to the gram panchayat to appoint such staff as may be necessary. Section 32 provides for the constitution of a Gaon fund for each gram panchayat. Section 32-A gives power to the State Government to constitute a Finance Commission. Section 34 states that all properties situated within the jurisdiction of a gram panchayat shall vest in and belong to the gram panchayat. Section 36 gives power to the gram panchayat to borrow money whereas Section 37 gives it power to levy taxes and fees. It E F G H

A is not necessary to refer to other provisions of the Act for our purpose.

6. We may now refer to the criticism by the High Court of certain provisions of the Act as being *ultra vires* the Constitution.

As stated earlier, the main thrust of the High Court's judgment is
B against the concept of 'village' as incorporated in the definition of "village" in Section 2[t] of the Act. The High Court has found fault with the said definition on two counts. According to it, firstly, Section 2[t] is inconsistent with the concept of village as contemplated by Article 243[g] of the Constitution and secondly, whereas the said Article requires the Governor
C of the State to specify the village, Section 2[t] gives the power to the State Government to declare it.

As regards the alleged difference in the definition of "village" in the Act and in the Constitution, we have already referred to the fact that Article 40 of the Constitution does not define 'village' as such. It only refers
D to the organisation of "village panchayats" as units of self-government.

'Village' has been defined in the Shorter Oxford English Dictionary [1993 Edition] to mean "a self-contained group of houses and associated buildings, usu. in a country area; an inhabited place larger than a hamlet
E and smaller than a town;... a small self-contained district or community within a city or town, regarded as having features characteristic of a village". The Law Lexicon by P. Ramanatha Aiyar [1987 Ed.] states that 'village' includes - [a] a village-community; [b] village-lands; [c] rivers passing through or by village-lands; and [d] a group of villages. The expression 'village' connotes ordinarily an area occupied by a body of men
F mainly dependent upon agriculture or occupations subservient thereto. When the area is occupied by persons who are engaged mainly in commercial pursuits, rural areas in the vicinity of a town grow into a suburb of the town.

G The Encyclopedia Americana [1983 Ed.] [Vol. 28] states that village is -

> "a type of community, generally small but without exact or commonly accepted size limits. Generally, in the United States, the village is thought to be intermediate between the hamlet [a settle-
H ment with several families and some form of commerce but more

than 50 people] and the town [generally over 1,000 people]. A

Dealing with the origin and evolution of village, it states that -

"the village is the typical form of rural settlement in most of the world - in Europe [except for great Britain] in Asia, in Africa, and in much of South America.... It often seems to be the result of the B settlement of lands that previously were only thinly occupied by indigenous populations, but probably also derives from the emergence of clear-cut private proprietorship of land. In much of Europe and in many other areas of the world, communal land ownership prevailed in the past, and this property arrangement C was one basis for the village form of rural settlement, the community being set amid the tillage and grazing lands."

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"Growing awareness of the nearly universal appearance of the D agricultural village prompted many social theorists in the 19th century to suggest that such communities represented a universal stage in human evolution. Such simplifying theories lost support as evidence of the great diversity of human cultures and the paths of change was accumulated. The interpretation of the village pattern E is now more nearly a functional one. With settled agriculture, village orientation provides mutual protection, sociability, a measure of economic specialisation [such as handicrafts], and at least the rudiments of local government.

Since size-limits will not precisely distinguish villages from F other types of communities, the question arises as to whether the term has a precise meaning. All communities or settlements called villages in popular language or technical studies cannot be brought within a common definition.... Generally, however, a village is a residential and trading centre for a predominantly agricultural economy. Its social controls are predominantly traditional and G informal; more formal administration and government are typical of cities and towns. Its self- sufficiency may be nearly complete, as in some parts of the Far East and Latin America, or seriously impaired by modern transportation, communication, and agencies of central government. The population of the village, unlike that H

of most cities and many towns, is self-recruited rather than immigrant. This, and the traditional informality of social standards and controls, lends a distinct quality of homogeneity that the more cosmopolitan center does not have.

The collapse of the theory that the village is the basic community of all civilizations did not end the idealization of the village. Yet even the informal and traditional social controls of the village can be extremely restrictive, certainly more so than the formal tolerance of difference that the cultural heterogeneity of the city encourages or requires. And it cannot be assumed that villages are democratic. European villages are often dominated by one or a few families, some of which may claim descent from feudal rulers. The village in India is often ruled by a council [panchayat] of the leading caste or by a few principal landlords. Even in the United States, with its short history and absence of an officially recognized aristocracy, leading families are more likely to receive deference in villages than in larger and more impersonal communities. The integration of village life, or lack of social problems and tensions, has also been exaggerated. Conflicts may smoulder or burn brightly, all the more because the parties know each other and personalize the antipathy.

In Europe and Asia, the village has exhibited a remarkable power of survival amidst currents of rapid social change. Rural America has been much more profoundly affected by the encroachments of an urban-industrial civilization. Many small towns, technically villages, have virtually disappeared as their economic and other social functions have been absorbed by nearby cities. Village life may endure a while longer in the United States, but the sense of continuity and communal integrity are difficult to maintain with high rates of residential mobility and in the face of steady inroads of an essentially urban civilization.

