

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Vijay Kumar Singh and ors. Vs. State of Bihar and ors. and Union of India (Uoi) and ors.

Vijay Kumar Singh and ors. Vs. State of Bihar and ors. and Union of India (Uoi) and ors.

SooperKanoon Citation : sooperkanoon.com/132204

Court : Patna

Decided On : May-19-2006

Judge : R.N. Prasad, Brain Ghosh and S.N. Hussain, JJ.

Acts : Bihar Panchayat Raj Act, 2006; Bihar Panchayat Raj Act, 1993; Bihar Panchayat Raj Act, 1947; Bihar Panchayat Raj (Amendment) Act, 1987; Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1992 - Sections 97(5) and 120; [People Act, 1950](#); [Constitution of India](#) - Articles 16(4), 40, 50, 213, 243 to 243(O) and 324

Appeal No. : C.W.J.C. Nos. 1095, 1118, 1246, 1408, 1413, 1416, 1422, 1433, 1445, 1446, 1658, 1661, 1701, 1705, 17

Appellant : Vijay Kumar Singh and ors.

Respondent : State of Bihar and ors. and Union of India (Uoi) and ors.

Disposition : Petition dismissed

Judgement :

R.N. Prasad, Barin Ghosh, and S.N. Hussain JJ.

1. In these writ petitions, we are concerned with the validity of Bihar Panchayat Raj Act, 2006 (hereinafter referred to as 'the 2006 Act'). The 2006 Act was preceded by Panchayati Raj Ordinance, 2006 (hereinafter referred to as 'the Ordinance'). These writ petitions were filed challenging the validity of the Ordinance. During the pendency of the writ petitions, the 2006 Act came into force and accordingly, applications have been filed to amend the writ petitions in order to enable the petitioners to challenge also the 2006 Act. The provisions of the Ordinance and the provisions of the 2006 Act are identical, except that the Ordinance repealed the Bihar Panchayat Raj Act, 1993 and saved the things done thereunder, whereas the 2006 Act repealed the Ordinance and saved the things done thereunder.

2. Before we proceed to deal with contentions of the petitioners, it would be useful to refer to certain background facts in order to appreciate the same.

3. On 13th March, 1948, Bihar Panchayat Raj Act, 1947 (hereinafter referred to as 'the 1947 Act') came into force. The object of the said Act was to establish and develop Local Self-Government in the village communities of the Province of Bihar and to organize and improve their social and economic life. The Act envisaged establishment and constitution of a Gram Panchayat as a body corporate with perpetual succession for every village or part of different villages or for a group of contiguous villages or more than one Panchayat in a big village consisting of several Tolas. The purpose thereof was to discharge functions as were delineated and primarily to look after the over all development of the village or villages under its domain by the villagers with the assistance of Executive Committee, of which Mukhiya was the Chairperson. The Act also established Gram Cutcherry to be presided by Sarpanch and in his absence by Up-Sarpanch and to be assisted by Panchs. The Gram Cutcherry was authorised to decide suits of civil nature of the description given in the Act where the value of the suit does not exceed five hundred rupees and was also vested with the concurrent jurisdiction of the Criminal Court in respect of certain offences as mentioned in the Act with a restriction not to pass simple imprisonment for a term exceeding one month, fine exceeding one hundred rupees and in default of payment of the fine simple imprisonment for a term exceeding 15 days. A Bench of Gram Cutcherry

comprising of the Sarpanch, if he is not interested in the matter, two Panchs to be nominated by the parties and two Panchs to be nominated by the Sarpanch was entitled to discharge the functions of the Gram Cutcherry, with an obligation to make an effort to settle the disputes between the parties before deciding the same. No lawyer was entitled to appear before a Bench of the Gram Cutcherry. A provision for preferring appeal to the Full Bench of the Gram Cutcherry comprising of the Sarpanch, if he is not interested in the matter, and not less than seven Panchs, with power to the Munsif to call for the records in case of miscarriage of justice had also been provided in the Act. The Mukhiya, Up-Mukhiya, Members of the Executive Committee, Sarpanch, Up-Panch and Panchs were to be directly elected. Gram Panchayat as well as Gram Cutcherry so established started functioning after the 1947 Act came into force.

4. On 26th January, 1950, the people of India adopted the [Constitution of India](#) and thereby constituted India into a Sovereign Democratic Republic. In order to achieve democracy, it provided for citizenship and granted universal suffrage to its adult citizens. It also separated the powers of the Executive, the Legislature and the Judiciary. It provided that legislators in the Lower House shall be appointed by direct election, while the legislators in the Upper House shall be appointed by indirect election as well as the Executive Head of the Union, i.e., the President shall also be appointed by indirect election. The Constitution authorized the Parliament to make provisions with respect to all matters relating to or in connection with election to the legislatures and accordingly, vested in the Parliament the power to make provisions in respect to the manner, by which citizens can seek to be elected, but at the same time provided that for 10 years from the commencement of the Constitution seats of the legislatures shall be reserved for Scheduled Caste and Scheduled Tribe Communities proportionate to their population in the total number of seats. There is no dispute that 10 years so fixed has now been raised to 60 years by several amendments. In order to achieve federal structural, it constituted the Union and the States and earmarked their area of operation. One of the objects of constituting India as a Sovereign Democratic Republic was to secure to all its citizens Justice-Social, Economic and Political and at the same time to provide for equality to all of status and opportunity. In order to achieve Justice-Social, Economic and Political, in Part IV of the

Constitution various directions have been given, which have been declared to be fundamental in the governance of the Nation with a duty imposed on the State to apply the same in making laws. One of them is to take steps to organize Village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-Government. In order to achieve equality, while the same has been declared to be a fundamental right, specific provisions have been made for making unequal as equals in relation to all matters, including in the matter of public appointments by law to be made with respect thereto.

5. In 1987. Bihar Panchayat Raj (Amendment) Ordinance was brought in, and thereby the 1947 Act was amended. In terms thereof seats of Mukhiyas in the Gram Panchayats were reserved for the members of Scheduled Caste and Scheduled Tribe Communities on the basis of their percentage in the total population of the Districts. The validity of the said ordinance was challenged in this Court and this Court by a Full Bench Judgment rendered in the case of Janardhan Paswan v. The State of Bihar 1987 PLJR 875 struck down the amendment. The Court declared that such an amendment in the background of the then constitutional scheme is not permissible. While holding so, it declared that the post of Mukhiya in the self-contained unit of a Panchayat is a solitary post and such a post cannot be reserved, inasmuch as reservation in excess of 50% is not permissible under any circumstances.

