

Bommegowda Vs. State of Karnataka

Bommegowda Vs. State of Karnataka

SooperKanoon Citation : sooperkanoon.com/383927

Court : Karnataka

Decided On : Sep-25-1992

Reported in : ILR1992KAR3148

Judge : Shyamasundar, J.

Acts : [Constitution of India](#) - Articles 40, 162, 226 and 246; ;Karnataka Zilla Parishads, Taluk Panchayat Samitis, Mandal Panchayats and Nyaya Panchayats Act, 1983 - Sections 8(1) 39, 40, 44(2) 272A and 287(2); ; Karnataka Zilla Parishads, Taluk Panchayat Samitis, Mandal Panchayats and Nyaya Panchayats (Amendment) Act, 1992

Appeal No. : W.Ps. No. 12118 of 1992

Appellant : Bommegowda

Respondent : State of Karnataka

Advocate for Def. : P.P. Muthanna, Adv. General, ;T.S. Ranachandra, Adv., ;S.G. Sundaraswamy, ;R.N. Narasimha Shetty and ;B.V. Acharya, Sr. Counsel and ;B.L. Acharya, Adv.

Advocate for Pet/Ap. : B.T. Parthasarathy, ;Ko. Channabasappa, ;V.T. Rayareddy, ;Jayakumar S. Patil, ;G. Gangireddy, ;P. Vishwanatha Shetty, ;B. Veerabadhrappa and ;H.K. Vasudeva Reddy, Advs.

Judgement :

ORDER

Shyamasundar, J.

1. These and other connected Writ Petitions running into two or three thousand in number are directed against four common entities who are arrayed as respondents in these Writ Petitions, their commonness extending even to their itemised positions in the Petitions in that the State is arrayed as the first respondent in all these petitions, the Deputy Commissioners as respondent No. 2, the Administrators as respondent No. 3 and the Mandal Panchayats as respondent No. 4. The common characteristic as aforesaid does not stop just there but spreads even to the factual aspects and the legal issues raised in every one of these Writ Petitions challenging the appointment of Administrators to all the Mandal Panchayats existing in the State of Karnataka numbering in all about 2534 according to information furnished at the hearing of the Writ Petitions.

2. The petitioners in all these cases are the Pradhans of the Mandal Panchayats. The office of a Pradhan is an electoral one. He is elected by the Members of the Mandal Panchayats who are themselves elected at an election held to constitute the Mandal Panchayat by the Deputy Commissioner of the District under the Karnataka Zilla Parishads, Taluk Panchayat Samitis, Mandal Panchayats and Nyaya Panchayats Act, 1983 (hereinafter referred to as 'the Act'). The Pradhan holds that office so long as he remains a member of the Panchayat, the term of office coinciding with the tenure of the respective Mandal Panchayat being 5 years. The petitioners herein were all duly elected and it is common ground that between the 6th of February, 1992, and 31st March 1992 the tenure of office of all the Mandal Panchayats in the State having come to an end by operation of law, the erstwhile Pradhans of the Mandal Panchayats became defunct. The Pradhans, however, nurtured hopes of continuing in office as care-takers till elections were held and concluded to elect a fresh batch of Members who would constitute the Mandal Panchayat. That however, did not happen. In other words the authority designated to hold the elections did not opt to hold them either before or after the expiry of the tenure of the Mandal Panchayats but instead each one of the Deputy

Commissioners of the 21 Districts in the State of Karnataka with the exception of the Districts of Gulbarga and Dharwad issued Notification purporting to stem from Section 8 of the Act appointing officers of the State Government as Administrators to take over and run the Mandal Panchayats after completion of their tenure. It is these Notifications or orders that has triggered off the massive exodus of these Pradhans to the portals of this Court claiming to be still in the saddle. The Pradhans who were probably hoping to continue in office till the next elections to the Mandal Panchayats were held and completed, were however, taken aback by this unforeseen development made a beeline to the precincts of this Court to challenge the orders of Deputy Commissioners appointing Administrators to man the Mandal Panchayats. Their challenge to the appointment of Administrators rested on two very simple grounds:

- i) the appointments are clearly untenable because some of the Mandal Panchayats had not completed their tenure in office;
- ii) no Administrator could be appointed, without any step being taken to hold the elections.