The village community may be defined as a group of people who live in permanent dwellings in a defined territory which includes arable land, sometimes held in common. If cattle is kept, as is often the case, it is pastured on non-cultivated meadowland over which the community claims right. Further characteristics

include a predominance of agricultural occupations, a close relationship to the natural environment, strong internal cohesion, and a relative absence of internal stratification and of occupational, territorial, and vertical social mobility. As such, the village is a specific type of rural settlement, but not the only one.

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The scientific study of the village community did not start until the middle of the 19th century..... Sir Henry Maine [1822-1888], one of the first English writers on this topic, held the theory that the village community was originally founded by a group of kin related people who settled independently in a specified spot. In time, the original households branched out into many separate ones, clearing more land as the need arose. Occasionally they included strangers, who were sometimes adopted but more often relegated to second-class membership, tolerated rather than accepted. If one family became extinct, its share of land was returned to the common stock. Only in later times, under pressure of more highly developed political structures, did the village structures, did the village community become feudalistic, the land was then owned by a ruler who received tribute in kind and promised protection in return. Often the responsibilities of supervision and collection were transferred to other members of the aristocracy. Maine based his case for this presumed development upon analysis of Roman law [Ancient Law, 1861] and upon practices in Russia, southeastern European countries, and specifically India, where he had carried out extensive field research [Village communities in the East and West, 1871].

Several other scholars criticized Maine's theoretical reconstructions-Modern anthropologists and sociologists take the position that both developments took place. They recognize that the evolution and structure of human settlements in general, and of village communities in particular, are closely connected with specific historical developments and ecological, socio-political, economic and religious circumstances which are different from place to place. With this recognition, questions of absolute origins have generally been replaced by an increased interest in the structure

A and function of village communities, in an attempt to gain a basic understanding of the essential nature of living arrangements therein.

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B As their characteristic features, peasant villages show strong internal cohesion and tendencies to restrict membership to those born within the community. Rules of local endogamy sometimes reinforce this trend. Membership in the community is demonstrated by participation in religious rituals, which frequently C stress the power of the community to deal with the supernatural rather than reliance upon individual piety. Economically, a peasant produces mainly for his own household's consumption, although he also uses part of his product to exchange in a market for other goods and services. These markets are often local and differ in structure from those in the cities. Although some city-produced D goods reach the peasant level, there is a tendency to limit the flow of city goods into the community.

Politically, peasant villages are now usually parts of national states and theoretically possess the rights and duties involved in such membership. But the village community has frequently E retained mechanisms of internal control, whether through government-approved local leaders or through informal leadership and community sanctions. Emotional attachments face inward. The individual's first loyalty is to his family, then to his community, and only then to whatever is beyond. The various elements of this F characterization may be developed more strongly in some villages then in others, but as a type they are recognizable and clearly distinct from tribal groups, farming settlements, and city formations."

7. It is common knowledge that the needs of the people change with G the development in the economic, scientific and technological fields as also with the developments in transport and communication. With them, the concept of self-sufficiency and the means, mode and range of self-governance also change. What is more, the units of self-governance at the lower level being interrelated and integrated with those at the higher levels as H parts of the whole scheme of administration and development in the State,

have to respond to and fall in line with the growth in the size and operation of the units at the higher level to form a coordinated democratic polity and administrative machinery. The concept of grassroot or lowest level administration must, therefore, necessarily change with the advance and progress at other levels. The governing units at all levels have to fit in in a pattern, and a scheme for administration both for law and order and economic growth. They have to act as vehicles of overall stability and progress. For that purpose, their constitution and functioning have to be in conformity with the larger social, political and economic goals.

Hence there cannot be any immutable social, political, economic or organisational concept of village as a self-governing unit. In a developing country like ours, where the population is growing fast, where the society is in ferment on all fronts, where divisive forces of all kinds abound, where the vast majority of population is illiterate and is the victim of ignorance, superstition, blind-faith, biases and prejudices, and is shackled by tradition, and irrational customs and practices, there is an urgent need to evolve means to unite and integrate the society, to expose the populace to larger and higher goals, to imbibe in them the wider perspectives and to forge a socially cohesive front for breaking the barriers of race, caste, class, religion and region rather than to pander to the age-old, self-centered physical and mental barriers. As stated earlier, Article 40 not only does not define "village" but also does not require that the village panchayats should be organised on the basis of any particular concept of village much less the vintage concept which appears to have appealed to the High Court. There is further nothing in the Mahathma Gandhi's advocacy of "village panchayat raj" from which the High Court has taken support to suggest that the village that Mahatmaji had in mind was of a particular description or dimension. It is amusing in this respect to note that the High Court in support of its concept of village has even gone to the extent of observing that "it must be remembered that in considering the aspirations of the people, more so at the first level of democracy, the phenomena of a case of identity of the people, their sentiments, feelings and chauvinism, cannot be forgotten" - the considerations which were, with respect, farthest from the mind of Mahathmaji and against which he fought throughout his life. If separate identities, chauvinism, divisible sentiments and feelings are nurtured from the grassroot level, they are bound to erode the foundation of the unity and integrity of the country and should be the last thing on the social and political agenda of the country. On the other hand, the need of the day is