6. With effect from 1st June, 1993 Part IX of the Constitution consisting of Articles 243 to 243O stood inserted in the Constitution. It directed, amongst others, constitution of Panchayats at village, intermediate and district levels in every State except, those specifically excluded thereby, and also where the intermediate level, meaning thereby a level in between the village and the district levels, do not have a population exceeding 20 lakhs, with the object of endowing the Panchayats with such powers and authority to enable them to function as institutions of self-Government. Articles 243D and 243E contained in Part-K of the Constitution are as follows:

243-D. Reservation of seats:(1) Seats shall be reserved for-

(a) the Scheduled Castes: and

(b) the Scheduled Tribes,

in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

(2) Not less than one-third of the total number of seats reserved under Clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

(4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State:

Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women:

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

(5) The reservation of seats under Clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under Clause (4) shall cease to have effect on the expiration of the period specified in Article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.

243-E. Duration of Panchayats, etc.-(1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in Clause (1).

(3) An election to constitute a Panchayat shall be completed-

(a) before the expiry of its duration specified in Clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat for such period.

(4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under clause (1) had it not been so dissolved.

7. On 23rd August, 1993, the Bihar Panchayat Raj Act, 1993 (hereinafter referred as 'the 1993 Act') came into force whereby and under the 1947 Act was repealed after saving whatever had been done thereunder. The object thereof was to lay

down a law in conformity with Part IX of the Constitution. The Act provided for constitution of Panchayats at three levels. The village level was constituted at the village level, the intermediate level was constituted at the block level and the district level was constituted at the district level. It made reservation of seats in the Panchayats at every level for Scheduled Castes, Scheduled Tribes and Backward Classes on the basis of their population proportionate to the total population in the area of the Panchayats. The Act made horizontal reservation of one-third of the total number of seats at each level for the women. The Act reserved seats of Chairpersons at every level, namely, the seats of Mukhiya at the village level, of Pramukh at the intermediate level and of Adhyaksha at the District level, for Scheduled Castes, Scheduled Tribes and Backward Classes in proportion to their population to the total population of the area of the Panchayats. It introduced similar reservations for Sarpanchs and Panchs. The Act, otherwise, reiterated the provisions pertaining to Gram Cutcherry as was provided in the 1947 Act with slight modifications. However, the value of the civil suits entertainable by the Gram Cutcherry was increased up to ten thousand rupees. It defined Backward Classes as those who have been mentioned in Schedule-I to the Act. Schedule-I listed various castes, which were specified as extremely Backward Class in the Schedule-I to the Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1992. In addition thereto, the Act provided for many other things with which at present we are not concerned.

8. The validity of the 1993 Act was challenged before this Court, while the validity of Article 243D too was challenged. A Division Bench of this Court in Krishna Kumar Mishra v. The State of Bihar 1996(1) PLJR 481 while upheld the validity of Article 243D, partially allowed the challenge thrown to the 1993 Act. It held that a maximum of 50 per cent reservation is permissible and on facts found that if seats are reserved in favour of Scheduled Caste, Scheduled Tribe and Backward Class Communities on the basis of their population proportionate to the total population of State of Bihar, the reservation would exceed 50 per cent and accordingly, the provisions made for reservation in favour of such communities in the 1993 Act, are inappropriate. It further held, though, reservation may be made in favour of Backward Classes, which may include Backward Castes, but it must be

determined which Backward Caste(s) is/are lacking power in the political field. On facts, it was found that four of the Backward Castes included in the category of the Backward Class in the 1993 Act are dominating the political field. It was held that though in service and other matters, creamy layer may be excepted but that is not permissible in the matter of reserving seats in Panchayats. It was held that seats like Mukhiya of a Panchayat, i.e., at the village level, Pramukh of a Samiti, i.e., at the intermediate level, and Adhyaksha of a Zila Parishad, i.e., at the District level, are single unit seats and in view of the Full Bench Judgment of this Court in Janardhan Paswan, no such seat can be reserved, for no reservation can exceed the limit of 50 per cent. It was held that constitution of Gram Cutcherry without specifying qualification of the Sarpanch, Up-Sarpanch and Panch is unconstitutional.

A direction was issued to verify which Backward Caste is politically depressed and is not adequately represented in the political field, with a declaration that the Schedule-I to the Act cannot be acted upon for the purpose of Panchayat election. This Judgment was rendered on 19th March, 1996.

9. In 1996, Special Leave Petitions were filed before the Hon'ble Supreme Court challenging the Judgment of the Division Bench rendered in Krishna Kumar Mishra.

10. In June, 2001, election for filling up the seats in Panchayats was held without making any reservation for any Backward Class Community. No seat of Mukhia, Pramukh or Adhyaksha was reserved. At the same time no election was held to constitute Gram Cutcherry.

11. On 10th January, 2006, on the prayer of the State, Special Leave Petitions were dismissed as not pressed and accordingly, applications filed by the State for withdrawal of the Special Leave Petitions were allowed.

12. On 14th January, 2006, the ordinance was promulgated and thereby the provisions of the 1993 Act were reiterated except that the aggregate reservation for Scheduled Castes, Scheduled Tribe and Backward Class Communities was fixed at 50 per cent at all levels of Panchayats with a direction that the seats to be

reserved for Scheduled Castes and Scheduled Tribes shall be proportionate to their population to the total population of the area of the Panchayats and 20 per cent of the remainder shall be reserved for the Backward Class Citizens and such reserved seats shall be allotted in the manner as prescribed. It made horizontal reservation to the extent of 50 per cent of the seats at each level for women. It made similar reservations for the posts of Mukhiya, Pramukh, Adhyakshya, Sarpanch and Panchs. It similarly defined Backward Classes but deleted those four castes, who had been found by the Division Bench to be dominating the political field. While it did not provide for qualification of Sarpanch. Up-sarpanch and Panchs, it made provisions for their training and supplying of. in addition to a Secretary, a Nyaya Mitra, who should have at least a three years law degree from a recognised Institution or any University, to each Gram Cutcherry.

13. On 19th January, 2006, guidelines were issued by the State Election Commission to all District Magistrates to carry out the provisions of the Act relating to reservation of seats and posts in the Panchayats.

14. From 7th February, 2006 and onwards these writ petitions were filed.

15. On 25th February, the Governor in exercise of his powers under the Ordinance notified the date of the ensuing election. On 27th February, 2006, the State Legislative Assembly reassembled after 29th December, 2005, when it neither approved nor disapproved the ordinance.

16. On 8th April, 2006, the 2006 Act was made and a notification to give effect to the Act was prepared.

17. On 9th April, 2006, six weeks time from the date of making of the Ordinance came to an end. On 10th April, 2006, the notification dated 8th April. 2006 giving effect to the Act was published in the Official Gazette.

18. On 20th April, 2006 a proposal was given to the Division Bench presided by the Hon'ble Chief Justice, which Division Bench was hearing the writ petitions, to constitute a Bench of three Hon'ble Judges to hear these writ petitions. By an order dated 20th April, 2006, the Hon'ble Chief Justice constituted this Bench. We

heard submissions made at the bar from 25th April, 2006 until 4th May, 2006.