A to create social, political and economic entities crossing all barriers and wedded to the nationhood as the ultimate goal. Anthropological and sociological entities may be natural so far as the blood and familial relationships and attachments go and have their place in certain limited spheres. But they have no place while shaping democratic political and administrative units. Nor are they necessarily conducive to social and economic progress. On the other hand, they may prove and have in the past proved a positive hindrance to them. Although, therefore, it is true that most of the villages have developed with the initial settlement of a family or a group of families belonging to either the same tribe or ethnic group and in that sense have their historical and sociological identity, these identities are not necessarily healthy or desirable for promoting wider and diverse interests and attaining larger goals. On the other hand, they often prove insurmountable blockades to promoting the ideals enshrined in the Preamble of our Constitution, viz., social, political and economic justice; liberty of thought and expression, belief, faith and worship; equality of status and of opportunity; and fraternity assuring the dignity of the individual and the unity and integrity of the nation. Sometimes, smaller the social, political and administrative entities, the greater the dominance of one section or the other and deeper the prejudices. The need is to organise viable social, political, economic and administrative units of optimum size at the lowest level on a rational basis keeping in mind the size of population, the needs of social and economic development, availability of resources, the transport and communication facilities, convenience of administration and other relevant factors. Old is not always gold and mere historic accidents through which the villages of the concept of High Court have developed, cannot justify their perpetuation as political and administrative units to attain the modern goals of social and economic progress or furnish the rationale for their survival as basic democratic entities. What is further forgotten is that over the years, not only the population in the rural areas has grown enormously but the complexion of the rural areas has also undergone a change. With the increasing pressure on land, there has been a steady migration from the rural to the urban and semi-urban areas. Some villages are almost deserted while others survive much below the poverty line. At the same time, some have emerged as small pockets of comparative prosperity, thanks to marginal industrial and commercial activities around them and the nearness to the urban and semi-urban areas. There is further a limit to the number of village panchayats which may be constituted with

all the overhead expenses involved in the exercise which must have a rational relation to the result sought to be achieved. In the State of U.P., there are 1,20,000 villages. Before the present exercise of constituting the village panchayats under the Act, there were 74,000 gram sabhas which are now reduced to 55,000. With the nature and range of functions entrusted to the new village panchayats under the Act, and the expenditure that may have to be incurred in constituting and running them, it can hardly be said that their number, structure and organisation militate in any way against the concept of democracy and the principle of self-governance. Section 11-F (1) by laying down for non-hilly areas a norm of a village panchayat for every 1000 population as far as practicable and for hilly areas, for every 5 kilometres radius-distance, has ~~in fact~~ tries to observe the principle of self-governance as closely ~~as~~ possible.

The first premise of the High-Court's reasoning is, therefore, faulty and it has led it to build an edifice which is equally defective. It is for this reason that we are unable to appreciate the portions of the impugned judgment dealing with the sentiments, feelings, chauvinism and will of the people [pages 16-20]; holding that power to specify villages vests with the people and not with the State Government and that the villages cannot simply be a revenue village [pages 21 to 25]; holding that the Governor is obliged to specify a village giving due regard to the wishes of the people [pages 26-27]; holding that provisions of the Act referring to establishment of Gram Sabha for a group of villages are *ultra vires,* and beyond the intention of the Constitution [pages 32-33]; that status of Gram Sabha has been compromised and belittled in that Act itself [pages 37-38]; holding that the Act in explaining the expression 'gram sabha' offends the Constitution and negates the concept of local self-government [page 40]; and stating that Section 11-F gives rise to misunderstanding as it has scope for overlapping and duplication in notifying and declaring areas comprising a village or group of villages into panchayat area [pages-59].

8. As pointed out above, Article 243 [g] of the Constitution defines village to mean "a village specified by the Governor to be a village and includes a group of villages so specified". In other words, according to this definition, any existing village or a group of the existing villages may be specified by the Governor as a village for the purposes of organising a village panchayat. The definition begs the question as to what is a village which the Governor can specify as a village for the purposes of constituting

A the "village panchayat". It is not disputed that almost all villages in the State have been recorded in the revenue records of the respective districts in which they are situate. No material has been placed on record to show that villages have been recorded as such in any other record. There may be some villages and new settlements which are not so recorded. There is, therefore, nothing wrong if the Governor specifies the revenue villages as
B villages and in addition also those villages and settlements which are not so recorded in the revenue records as villages and in addition also those villages and settlements which are not so recorded in the revenue records as villages for the purpose of constituting village panchayats. The "revenue village" is, therefore, a documented ready-made concept of village and the
C Governor while acting under Article 243 [g] for specifying the village may adopt the same as village. No restriction has been placed by Article 243 [g] on the Governor for accepting the revenue village as a village for the purposes of constituting village panchayat. In fact, the Governor has been empowered by the said constitutional provision to declare even a group of
D villages as a village. If this is so, we are unable to appreciate as to why the definition of village in Section 2[t] will fall foul of the provisions of Article 243[g]. Section 2[t] not only speaks of villages recorded in the revenue records as such but also includes in the definition, any area which the State Government may by general or special order declare to be a village for the purposes of the Act. The concept of village is not foreign either to the
E Constitution or to the State legislation. Apart from the U.P. Land Revenue Act, the concept of village finds place in other State enactments such as U.P. Village and Road Police Act, 1873 and U.P. Village Sanitation Act, 1892, U.P. Village Courts Act, 1892, U.P. Village Panchayats Act, 1920 which was replaced by the unamended U.P. Panchayat Raj Act, 1947, U.P.
F District Boards Act, 1922, U.P. Local Rates Act, 1914 which latter two Acts were replaced by the U.P. Kshettra Samities and Zila Parishads Adhiniyam, 1961. If, therefore, there is no restriction placed by the Constitution on the Governor in accepting any inhabited rural area as a village, it is difficult to appreciate how the Act is violative of the Constitution when the State Government declares any area including a revenue village as a
G village. In any case, the Court cannot substitute its concept of village for that of the State Government.

9. As regards the objection of the High Court that whereas Article 243 [g] requires the Governor to specify the village, the Act gives this power
H to the State Government to do so, the High Court has failed to notice the

provisions of the Constitution which equate the Governor with the State Government in exercise of his functions except where he is by or under the Constitution required to exercise the function in his discretion. In this connection, we may refer to the provisions of Article 163 of the Constitution which state that there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions except when they are to be exercised by him under the Constitution in his discretion. It is also not disputed that when a Minister takes action, according to the rules of business, it is both in substance and in form the action of the Governor. Under the Constitution, therefore, while exercising the non-discretionary functions, the Governor cannot act without the aid and advice of the Council of Ministers. To do so will cut at the very root of the cabinet system of Government we have adopted. In this connection, we may refer to the decision of this Court in *Samsher Singh* v. *State of Punjab,* [1974] 2 SCC 831 where the Constitution Bench of seven learned Judges has held that the executive power of the State is vested in the Governor under Article 154 [1] of the Constitution. The expression 'State' occurs in Article 154 [1] to bring out the federal principle embodied in the Constitution. Any action taken in the exercise of the executive power of the State vested in the Governor under Article 154[1] is taken by the Government of the State in the name of the Governor as will appear in Article 166 [1]. There are two significant features in regard to the executive action taken in the name of the Governor. First, Article 300 states, among other things, that the Governor may sue or be sued in the name of the State. Second, Article 361 states that proceedings may be brought against the Government of the State but not against the Governor. The reason is that the Governor does not exercise the executive functions individually or personally. Executive action taken in the name of the Governor is the executive action of the State. Paragraph 48 of the said judgment explains the position of law in that behalf succinctly as follows :

> "The President as well as the Governor is the constitutional or formal head. The President as well as the Governor exercises his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers, save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion. Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise by the President or the Governor of any

power or function, the satisfaction required by the Constitution is not the personal satisfaction of the President or Governor but the satisfaction of the President or Governor in the constitutional sense in the Cabinet system of Government, that is, satisfaction of his Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions. The decision of any Minister or officer under Rules or Business made under any of these two Article 77 [3] and 166 [3] is the decision of the President or the Governor respectively. These articles did not provide for any delegation. Therefore, the decision of a Minister or officer under the Rules of Business is the decision of the President or the Governor."

Admittedly, the function under Article 243 [g] is to be exercised by the Governor on the aid and advice of his Council of Ministers. Under the rules of business made by the Governor under Article 166 [3] of the Constitution, it is in fact an act of the Minister concerned or of the Council of Ministers as the case may be. When the Constitution itself thus equates the Governor with the State Government for the purposes of the relevant function, the provision in Section 2 [t] which realistically gives the power of declaring the village to the State Government, cannot be said to be inconsistent with or contrary to Article 243 [g]. Further, Section 3 [60] (c) of the General Clauses Act, 1873 defines 'State Government' to mean Governor which definition is in conformity with the provisions of the Constitution. We are, therefore, unable to appreciate the conclusion of the High Court that Section 2[t] is *ultra vires* Article 243 [g] of the Constitution.

We are also unable to appreciate the reasoning of the High Court that under the Act the State Government cannot declare the village by special or general order as required by Section 2[t] because Article 243 [g] of the Constitution requires the Governor "to specify the village by a public notification". Admittedly, the general or special order issued by the State Government is always published in the official gazette. In any case, the order declaring the villages for the purposes of Section 2[t] in the present case was gazetted. There is a hierarchy of legal instruments such as law, ordinance, order bye-law, rule, regulation and notification. It is recognised even by Article 13 [3] [a] of the Constitution and Section 3[29] of the General Clauses Act, 1897. All the orders, rules, regulations and notifications when made or issued by the State Government are made or issued in

the name of the Governor by the functionary of the concerned Ministry named in the rules of business as per the provisions of Article 166 of the Constitution. We have already pointed out that in view of the provisions of Article 154 and of Article 163 read with Article 166 of the Constitution, 'Governor' means the Government of the State and all executive functions which are exercised by the Governor except where he is required under the Constitution to exercise the functions in his discretion, are exercised by him on the aid and advice of the Council of Ministers. Hence, whether it is a notification issued by the Government or a general or special order issued by the State Government, constitutionally both are the acts of the Governor.

In the present case by the notification dated 9th May, 1994 issued under Section 96-A of the Act by the Governor, the powers of the State Government under Section 3 and Section 11-F of the Act were delegated to the Director, Panchayat Raj, U.P., Lucknow [hereinafter referred to as the 'Director']. Pursuant to this delegation, on 4th August, 1994 the Director issued notification establishing gram sabhas under Sections 3 and declaring panchayat areas under Section 11-F of the Act. This was a composite notification both for establishing gram sabhas and declaring panchayat areas. It is true that neither in the notification dated 9th May, 1994 delegating powers under Sections 3 and 11-F to the Director nor in the notification dated 4th August, 1994 establishing gram sabhas and declaring the panchayat areas, there is a mention either of Section 2[t] of the Act or of the power delegated to declare the village under the said provision. However, keeping in mind the scheme of the Act and the provisions of Sections 2[t], 3 and 11-F, it is clear that Section 2 [t] merely defines 'village' and by itself does not give power to the State Government to declare the village. It states that village means "any local area recorded as a village in the revenue records of the district in which it is situate and includes any area which the State Government may by general or special order declare to be a village for the purposes of the Act. The said section is, therefore, in two parts. By the first part, it adopts the villages recorded in the revenue records of the districts as villages for the purposes of the Act. By the second part, it accepts as village any area which the State Government may for the purposes of the Act declare as such village. There is no separate provision giving power to the State Government to declare any area as village for the purposes of the Act. The legislature, probably rightly thought that since the power given to the State Government by