19. Before us, the following points were urged by the counsel appearing on behalf of the petitioners:

(a) The Division Bench Judgment in Krishna Kumar Mishra having been rendered in, amongst others. Public Interest Litigations, the same became binding in between the State and the people of the State and that having been permitted to reach finality, the State could not present the same thing as was declared to be invalid by the Division Bench in a different statute;

(b) In order to promulgate an ordinance, the Governor was required to be satisfied that circumstances exist which render it necessary for him to take immediate action and having regard to the fact that the term of the existing Panchayats was expiring in June, 2006, there was no necessity for the Governor to take immediate action, as the Assembly was reassembling on 27th February, 2006, within 43 days, and there is nothing on record to suggest that there was any material to obtain subjective satisfaction in relation to circumstances necessitating an immediate action to be addressed by promulgating the ordinance.

(c) It was next contended that in terms of the directions contained in the Act, the same came into effect on publication of the notification in the official gazette, which was made on 10th April, 2006 and before that date on 9th April, 2006 in terms of the provisions contained in Article 213 of the Constitution, the ordinance died in course of its natural death and accordingly, nothing done under the ordinance could be saved by the Act and therefore, whatever steps have been taken under the ordinance should be deemed to be redundant.

(d) Though, ostensibly a cap of 50 per cent reservation of the elected posts has been provided, but in fact, reservation has exceeded 50 per cent of the elected seats. It was contended that 16% reservation for Scheduled Castes, 1% reservation for Scheduled Tribes, 20% reservation for Backward Classes and 50% reservation of the remaining 63% of the elected seats for women would take the total reservation to 68.5%. It was, thus, urged that reservation for women in the open category, as provided, is a vertical reservation.

(e) The posts of Mukhiya, Pramukh and Adhyaksha are single posts. Those cannot be reserved. It was stated that the word 'Chairpersons' but not the word 'Chairperson' has been used in Article 243D(4) and that suggests there was no intention to reserve single posts of Mukhiya, Pramukh and Adhyakshya and what was intended was to reserve posts of Chairpersons in various Committees of the Panchayats. It was also stated that even assuming single posts of Mukhiya, Pramukh and Adhyaksha were directed to be reserved by the said Article, the same were to be reserved in proportion to the population of the Scheduled Castes and Scheduled Tribes in the State to the total population of the State, but in the 2006 Act such reservation has been provided in proportion to the population of the area of the Panchayats and that is not permissible.

(f) It was contended that assuming single posts can be reserved, such reservation cannot be made in favour of Backward Classes for there is no mandate therefore in Article 243D.

(g) It was also contended that there is no authority to reserve the posts of Sarpanchs and Panchs and accordingly, the same is not permissible and to that effect Janardan Paswan is still binding.

(h) It was contended that there is a direction to rotate reservations and have on regard to the mandate contained in Article 243D, the reservation will come to an end on 26th January, 2010. There is, thus, no scope of rotation and as such the reservation is not in accordance with the directions of the Constitution.

(i) No census of Backward Class Communities has been made and accordingly, it is not known what is their percentage in the total population of the State. It was, therefore suggested that the fixation of 20% reservation for Backward Classes having no reasonable nexus is arbitrary. It was stated that when recognition is of Backward Class Citizens, there was no reason to reserve seats only for extremely Backward Class Citizens.

(j) Despite the binding Judgment of Krishna Kumar Miahra, no qualification for Sarpanchs, Up-Sarpanchs and Panchs has been prescribed and on top of that despite observations in Krishan Kumar Mishra the ban on appearance of Lawyers

before Gram Cutcherry has been retained, while the Gram Cutcherry has been provided with the assistance of a lawyer, which will misdirect Gram Cutcherries in rendering Justice, for they will be acting on the advice of one lawyer.

(k) While the Gram Cutcherry will be discharging Judicial function, the Executive through the Commissioner has been authorised to remove a Sarpanch or a Up-Sarpanch on the ground, amongst others, abuse of power and misconduct in the discharge of his duties in violation of the provisions contained in Article 50 of the Constitution.

(l) It was urged that the manner in which the ordinance and the rules framed thereunder as well as the 2006 Act have been framed a person, having his properties in a village, where his family is residing, but had to move to town to pursue a profession, has not been recognised to be a part of the Aam Sabha which along with the Executive Committee and the Mukhiya has been bestowed with the authority of self-governance and accordingly, he has been denied right of self-governance, which is the basic object of inserting Chapter IX in the Constitution.

20. It was, thus, contended that no Gram panchayat or Gram Cuthcerry can be constituted on the basis of the provisions contained in the 2006 Act or the Rules framed under the Ordinance.

21. While we were hearing the writ petitions, applications were filed to amend the writ petitions to include similar challenges to the 2006 Act, applications were also filed to challenge the validity of Article 243D, but while the amendment applications were moved and pressed, the applications seeking to challenge Article 243D were neither moved, nor pressed. In addition to the points highlighted above, many other points have been taken in the writ petitions, but since those were not canvassed before us, we have not applied our mind to those points.

22. The learned Advocate General, who led the arguments in support of the ordinance as well as the 2006 Act countered the points as highlighted above in the manner as follows:

(a) In Krishna Kumar Mishra, the Court held that reservation up to 50% is permissible. Such a provision has been incorporated in the Ordinance as well as in the 2006 Act. In Krishna Kumar Mishra, horizontal reservation in favour of women has been recognised. Such reservation, therefore, can be made. In Krishna Kumar Mishra validity of Article 243D was upheld, which provides for horizontal reservation in favour of women to the extent of at least one third of the total number of seats and does not restrict reservation to one-third of the total number of seats and accordingly horizontal reservation in favour women to the extent of 50% cannot be said to be contrary to the mandate of Krishna Kumar Mishra. In Krishna Kumar Mishra. Schedule-I to the 1993 Act was held to be bad on the ground that four castes mentioned in the said Schedule were found to be dominating the political field. Those four castes have been removed from the Schedule of Backward Classes to the 2006 Act. It was submitted that the learned Judge, who played a pivotal role in rendering the Judgment in Krishna Kumar Mishra, while sitting in a Division Bench of the Jharkhand High Court on 2nd September, 2005 in Dhananjay Mahto v. Union of India and Ors. 2005 (4) JCR (HC) 1, held in no uncertain terms that reservation in favour of Scheduled Caste and Scheduled Tribe Communities is a mandate of Article 243D and any law made contrary thereto is unsustainable, but while rendering the Judgment in Krishna Kumar Mishra without looking into such mandatory provisions of Article 243D, which was inserted in the Constitution after the Judgment in Janardhan Paswan was rendered, proceeded to hold that in view of the Judgment rendered in Janardhan Pas-wan single posts of Mukhiya, Pramukh and Adhyakash cannot be reserved. It was found as a fact that in terms of the said Judgment in Dhananjay Mahto. seats are to be reserved for Scheduled Caste and Scheduled Tribe Communities in the State of Jharkhand and similar seats have already been reserved in the States of West Bengal, Karnataka and Maharashtra. It was felt that for no just reason, the people of the reserved category of the State will be deprived of a benefit expressly given to them by the Constitution and accordingly, the State Legislature brought in a new Act to give to the people of such category the benefits to which they are entitled to. It was submitted that in Krishna Kumar Mishra, although, the Division Bench declared Sarpanchs, Up-sarpanchs and Panchs should have some qualification, but did not specify what should be such

qualification. In the State of Uttar Pradesh, such qualification has been prescribed as ability to read and write. In the State of Bihar, there will be more than 1,60,000 Gram Panchayats and accordingly, there will be more than 1,60,000 Gram Cutcherries which should have not less than 7 Panchs in addition to a Sarpanch and an Up-sarpanch and accordingly, there will be requirement of 13,40,000 people. It was, thus, felt that in a situation of that nature, it would not be practical to prescribe any qualification. It was submitted that the Act requires the Gram Cutcherry to pass orders and decisions which are not only appealable to Full Bench of the Gram Cuthcerry, but a Second Appeal can also be preferred before the Sub-Judge, in Civil Cases and before the District and Sessions Judge in Criminal Cases, which makes it obligatory on the part of the members of the Gram Cutcherry to write and a person, who is competent to write is also competent to read and accordingly such qualification is implied in the statute and if a person is incapable of writing or reading, on the ground that he is incapable of discharging his duties may be removed and therefore, to that extent Krishna Kumar Mishra has been complied with. It was submitted that taking cue from the observations in Krishna Kumar Mishra, it has been decided that appropriate steps will be taken to train the members of the Gram Cutcherry and in addition thereto, it has been decided to provide them with legal assistance through a qualified lawyer. It was, thus, submitted that Krishna Kumar Mishra does not stand in the way of the 2006 Act.

(b) It was submitted that in terms of the mandate contained in Article 243E, the term of every Panchayat shall continue for five years from the date appointed for its first meeting. The term of the existing Panchayats constituted in 2001 under the 1993 Act, as modified by Krishna Kumar Mishra, would come to an end in June, 2006. Steps to constitute Panchayats, who would function after the expiry of the term of the existing Panchayats, in terms of Article 243E are required to be taken and completed before its expiration and accordingly, if back calculation is done, it would be evidenced that the necessity required the Governor to act promptly to bring out the Ordinance and admitted facts and dates would show that there was enough materials, to have subjective satisfaction in relation thereto.

(c) It was submitted that from the admitted facts, it would be evidenced that on 8th April, 2006 itself, a notification to give effect to the 2006 Act was prepared, but the same was published in the Official Gazette on 10th April, 2006. The ordinance was valid until 10th April, 2006 and the Act was also notified on 10th April, 2006. It was submitted that assuming at the mid-night of 9th April, 2006, the ordinance came to an end, at the best it can be said that on the basis of the ordinance, nothing could be done on and from 10th April, 2006 and it is no body's case that on and from 10th April, 2006 anything has been done on the basis of the ordinance. He submitted that things done up to 9th April, 2006 on the basis of the ordinance cannot be said to have died their natural death for Article 213 does not say so. In any event, Article 213 does not say that an ordinance which has lapsed stands obliterated or that the legislature by a subsequent legislation cannot save the things done under the ordinance.

(d) It was submitted that Article 243D in clearest of clear terms has provided for horizontal reservation in favour of women and accordingly, the contention of the petitioners that the same will be vertical in respect of the remaining 63% of the elected seats is inappropriate.

(e) It was submitted that the posts of Mukhiya, Pramukh as well as Ad-hyaksh are single posts but Article 243D has directed reservation in those posts and accordingly, it is permissible to make reservation in those posts. He contended that Chapter IX of the Constitution does not contemplate creation of various Committees of Panchayats. On the other hand, it directs reservation in the posts of Chairpersons in the Panchayats and accordingly, it is inappropriate to contend that posts of Mukhiya, Pramukh and Up-Pramukh cannot be reserved but posts of Chairperson in various Committees of the Panchayats can be reserved. He also submitted that the words 'Offices of the Chairpersons' was used in conjunction with Panchats and a plain reading of those words would suggest that the reservations are to be made in the Offices of the Chairpersons in the Panchayats and accordingly, while Panchayats will be many, offices of the Chairpersons of Panchayats will also be many and in all those offices of Chairpersons reservation in the manner as prescribed is required to be made. He submitted that the percentage of population of Scheduled Tribe Community and Scheduled Caste

Community, as per the last census is approximately 85% and 16% respectively and it is nobody's contention that any reservation in excess of 1% for Scheduled Tribe Communities and in excess of 16% in favour of Scheduled Caste Community has been made. He contended that by providing proportionate reservation for the posts of Mukhiya, Pramukh and Ad-hyaksh in proportion to the population of Scheduled Caste and Scheduled Tribe Communities of the area an attempt has been made to logically make available the maximum benefit of the reservation for the said Communities within the over all limit arrived at on the basis of their population in the State without touching the rights of the other Communities. He, thus, submitted that there is no infirmity in the 2006 Act.

(f) He also submitted that though, there is no mandate in Part-IX of the Constitution to make any reservation for Backward Classes but Article 243D enables the State Legislature to make reservation of seats in favour of Backward Class Citizens not only in any Panchayat but also in the offices of Chairpersons in the Panchayats at any level and accordingly, it is incorrect to contend that it is not permissible to make reservation in favour of Backward Class Citizens in the single posts of Mukhiya, Pramukh and Adhyaksh.

(g) He submitted that except in Bihar, in all other States there are reservations in favour of Scheduled Caste, Scheduled Tribe and Backward Class Communities in the services and posts in the Lower Judiciary. Sarpanchs, Up-sarpanchs and Panchs will be rendering functions as that of the lowest level of Judiciary and accordingly, reservation for the posts of Sarpanchs, Up-sar-panchs and Panchs cannot be held to be unauthorised.

(h) He submitted that in 2001, Panchayats at three levels were constituted through election and while doing so, the mandate of the Article 243D subject to the directions contained in Krishna Kumar Mishra were complied with where no reservation was made for Backward Class Communities and at the same time, no reservation was made of single posts. In terms of the present Act, the posts, which were reserved in 2001 in favour of Scheduled Caste and Schedule Tribe Communities will now be rotated and therefore, the direction contained in Article 243D as regards rotation will be complied with,

(i) He submitted that census is in the Union List. He accepted that after 1931, no census of Backward Class Citizens has been made. He contended that although, no such census was made, but in the Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1992, for Extremely Backward Class Citizens, originally 12% reservation was made out of the permissible limit of 50% reservation for direct recruitment, when reservation for Scheduled Castes and Scheduled Tribes was respectively 14% and 10%. He submitted that after bifurcation of the State, the percentage of the Scheduled Tribes has fallen down, while the percentage of the Scheduled Castes has gone up to the extent of 85% and 16% respectively and taking note of the said fact reservation for Extremely Backward Class Citizens has been increased to 18% within the over all limit of 50%. In such situation, he submitted that reservation for Extremely Backward Class Citizens to the extent of 20% cannot be said to be arbitrary and more so when the State has no power to conduct census. He submitted that if reservation is made in favour of citizens who are more backward, it cannot be said that a policy of that nature is bad.