A Section 3 to establish a gram sabha and by Section 11-F to declare the panchayat area comprise in them the power to declare the village within the meaning of Section 2[t] and particularly of the second part of it, it was not necessary to make an independent provision to enable the State Government to declare the village for the purposes of the Act. It cannot be said that this view of the State Government is wrong for it is not possible B to establish a gram sabha or declare the panchayat area unless the village for which such gram sabha is to be established and its area are first determined. The notification which is issued on 4th August, 1994 further shows that the gram sabha which is inappropriately titled as gram panchayats are established for villages within the meaning of Section 2[t] C and they comprise the area either of one revenue village or of more revenue villages than one. Although, therefore, the criticism by the High Court with regard to both the notifications dated 9th May, 1994 and 4th August, 1994 delegating the power, and establishing gram sabhas and declaring panchayat areas may be justified in that they do not refer to Section 2[t] and the latter notification has given inappropriate titles in D columns 2 and 3 thereof, according to us, for the reasons stated above, the said defects do not in any way affect the legality of the said notifications. All that can be said in that connection is that they could have been correctly and adequately worded. However, in construing legal documents, it is not their form but their substance which has to be taken into considera- E tion. Thus construed, we are more than satisfied, that the two notifications are in substantial compliance with the provisions of the Act and have to be construed as such.

We also find no merit in the contention that the first part of Section F 2[t] which defines village to mean any local area recorded as a village in the revenue records of the district in which it is situate, goes counter to the provisions of Article 243 [g] in that it forecloses the authority of the Governor to specify the village for the purposes of establishing a gram panchayat as envisaged by Part IX of the Constitution. The argument ignores that whereas the Constitution permits the Governor to specify G village by a notification, it does not prevent the State from enacting a law for the purpose. As pointed out earlier, the notification issued by the Governor is in fact a notification issued by the State Government. An enactment of the legislature is certainly a higher form of legal instrument than a notification. What is further, the Act has received the assent of the H Governor on 22nd April, 1994. Hence, there is not only no conflict between

the provisions of Sections 2[t] of the Act and those of Article 243[g] but there is an over-compliance with the provisions of the Constitution. A

10. The High Court has also held that there is a substantial difference between the definition of 'gram sabha' in Article 243 [b] of the Constitution and that in Section 2[g] of the Act and, therefore, the latter definition is *ultra vires* the provisions of the Constitution. Frankly, we have been unable to understand the reasoning of the High Court in that behalf. Article 243[b] of the Constitution defines 'gram sabha' to mean "a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of panchayat at the village level" whereas Section 2[g] of the Act defines 'gram sabha' to means "a body established under Section 3 of the Act consisting of persons registered in the electoral rolls relating to village comprised within the area of a gram panchayat". The High Court has taken exception to the word 'established' in Section 2[g] of the Act. It must be remembered in this connection that there is no provision in Part IX of the Constitution such as Section 3 of the Act for establishing a gram sabha for a village or a group of villages by such name as may be specified, and to name the gram sabhas in the name of the village having the largest population when the gram sabha is established for a group of villages. One may have quarrel with the use of the expression 'established' in this connection. For it is true to say that gram sabha is nothing but the electorate of the village or villages comprised within the area of a gram panchayat and in that sense there is nothing to be established as far as gram sabha is concerned. What is to be established is the panchayat for a particular area and for the electorate constituted in that area. The moment the panchayat area is declared the electorate comprised in it gets automatically constituted into the gram sabha. It no longer remains merely an electorate. Whether such constitution is called establishment is immaterial. These are matters of description. Having followed a particular pattern, the legislature, has used the expression 'established' also in connection with the gram sabha along with the panchayat. We, however, do not see how the use of the said expression makes any difference to the intendment of the said provision and how the said provision goes counter to the provisions of the Constitution. Surely, it is not suggested that the gram sabha that the Act seeks to establish does not consist of the entire electorate in the panchayat area or excludes some of it. So long as, therefore, the definition given in Section 2[g] and the provisions of Section 3 of the Act do not in any way detract from the provisions of Article 243[b] or their intendment, B C D E F G H

A they cannot be held *ultra vires* the provisions of the Constitution. We are, therefore, unable to agree with the finding of the High Court in that respect.

The High Court has also held that the provisions of Section 3 of the Act which empower the State Government to establish a gram sabha for a B group of villages by the name of the village having the largest population would result in the loss of identity of the village or villages with smaller population comprised in the gram sabha. The High Court has committed an obvious error here in that it has identified the village with the gram sabha and the village panchayat. When villages are united to form a gram C sabha and a village panchayat, they do not lose their name and identity as separate villages. They come together only for the purpose of running the gram panchayat. In that process, they may also stand to gain inasmuch as they may have access to more resources, and the benefit from bigger schemes and projects and availability of better infrastructure and equip- ment to implement the projects and schemes. It is not, therefore, possible D to agree with the High Court that the identity of the smaller villages is lost because they are grouped together for establishing a common gram sabha or gram panchayat.