(j) He repeated his submission that the qualification for Sarpanchs, Up-panchs and Panchs to be able to comprehend, read and write has been impliedly provided in the Act. He submitted that ban on appearance of lawyers before Gram Cutcherry was there since 1947 but still Gram Cutcherry discharged its duties. In Krishna Kumar Mishra, although the Court made certain observations as regards ban on appearance of lawyers before Gram Cutcherry, as was imposed by the 1993 Act, but did not strike down those provisions. It was submitted that in the event, despite availability of the advice of a lawyer, Gram Cutcherries misdirect themselves the litigant public will not be prejudiced for not only they will be in a position to approach the judiciary, but the judiciary itself on its own notion can call for the records of Gram Cutcherries and do justice to the matters so called for. It was, thus, submitted that there was no infirmity.

(k) He submitted that he would apprise the legislature as regards the provisions contained in Section 97(5) of the Act, which authorises the Commissioner to remove a Sarpanch or an Up-sarpanch, when he abuses powers vested in him or is found to be guilty of misconduct in the discharge of his duties, and by slight

modification provisions contained in Article 50 of the Constitution can be complied with, inasmuch as under Section 120 of the Act, the District Judge or any other Judicial Officer authorised by him has power to inspect the proceedings and records of Gram Cutcherries or of Benches thereof.

(l) It was submitted by him that in accordance with the provisions of the Representation of the [People Act, 1950](#) the residence of a citizen recognizes his right to cast his vote at and for a Legislative Constituency as well as Parliamentary Constituency and having regard to the mandate contained in the Constitution, no one can claim preferential treatment as an elector on the basis of properties owned by him. At the Aam Sabha, meaning thereby the villagers at a meeting, will decide the course of their well being and that is the object of the Act as well as of the Constitution, for Article 40 to the Constitution has not been deleted. By providing that the Aam Sabha alongwith the Executive Committee and the Mukhiya shall have the authority of self-governance, the said object of the Constitution has been fulfilled and a person, who is not a villager, but is having some property or relation in a village and for that purpose frequents the same from time to time cannot be said to be interested in the development of the village in question.

23. I shall now deal with the rival contentions. Before doing so, it is my duty to record that apart for the Judgments referred above, many other Judgments were cited at the Bar. Most of them having been rendered by the Hon'ble Supreme Court, logically there cannot be any dispute as to the propositions of law enunciate in those Judgments. However, having regard to the fact that the Judgments so cited are large in number, it would not be convenient to refer to the same in details. I have tried to cull out the propositions of law as were place and would try to incorporate them in accordance with my understanding.

24. In terms of Judicial hierarchy, a larger Bench is not bound by a decision of a smaller Bench, while it is bound by a decision rendered by a co-ordinate Bench. A law declared by a larger Bench should not be declared to be an incorrect declaration of law by a smaller Bench, even if, the basis of declaration of law by the larger Bench has been altered. When such a situation crops up, judicial

discipline requires that the smaller Bench shall refer the matter to the larger Bench so that the larger Bench after noting the change effected can suitably after the declaration made by it earlier.

25. In Janardhan Paswan, a Bench comprising of three Hon'ble Judges having noted the then Constitutional Scheme pointed that single post of Mukhiya cannot be reserved. The basis of the said Judgment was altered by reason of insertion of Chapter-IX to the Constitution. When the said matter was brought to the notice of a Division Bench in Krishna Kumar Mishra, if the Division Bench was of the opinion that the law declared in Janardhan Paswan cannot be the law governing the field then, for in the meantime Constitutional Scheme stood altered, it was obligatory on its part not to make a pronouncement contrary to Janardhan Paswan and instead to refer the matter to a larger Bench. Accordingly to my mind while declaring that single post cannot be reserved in view of the decision rendered in Janardhan Paswan, the Division Bench acted within four corners of Judicial discipline. The fact that in Krishna Kumar Mishra, an incorrect law was declared by the Division Bench, as was urged before us, is a different matter.

26. It is true, whether correct or incorrect, decision of the Division Bench in Krishna Kumar Mishra was and still is binding on the State, for it has permitted the said decision to reach its finality. Therefore, under the 1993 Act, the State could not hold any election contrary to the directions contained in Krishna Kumar Mishra.

27. In Krishna Kumar Mishra. The Court held 50% and no more, reservation is permissible. That has been provided in the 2006 Act. In Krishna Kumar Mishra, the Court held that single posts cannot be reserved and Gram Cutcherries cannot be constituted without specifying qualification of Sarpanchs, Up-sarpanchs and Panchs. In the 2006 Act, single posts have been reserved. It appears in Krishna Kumar Mishra what qualification is necessary for Sarpanchs, Up-sarpanchs and Panchs had not been discussed, except the observations of the Hon'ble Supreme Court in All India Judges Associations v. Union of India (1993) 4 SCC 228, where the Supreme Court held that three years practice as lawyer after obtaining a law degree shall be one of the essential conditions for recruitment of Judicial Officers at the lowest rung. By providing for training of Sarpanchs, Up-sarpanchs and

Panchs as well as a lawyer to each Gram Cutcherry, the lacuna as was pointed out by the Division Bench has been sought to be removed. Whether that is sufficient or insufficient is another question. The Division Bench held that the Schedule of Backward Class Citizens as provided in the 1993 Act does not reflect Backward Class Citizens, for four Classes included therein were dominating the political field. Those four class of citizens have been removed from the Scheduled to the 2006 Act. Therefore, an attempt was made to remove the mischiefs as had been pointed by the Division Bench in Krishna Kumar Mishra, except the mischief or reservation of a single posts. Whether redressed of the mischiefs is adequate or inadequate is of course a separate question.

28. The main emphasis, therefore, was given by the learned Counsel for the petitioners that by providing for reservation for single posts, the State has presented old wine in a new bottle, despite there being a binding Judgment of this Court declaring that the wine is spurious.

29. The learned Advocate General principally contended that while addressing the issue of reservation for single posts, the Division Bench in Krishna Kumar Mishra overlooked the directions contained in Article 243D and instead relied on Janaradhan Paswan and accordingly pronounced an incorrect law. If that be so, it was obligatory on the part of the State to pursue the Special Leave Petitions, which were withdrawn, or after withdrawal of the Special Leave Petitions to approach the Division Bench with a modification application. That should have been the proper procedure.

30. Inasmuch as the State did not pursue the Special Leave Petitions and did not approach the Division Bench with a modification application, the question that falls for consideration is whether in the subsequent legislation the State could provide for reservation in single posts.

31. The Division Bench in Krishna Kumar Mishra and the Full Bench in Janardhan Paswan basically held that reservation up to 50% and no more is permissible and accordingly, single posts cannot be reserved. In coming to the said conclusion, they referred to various Judgments of the Hon'ble Supreme Court rendered in connection with steps taken by the State to make unequals as equals as well as

for providing employment through reservation. I think, those Judgments may not throw much light for deciding whether reservation up to 50% of the seats in an elected body, entitle to govern, is permissible.

32. Democracy is one of the basic structures of the Constitution. Democracy means rule of the nation by the majority of its people. The [Constitution of India](#) has identified the people, the majority of which will rule the nation. It has provided for universal adult franchise and accordingly, has authorized majority of them to rule the nation. At the same time, it has authorised the Parliament to make provisions in respect to elections. 'To make provisions in respect to elections' has been judicially interpreted to mean all things and matters pertaining to elections. The Constitution has provided for equality and at the same time has granted power to make unequals as equals. Despite that, in the matter of reservation for Scheduled Caste and Scheduled Tribe Communities, the Constitution had to make a specific provision therefor, so as to ensure such reservation. That suggest that the power to make unequals as equals as well as power to make laws pertaining to elections, do not encompass power to monopolies in favour of any class or community a right to be elected to the exclusion of others. While 50% is neither majority, nor minority; a majority cannot device a scheme so as to remain in power for ever through that scheme. That will destroy democracy. In such view of the matter, majority being 51% at least, at the best reservation can be made upto 49%. It will be evidenced from the majority Judgment of the Constitution Bench in Indra Sawhnay AIR 1993 SC 447, that Dr. Ambedkar contemplated reservation will be confined to a minority of the seats and no other members of the Constituent Assembly suggested otherwise. Therefore, under the Constitutional Scheme of this Country, where democracy is the basic feature, reservation, which is monopolization, can be made exactly on the terms as provided in the Constitution, but the Constitution did never contemplate monopolization of the majority; and thus to my mind 50% of the seats cannot be reserved in the matter of elections. Be that as it may, having regard to the fact that in reality only 37% of the seats have been reserved, I would not declare that the provisions of the Ordinance or of the 2006 Act, which authorizes reservation not exceeding 50% of the total seats, is contrary to the basic structure of the Constitution and accordingly, the same is bad. I would only observe that anyone exercising power under the provisions of

the Constitution is bound by the provisions contained therein for the Constitution is supreme and accordingly, the State will appropriately apply its mind in future and ensure that not exceeding 49% of the seats are reserved.

33. The next question is reservation in favour of Scheduled Caste and Scheduled Tribe Communities. The original mandate for reservation of seats for them in legislatures and in Parliament remains the same and that is limited to a minority of the seats to be determined on the basis of their population in the total population vis-a-vis number of seats. In other words, while providing for reservation in their favour on the basis of their population, it was contemplated that they would be entitled to a minority of the seats and that philosophy has not been changed while inserting Part IX to the Constitution and accordingly, there is no impediment in providing similar reservation for them in Panchayats, who will get the power of, as well as right to self-governance from the State.

34. The next question is reservation to the extent of 50% in favour of women. I have already said that reservation to the extent of 50% is not permissible but that must be understood to remain confined to a Class or Classes of Citizens or Communities, but women and man are neither separate classes, nor separate Communities. They belong to the same Class as well as to the same Community. Unless 50% of the population are men and the remaining 50% are women, the human society, of which they are members, will perish. At a given point of time, it may transpire that the population of the man is less or more than women, but that cannot be the yardstick to contend they are not proportionate to each other for in order to survive every effort must always be made so as to make their proportion equal. Then again, a man belonging to a Class or a Community will represent that Class or Community and similarly, a women belonging to that Class or Community will also represent that Class or Community. If 50% of the seats of that Class or Community is, thus, reserved for women that will not ensure monopolisation of seats by the majority and accordingly, the same is permissible. I, therefore see no reason which can stand in reservation of seats of elected members to the extent of 50% for women, provided those reservations are horizontal Le., within the Class or Communities to which they belong. Article 243D has provided horizontal reservation for women in all Classes and Communities of the society and the

same provision has been adopted in the Ordinance as well as in the 2006 Act. Although Article 243D has directed reservation of not less than one third, the same has been increased to 50% in the Ordinance and the Act. That being permissible no interference is required.

35. The next comes reservation for the Backward Classes, I agree with the learned Advocate General that if reservation is permissible for Backward Class Citizens, reservation in favour of more Backward Class Citizens cannot be held to be impermissible. I also agree with the learned Advocate General that Article 243D enables reservation in favour of Backward Class Citizens but there is no mandate to that effect. Accordingly, reservation for more Backward Class Citizens without making reservation for some forward Class Citizens amongst Backward Class Citizens cannot be said to be impermissible. It is true that the ratio of the population of Backward Class Citizens, for whom reservations have been made, to the total population of the State is not known. But the fact remains that 18% reservation has been made in favour of those persons in the matter of securing direct recruitment under the Reservation of Vacancies In Posts and Services (for Scheduled Castes, Scheduled Tribes and Other backward Classes) Act, 1992. In that Back ground, if 20% has been reserved for them, deleting those who have political presence, that cannot be said to be improper.

36. Inasmuch as more than 50% reservation is not permissible, this Court in Dhananjay Paswan and Krishna Kumar Mishra held that single posts cannot be reserved. But the fact remains that Article 243D specifically directs such reservation in relation to Scheduled Caste and Scheduled Tribe Communities and enables such reservation in favour of Backward Class Citizens. That being the Constitutional mandate and that Constitutional mandate having not been challenged and on the contrary, the earlier. Division Bench having upheld the validity of Article 243D, it would not be proper on my part to pronounce that single posts cannot be reserved. Therefore, the conclusion would be that reservation in single posts for Scheduled Caste and Scheduled Tribe Communities is mandatory and insofar as Backward Class Citizens are concerned, the same is permissible. Therefore, pronouncement of this Court in Janardhan Paswan is no longer a good law, for subsequent to the said Judgment Chapter-IX containing Article 243D was

inserted in the Constitution and Krishna Kumar Mishra, is an incorrect pronouncement of law, for the same was rendered without taking note of the mandate as well as the enabling provision contained in Article 243D of the Constitution, which was inserted after the pronouncement in Janardhan Paswan.