11. The High Court has also declared the provisions of section 2[11] E read with those of Section 11-F *ultra vires* the provisions of Article 243[e], because according to the High Court, the provisions of the said Article require that as first, a territorial area should be carved out to make it the panchayat area and then the population of the area should be adjusted so as to ensure uniform ratio of representation as required by Article 243-C. F Instead, the provisions of Sections 2[11] and 11-F carve out the panchayat area on the basis of population alone and the basis for it is conspicuous by its absence in the Act and this has created confusion. The representation of an area has to be balanced to the ratio of the population in it and not the population to the area. Territorial constituencies are sub-divisions of a panchayat area. A densely populated area will automatically contain more G seats while a sparsely populated area will contain lesser seats than the densely populated area and hence the provisions of the Act are *ultra vires* the Constitution. We are unable to appreciate the reasoning of the High Court. Article 243 [e] defines 'panchayat area' to mean "territorial area of a panchayat" and Article 243-C speaks about the composition of H panchayats and leaves it to the legislature of a State to make provisions

with respect to it. The only conditions that the latter Article imposes on the composition of panchayat is firstly, the ratio between the population of the territorial area of the panchayat at any level and the number of seats in the panchayat to be filled by election shall, as far as practicable, be the same throughout the State. Secondly, the seats in the panchayat have to be filled by direct election from the territorial constituencies in a panchayat area and for this purpose the panchayat area has to be divided into territorial constituencies in such a manner that the ratio between the population of each constituency and the number of seats allotted to it have as far as practicable to be the same throughout the panchayat area. So long as these conditions are complied with, the composition of the panchayat that may be evolved by the State legislature cannot be faulted. We do not see any material before us to suggest that these two criteria are breached or are sought to be breached. On the other hand, section 11-F of the Act has made three provisions to conform the norms laid down by the said Article, viz., [i] the panchayat area would be such that as far as practicable, it will have a population of 1000 throughout the state; [ii] for the purpose of the declaration of the panchayat area, no revenue or any hamlet thereof shall be divided and [iii], in the hill districts which are sparsely populated and spread over a vast terrain, an area within a radius of 5 kms. from the centre of the village should be declared as the panchayat area, though the population comprised in the area may be less than 1000. When Article 243[e] defines, the "panchayat area" to mean the territorial area of panchayat, it does not require that the panchayat should be constituted on the basis of the area alone. The High Court has read otherwise in the said definition and has, therefore, fallen in an obvious error. When the panc' ayat area is determined on the basis of population inhabiting a particular area, that area will also be a panchayat area within the meaning of the said Article. The provisions of the Act, viz., Section 2[11] read with Section 11-F do not more than give effect to the definition of panchayat area in Article 243 [e]. When the area includes the whole of the village or a group of whole villages including the hamlets thereof, keeping in view the uniform norm of the population of 1000 as far as practicable, the panchayat area gets automatically demarcated by the areas of the village or villages comprised therein.

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It is for the Government to decide in what manner the panchayat areas and the constituencies in each panchayat area will be delimited. It is not for the court to dictate the manner in which the same would be done. H

A So long as the panchayat areas and the constituencies are delimited in conformity with the constitutional provisions or without committing a breach thereof, the courts cannot interfere with the same. We may, in this connection, refer to a decision of this Court in *The Hingir- Rampur Coal Co. Ltd. and Others* v. *The State of Orissa and Others,* [1961] 2 SCR 537. In this case, the petitioner-mine owners, had among others, challenged the B method prescribed by the legislature for recovering the cess under the Orissa Mining Areas Development Fund Act, 1952 on the ground that it was unconstitutional. The majority of the Bench held that the method is a matter of convenience and, though relevant, has to be tested in the light of other relevant circumstances. It is not permissible to challenge the vires of C a statute solely on the ground that the method adopted for the recovery of the impost can and generally is adopted in levying a duty of excise.

What is more objectionable in the approach of the High Court is that although clause (a) of Article 243-O of the Constitution enacts a bar on D the interference by the courts in electoral matters including the questioning of the validity of nay law relating to the delimitation of the constituencies or the allotment of seats to such constituencies made or purported to be made under Article 243-K and the election to any panchayat, the High Court has gone into the question of the validity of the delimitation of the constituencies and also the allotment of seats to them. We may, in this E connection, refer to a decision of this Court in *Meghraj Kothari* v. *Delimitation Commission & Ors.,* [1967] 1 SCR 400. In that case, a notification of the Delimitation Commission whereby a city which had been a general constituency was notified as reserved of the Scheduled Castes. This was challenged on the ground that the petitioner had a right to be a candidate F for Parliament from the said constituency which had been taken away. This Court held that the impugned notification was a law relating to the delimitation of the constituencies or the allotment of seats to such constituencies made under Article 327 of the Constitution, and that an examination of sections 8 and 9 of the Delimitation Commission Act showed that the matters therein dealt with were not subject to the scrutiny of any G court of law. There was a very good reason for such a provision because if the orders made under sections 8 and 9 were not to be treated as final, the result would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from court to court. Although an order under Section 8 or 9 of the Delimitation H Commission Act and published under Section 10[1] of that Act is not part

of an Act of Parliament, its effect is the same. Section 10 [4] of that Act puts such an order in the same position as a law made by the Parliament itself which could only be made by it under Article 327. If we read Articles 243-C, 243-K and 243-O in place of Article 327 and sections 2 [kk], 11-F and 12-BB of the Act in place of Sections 8 and 9 of the Delimitation Act, 1950, it will be obvious that neither the delimitation of the panchayat area nor of the constituencies in this said areas and the allotments of seats to the constituencies could have been challenged or the Court could have entertained such challenge except on the ground that before the delimitation, no objections were invited and no hearing was given. Even this challenge could not have been entertained after the notification for holding the elections was issued. The High Court not only entertained the challenge but has also gone into the merits of the alleged grievances although the challenge was made after the notification for the election was issued on 31st August, 1994.