37. In a situation of that nature assuming no challenge to the pronouncement of Krishna Kumar Mishra was thrown and, as in fact, the same was accepted, when the 2001 election was held, can it be said that the State Legislature instead of discharging its constitutional duty of reaching to the people what has been provided for them in the Constitution, could be held to be eternally bound by Krishna Kumar Mishra? As the Constitution is a living organ, so is the legislature. A legislature functioning under the Constitution is obliged to comply with the directions of the Constitution and to reach the benefits granted by the Constitution to the citizens. It was, therefore, obligatory on the part of the State Legislature to come up with a new law to give what the Constitution has given to the people and it could not deny the people what has been given to them by the Constitution by merely holding out that there is a Judgment, which stands in the way. The matter would have been different if what was purported to be given by the act, was not what the Constitution has given to the people.

38. This may be looked at from a different angle. If a decision is rendered in a tax assessment case for an assessment year, the same is binding on the tax authority and on the tax payer for that assessment year but not for the subsequent or previous assessment years. That is so, because the purpose of assessment is to determine finally the tax liability of the tax payer for a particular assessment year. The object of legislation, with which we are concerned here, is to reach to the people what has been given to them by the Constitution. Such obligation being persistent, if a new law is made any conclusion on the basis of a law previously made, though for the same purpose, cannot be binding, though a vested right founded on an existing right cannot be denied thus.

39. The matter can also be looked from yet another angle. Laws are made by the Legislature as well as by the Executive for the purpose of imposing control on the subjects dealt with and also to regulate conduct thereof. The Judiciary is obliged to

interpret such laws and to cull out the true meaning thereof. The law, thus, declared also becomes law. On the basis thereof, people device their affairs. If the judiciary declare the law, but later on it transpires to it the law so declared is per incuriam i.e., pronounced without noting the appropriate provisions of law or a binding precedent, it can ignore such declaration. A person, who has devised his affairs on the basis of such incorrect law cannot fall back upon the same to justify his action. Therefore, when his action is the subject matter of scrutiny by the judiciary, he cannot escape his liability accruing for following such incorrect law. Therefore, proceeding on the basis that the law is per incuriam, one may devise his affairs and when his subsequent action is the subject matter of scrutiny by the judiciary, he can point out to the judiciary that the law, upon which his action is being challenged, is per incuriam and as such his action cannot be faulted. If that is permissible for an individual, I see no reason why the same is not permissible for the legislature.

40. I. therefore, hold that Krishna Kumar Mishra held the fort until the 1993 Act was not repealed, but Krishna Kumar Mishra' did not stand in the way of the State Legislature either in making the Ordinance or the 2006 Act and thereby providing for reservation in single posts.

41. Admittedly, after 29th December, 2005, the Legislature reassembled on 27th February, 2006. The term of the existing Panchayats constituted in 2001, to the knowledge of everybody, is expiring in June, 2006. Article 243E mandates that an election to constitute a Panchayat shall be completed before expiry of its term i.e., the term of the existing Panchayat. In order to constitute a Panchayat. Through election, many steps are required to be taken including preparation of voters list, calling for nominations and actual election, etc. Preparation of voters list should be completed before the election is notified. In order to prepare voters list, though the voters of the Legislative Assembly would automatically become voters for the Panchayat election, but some changes are always required to be effected, and accordingly, there is a requirement for preparation of draft voters list, inviting of objections and then preparing a final voters list. This is the normal procedure and that has also been adopted in the rules framed under the Ordinance. After the voters list is finalized, nominations for election are required to be filed. Some time

should be given for withdrawal of such nominations and then actual election is to be held, ballots are to be counted and results have to be declared, in such a situation making of the Ordinance to provide for election in accordance with the mandate of the Constitution cannot be said to be a hasty step by the Governor. An emergent situation was already existing, for the legislators were not sitting and the term of the previous Panchayats was coming to an end. In a situation of this nature, it would be inappropriate to count each day that was available instead a broader view must be taken to ascertain whether in a situation of that nature, the Governor could sit tight over the matter. I am of the view that the situation justified taking of steps to promulgate the Ordinance as quickly as possible in order not only to take steps to hold election in terms of the Constitutional mandate, but also to apprise the people that they have been given what they are entitled to in terms of the directions of the Constitution.

42. Article 213 of the Constitution provides that the Ordinance made thereunder will lapse on the expiry of the time mentioned in the said Article. It does not say that whatever has been done in terms of the provisions contained in the Ordinance, they shall also stand lapsed or be extinguished. Article 213 only ensures that after lapse of the period mentioned thereunder, nothing can be done in exercise of power granted by the Ordinance. The Ordinance, even assuming stood lapsed on 9th April, 2006, ceased to operate on and from 10th April, 2006 and accordingly, on and from 10th April, 2006 no one could exercise any power bestowed upon him by the Ordinance. The fact that the 1993 Act was repealed by the Ordinance after saving whatever had been done under the said Act did not become ineffective on and from 10th April, 2006, i.e., after the lapse of the Ordinance, nor did the 1993 Act stand revived on and from 10th April, 2006. Therefore, on 10th April, 2006, there was a total void in relation to laws pertaining to election of Panchayats in the State. That was supplied by the 2006 Act. Nowhere in the Constitution, it has been provided that a Legislature competent to legislate is incompetent to save things done under a lapsed Ordinance. The 2006 Act, while supplying the void in relation to constitution of Panchayats saved whatever had been done under the Ordinance. I, therefore, cannot accept the contention of the petitioners that whatever was done under the Ordinance should be deemed to be redundant.

43. Having regard to the provisions contained in Article 243D and having considered the provisions contained in the Ordinance as well as in the 2006 Act. it would be difficult for me to opine that any attempt had been made in the Ordinance or in the Act to make any vertical reservation in favour of women belonging to non-reserved category. If that be so construed, the same would tantamount to separate women belonging to a Class from the men of that Class. The mandate of the Constitution is for providing horizontal reservation and similar reservation had been provided in the Ordinance as well as in the 2006 Act. Even if the same is assumed to be a vertical reservation, the same is permissible in terms of the mandate contained in Article 243D. Unless challenge is thrown to Article 243D successfully, the State Legislature is bound to follow the same.

44. It was urged that if one-third of the seats are reserved for women, as was done in the 1993 Act, then in the unreserved category reservation for women would be of 21% and such reservation alongwith reservation of 37% would not increase 50% and therefore, it was contended that the provision for 50% reservation in favour of women for unreserved seats will tantamount to exceeding permissible reservation of 50%. It was contended that while the constitutional mandate is 33% reservation for women it did not authorize 50% reservation for women. That is incorrect, for the constitutional mandate is not less than one-third, but without a ceiling. I would, however, again repeat that reservation in favour of women being horizontal in nature, the same cannot under any circumstances be considered as vertical reservation. A class or a Community must be represented by 50% women and the remaining by 50% men. Therefore, reservation for women to the extent of 50% will be for all classes and not in respect of one class in preference to another class.

45. When the Constitution provides that the offices of the Chairpersons in Panchayats shall be reserved, despite the posts of Chairpersons in Panchayats, as that of Mukhiya, Pramukh and Adhyaksh, being single posts, those are to be reserved for the Scheduled Caste and Scheduled. Tribe Communities and when the Constitution enables such posts to be reserved also for Backward Class Citizens, there is no impediment in reserving those posts for them. Inasmuch as the Constitution does not direct establishment of various Committees of

Panchayats and inasmuch as the Ordinance as well as the 2006 Act provides for Constitution of various Committees of Panchayats, it cannot be said that reservation of the posts of Chairpersons of those Committees can be reserved, but not the post of Mukhiya, Pramukh and Adyaksh, for a law made in discharging of obligations under the Constitution, cannot be treated to be tool to interpret any provision of the Constitution.

46. It was contended that Article 243C(5) empowers election of Chairpersons at the village level either directly or indirectly, but mandates election of Chairpersons at other levels indirectly and as such when it is decided to elect Chairpersons at the village level directly, no reservation can be made. In order to accept this submission, we have to include the words 'elected indirectly' after the words 'at the village' and before the words 'on any other level' in Article 243D(4), which we cannot do and even by applying the concept of either ejusdem generis or reading down, the same can be achieved.

47. It is not the contention of any of the petitioners that the reservation for the posts of Mukhiya, Pramukh and Adyaksh has been made in favour of Scheduled Caste and Scheduled Tribe Communities in excess of 17%. At the same time, in the Ordinance as well as in the 2006 Act, reservation for them has been provided in proportion to their population to the total population of the area of the Panchayats. Therefore, by reason of the provisions contained in the Ordinance as well as in the 2006 Act, an attempt has been made to do Justice to the unreserved category of the population inasmuch as reservation within the ceiling limit of 17% in favour of the said Committees on the basis of the thickness of their population in the area of the Panchayats will ensure that the areas of the Panchayats where their population is less, seats in those areas are not reserved for them. There is therefore no scope of interference.

48. Rotation in terms of the mandate is available up to 26th January, 2010. The first reservation was made in 2001, when no reservation was made for Backward Class Citizens. Therefore, there would be no impediment in rotating the reservations already made and to provide for reservation for the first time for the Backward Class Citizens. It is, therefore, not acceptable that there is no scope of

rotation and as such the reservation is not in accordance with the directions of the Constitution.

49. It was contended that the reservation will come to an end on 26th January, 2010 and accordingly, it was obligatory to hold out that constitution of Panchayats on the basis of such reservation will last till 26th January, 2010 only and that having not been done, the Legislature has played fraud upon the people. The Constitutional mandate is to reserve whenever an election is held to constitute Panchayats. Despite reservation coming to an end on 26th January, 2010, the Constitution has mandated that the term of a Panchayat constituted on the basis of reservation will be for five years and accordingly, despite reservation coming to an end on 26th January, 2010, constitution of Panchayats before the expiry of 26th January, 2010 requires reservation and the term of such Panchayat despite reservation coming to an end on 26th January, 2010 will be for five years from the date appointed for its first meeting and as such, there was no occasion to provide that the term of the Panchayats to be constituted prior to 26th January, 2010 will expire on 26th January, 2010 either in the Ordinance or in the 2006 Act.

50. When the Constitution enables reservation of single posts for Backward Class Citizens, such reservation cannot be said to be unauthorised.

51. In many Countries, members of the judiciary are appointed by election. That is one of the modes of appointment. But appointment through election cannot be in perpetuity. In our Country, in order to ensure judicial independence, it was decided to create career posts in judiciary to be filled in through selection upon ensuring a tenure. In the lower posts available in judiciary, provisions have been made in many States to reserve seats for Scheduled Caste, Scheduled Tribe and Backward Class Citizens. That is permissible. It has been decided that Sarpanchs, Up-Sarpanchs and Panchs will be discharging the duties of the lowest of the lower judicial appointees, but they shall not be appointed through selection, they 'shall be elected and their tenure shall not be in perpetuity. Making of reservation in those posts for the members of those Communities and Backward Class Citizens is squarely covered by Article 16(4) of the Constitution. That Article is also applicable when the mode of appointment is by election and not by selection, but

not to rule, but to administer. A Post of a Munsif which can be reserved is a single post, for the cases which will come before him will not go to another Munsif. If a post of Munsif can be reserved, I see no reason why a post of Sarpanch or Up-sarpanch or Panch cannot be reserved and particularly when none of them would have exclusive jurisdiction over any matter and on the contrary will have only collective jurisdiction over all matters.

52. In the Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1992, originally 12% reservation was made in favour of Extremely Backward Class Citizens, when 8% reservation was made for Backward Class Citizens and 3% for Economically Backward Women. After the State was bifurcated reservation for Extremely Backward Class Citizens was increased to 18% and for Backward Class Citizens the same was increased to 12%. At that time, reservation for Backward Class Women was fixed at 3%. Backward Class Women would include women belonging to Backward Class Citizens and also to Extremely Backward Class Citizens. Of the 3% reservation for Backward Class Women 18/30th, i.e., more than 1% will go to Extremely Backward Class Women. Hence, 20% reservation for Extremely Backward Citizens cannot be said to be arbitrary. It is true that the object of that Act was completely different, but it is not in dispute that before specifying such percentage an attempt was made to justify the same. The same could only be justified provided there were reasons to support the same. The one and the only reason could be that the members of that Class require that percentage of protection. I see no reason why the same reason is not available for fixation of the percentage with which we are concerned.

53. It is true that the Schedule contains Kurmi (Mahto) in Jharkhand autonomous area as one of the beneficiary castes and accordingly, they may not be present in the State of Bihar. If they are not, they will not get the benefit of reservation. Because they have been included, an attempt to benefit other genuine Backward Class Citizens, cannot be scuttled.

54. As aforesaid, in the Ordinance as well as in the 2006 Act provisions have been made for training of Sarpanchs, Up-sarpanchs and Panchs. In addition to that,

they have been provided with the assistance of a lawyer. In such circumstances, the lacuna as was pointed out in Krishna Kumar Mishra has been attempted to be removed. Further more, for 45 years since 1948 and until 1993 i.e., before the 1947 Act was repealed by the 1993 Act, Gram Cutcherries were functioning with Sarpanchs, Up-sarpanchs and Panchs. The 1947 Act did not prescribe any qualification for them. Despite there being no such qualification, the Gram Cutcherries functioned. The 1993 Act wanted the Gram Cutcherries to function further. This aspect of the matter was totally overlooked in Krishna Kumar Mishra. Since Gram Cutcherries, without any qualification fixed for Sarpanchs, Up-sarpanchs and Panchs, functioned properly for 45 years, I think, by providing for training to them even if any lacuna was there in the matter of making available justice to the litigant public appearing before them, the Ordinance as well as the 2006 Act have adequately removed the same.

55. I would, therefore, advice myself not to interfere in any of these writ petitions and the same are, accordingly, dismissed, after allowing amendment applications seeking to challenge the 2006 Act, without any order as, to cost. Petitions dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com