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While supporting the judgment of the High Court, the respondents raised some additional contentions. The first contention was that it was not competent for the State Government under Section 96-A of the act to delegate its power to the Director, the delegation being in contravention of the provisions of Articles 243 [g] of the Constitution. We have pointed out earlier that under the Constitution, Governor means the State Government. Article 154 [1] enables the Governor to exercise the executive power of the State either directly or through officers subordinate to him in accordance with the Constitution. Hence by virtue of Article 163, the State Government can exercise the power through its officers. Neither Article 243 [g] nor any other provision in Part IX of the Constitution prevents the Governor and, therefore, the State Government from delegating its power mentioned in the said Part to any subordinate officer. The Act makes a specific provision by Section 96-A thereof for the State Government to delegate all or any of its powers under the Act to any officer or authority subordinate to it subject to such conditions and restrictions as it may deem fit to impose. The State Government by a notification issued on 9th May, 1994 under Section 96-A delegated its powers under Sections 3 and 11-F of the Act to the Director. We have already pointed out that the power delegated under Sections 3 and 11-F of the Act would impliedly include the power to declare "village" under Section 2[t] of the Act although the said section is not mentioned in the notification specifically. Hence we do

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not see any substance in this contention either.

A part of the aforesaid contention was that the Director by his Circular dated 12th May, 1994 had delegated the function of delimiting the panchayat areas to the District Magistrates of various districts which he could not have done since Section 96-A does not permit sub-delegation of the powers given by the State Government. We are afraid that this contention results from the incorrect appreciation of the contents of the said Circular. By the said Circular, the Director had only asked the District Magistrates to do the ministerial work of submitting the proposals for re-organisation of gram panchayats according to the guidelines given in the Circular which were in terms of the provisions of the Act. Those proposals were to be finally processed by the Director himself and that is what the Director ultimately did as he himself took the final decision with regard to the reorganisation of the existing gram panchayats constituted under the unamended Act and delimited the panchayat areas. In the circumstances, there is no merit in the contention.

12. The second contention raised on behalf of the respondents was that the delimitation of the panchayat areas and gram sabhas was done without giving adequate opportunities of being heard to the people in the areas concerned. The lists of gram panchayats were published from 20th to 26th August, 1994 and objections were heard and disposed of on 27th and 28th August, 1994 and the final lists of the panchayat areas and gram sabhas were published on the 31st August, 1994. While it was conceded on behalf of the State Government that the proposals for delimiting the panchayat areas were published and finalised as above, it was pointed out on their behalf that this was done *bona fide* to complete the elections on time and without any ulterior motive, since the State Government was racing against time to meet the deadline set by the Centre to constitute the new panchayats. However, during the hearing of the writ petitions before the High Court, the State Government had in its counter-affidavit voluntarily offered to remove the said grievances and invite the objections afresh and finalise the delimitation of the panchayat areas. However, no order was passed on the said offer by the High Court. Subsequently, the State Government on its own canceled the notification of election dated 31st August, 1994 to meet the said grievances of the writ petitioners, i.e., the respondents herein. However, in view of the letter dated 12th November, 1994 received from the Centre, to which we have already made a reference,

threatening to stop the release of funds, the State Government was compelled to renotify the elections of 26th November, 1994 in pursuance of which the election process was to commence on 3rd December, 1994. In the meanwhile, on 2nd December, 1994 the impugned judgment was delivered by the High Court.

Before us, again, in order to prove its *bone fides,* the State Government voluntarily offered to hear the respondents with regard to their grievances and for that purpose to cancel the notification dated 26th November, 1994 and reschedule the election process without prejudice to their contentions in the appeal. By our interim order dated 9th February, 1995, we permitted the State Government to cancel its notification dated 26th November, 1994, to hear the respondents with regard to their said grievances and to reschedule the election process. That order of 9th February, 1995 is reproduced below:

> "Pending the decision, we direct as follows :
>
> The Governor may adopt the Notifications issued by the Director of Panchayat Raj under Section 3 read with Section 11-F of the Uttar Pradesh Panchayat Raj Act, 1947 [Act] between 2nd and 5th August, 1994 as his own proposals for the purpose of specifying villages and constituting Gram Sabha and Panchayat areas under the Act. The Governor may thereafter or simultaneously issue a fresh notice inviting objections to the said proposals. He will give at least 10 days' clear time for lodging objections. He may also nominate officers to hear the said objections. After the objections are disposed of final Notification or Notifications will be issued by the Governor.
>
> The notice inviting objections must be prominently displayed at least in the offices of all the Block Development Officers throughout the period fixed for filing the objections. In addition, wide publicity to such notice should be given on T.V., Radio and in Newspapers having wide circulation in the areas concerned.
>
> It would not be necessary to give oral hearing to the objector unless the officer concerned, considers it necessary to do so.
>
> After the final Notification/s/is/are issued, the State Election

A Commissioner may proceed with the conduct of the elections."

We understand that the grievances of the people in the areas have since been heard and the process of election is underway according to the revised schedule.

B

13. The above order was passed as stated earlier without prejudice to the contentions of the State Government that the notifications issued by the Director under Section 3 read with Section 11-F of the Act between 2nd and 5th August, 1994 were valid. We have already held that since the Governor means the State Government, the Legislature could empower the C State Government to delegate all or any of its powers under the Act to any officer or authority subordinate to it. This is what the legislature has done by enacting Section 96A and the State Government in pursuance of the provisions of the said Section, delegated its powers to the Director. We have held that both the provision of Section 96A and the delegation made by the State Government to the Director under the said provision is valid. D Hence, the notifications in question issued by the Director are valid. The adoption by the Governor, of the notifications issued by the Director pursuant to our interim order of 9th February, 1995 has, therefore, to be deemed to be by way of abundant precaution, pending the decision on the contentions raised on behalf of the respondents. The actions of the Gover- E nor pursuant to our interim order, therefore, in no away reflect adversely on the validity of the notifications issued by the Director.

We must also make it clear that we had passed the interim order, as stated earlier, pending the decision and without prejudice to the conten- F tions of the State Government that the election process once started could not be set at naught by raising objections on the ground that the delimitation of the panchayat areas was defective. We have pointed out that the original delimitation of the panchayat areas having been made much prior to the election notification of 31st August, 1994, the respondent-writ petitioners could not have challenged the same after the said notification G and the Court could not have entertained the challenge. There was, therefore, no invalidity in the action taken by the State Government by its notification of 31st August, 1994 to commence the election process. We are, in these proceedings, referring to the lacuna in the steps taken by the State Government to finalise the panchayat areas only with a view to point H out that it was obligatory on the State Government to hear the objections

before the panchayat areas were finalised. The ratio of the decisions of this Court in *Visakhapatnam Municipality* v. *Kandregula Nukaraju & Ors.*, [1976] 1 SCR 545, *S.L. Kapoor* v. *Jagmohan & Ors.*, [1980] 3 SCC 379, *Baldev Singh & Ors.* v. *State of Himachal Pradesh & Ors.*, [1987] 2 SCC 510, *Sundarjas Kanyalal Bhatija & Ors.* v. *Collector, Thane, Maharashtra & Ors.*, [1989] 3 SCC 396 and *Atlas Cycle Industries Ltd.* v. *State of Haryana & Ors.*, [1993] Supp. 2 SCC 278 requires that a reasonable opportunity for raising the objections and hearing them ought to be given in such matters since the change in the areas of the local bodies results in civil consequences. It was not disputed before us that the action of bringing more villages than one under one gram panchayat when they were earlier under separate gram panchayats, does involve civil consequences. However, as held in *Visakhapatnam Municipality, S.L. Kapoor, Baldev Singh, S.L. Bhatija* and *Atlas Cycles cases,* in mattres which are urgent even a post-decisional hearing is a sufficient compliance of the principle of natural justice, viz., *audi alteram partem*. It is in view of this position in law that the State Government had offered to hear the grievances of the writ petitioners before the High Court and before us.

14. We are, therefore, more than satisfied that there were no *mala fide* intentions on the part of the State Government in giving the short time for submitting the objections and for hearing and disposing them of. We may, however, make it clear that although, as pointed out earlier, the challenge to the delimitation of the panchayat areas on the said grounds could not have been made in the present case after the election notification was issued, the State Government should bear it in mind that if and when the next regrouping of the villages and redetermination of the panchayat areas is undertaken, the authorities will have to give sufficient opportunity to the people of the areas concerned for raising the objections. This is with a view to remove their grievances, if any, with regard to the difficulties, invonveniences and hardships, likely neglect of their interests, domination of certain sections and forces, remoteness of the seat of administration, want of proper transport and communication facilities etc. The opportunity will also provide an occasion for the people to come forward with suggestions for better and more viable, compact and cohesive regrouping of the villages for efficient administration and economic development. The objections are not to be invited to enable the people to exercise the sort of a right of self- determination which is sought to be spelt out by the High Court. The final decision with regard to the delimitation of the panchayat

A areas, after hearing the objections and suggestions, will, of course, be that of the State Government acting through the Director.

The last contention of the respondents was that the Act makes provision for the nyaya panchayats whereas the amended provisions of the Constitution do not direct the organisation of such panchayats and, there-
B fore, the Act is *ultra vires* the Constitution. The contention is only to be stated to be rejected. Admittedly the basis of the organisation of the nayay panchayats under the Act is different from the basis of the organisation of the gram panchayats, and the functions of the two also differ. The nyaya panchayats are in addition to the gram panchayats. The Constitution does
C not prohibit the establishment of nyaya panchayats. On the other hand, the organisation of the nyaya panchayats will be in promotion of the directive principles contained in Article 39A of the Constitution. It is, therefore, difficult to appreciate this contention.

As pointed out above, the decision of the High Court suffers from
D errors and has to be set aside. The appeals, therefore, succeed and are hereby allowed and the impugned decision of the High Court is set aside with costs throughout.

R.A. Appeal Allowed.