This Court having issued notices to the State and other respondents, had stayed the operation of the orders appointing the Administrators and the situation as of now is the appointment of Administrators not being given effect to, the petitioners still continue as Pradhans or rather as care-taker Pradhans.

3. It is at this stage the State Government promulgated Ordinance No. 1 of 1992 under which it purported to repeal or delete from the Statute Book Clause (2) of Section 44 of the Act. The said Ordinance promulgated on the 8th of January, 1992 was however repealed five days later by Act No. 1 of 1992 under which a part of Section 8 of the Act was amended, the repealing of Clause (2) of Section 44 again reiterated. Act I of 1992 also amended Section 135 and Section 162 and also enacted a new Section 277(3) making possible appointment of Administrators to the Zilla Parishad but we are not concerned with all that. The amended Act then went on to repeal the Karnataka Ordinance 1 of 1992 at the same time providing for saving any action taken or anything done under the repealed ordinance. A significant feature to be noticed here is, the Act was given retrospective effect,

tracing it back to 8th of January, 1992 the date on which Ordinance No. 1 of 1992 was promulgated by the Governor of Karnataka. Armed with the Ordinance and the Act, the Government returned with vigour to the Court and asked for vacating the interim orders made in these Writ Petitions. The Court then asked the Government to take a stand on the basis of the changes effected in the statute and accordingly the Government filed a Statement of Objections which went on to set out the reasons that had led to the appointment of Administrators resting it mainly on the inability of the executive to hold elections to the Mandal Panchayats in the light of certain developments that had taken place since.

4. As soon as the State came forward with their aforesaid counter offensive the petitioners joined in and attacked the vires of the amended Act contending inter alia that it was constitutionally invalid since it fell outside the legislative competence of the State Legislature. It was also urged that the State having resorted to the appointment of Administrators without fulfilling the first condition i.e., taking steps to hold elections the same was also violative of Article 14 of the Constitution. It was then urged that the appointment of an Administrator being a task performed by the Deputy Commissioner under the statute any decision in that behalf should have emanated from him also but in this case the Deputy Commissioners had not acted on their volition had instead acted on the dictates of the State Government and therefore the impugned appointments being the result of invalid exercise of power was liable to be struck down as illegal.

5. The hearing of these Writ Petitions that began some time before the onset of the summer vacation could not be concluded before the Courts closed for the summer recess and at that stage the learned Advocate General moved for vacating the interim orders made in these petitions. I rejected that motion pointing out inter alia that the Writ Petitions were being heard on their merits and, therefore, the continuance of the interim orders for some more time would not matter. On the re-opening of the Courts the hearing of the Writ Petitions was resumed and heard at great length with a large number of Counsel taking part on behalf of the petitioners prominent amongst them being Mr B.T.Parthasarathy, Sri Ko.Channabasappa, Barrister Vasudeva Reddy, Sri.Veerabhadrapa, Sri.Vishwanatha Shetty, Sri.Raya Reddy and Sri.Gangi Reddy and Sri.Jayakumar

Patil. On behalf of the State arguments were addressed by the learned Advocate General supported by the learned Government Advocate. No one actually appeared for the Deputy Commissioners and the Administrators at the beginning but as the hearing was almost drawing to a close the State Government engaged the services of Senior Counsel Sri S.G. Sundaraswamy, Sri R.N.Narasimha Murthy, Sri B.V.Acharya and Sri T.S.Ramachandra to represent the several Administrators impleaded as party-respondents in these Petitions. The hearing which spread over 23 days led to a lot of arguments touching a variety of grounds starting from dry stick statutory rights rising to the sacrosanct fiats in the Constitution. Time and again reference was made to the Preamble to the Constitution which ensured according to the petitioners the undisturbed flow of democracy and the democratic process, purposefully articulated by the Directive Principles of the Constitution with particular reference to Article 40 providing a special niche for village administration and rural upliftment. Emotional arguments were advanced drawing upon the dream of the Father of our Nation Mahatma Gandhi whose belief in Grama Samaj was almost a by-word. Some argument was also advanced contending that Act 1 of 1992 had violated the basic structure of the Constitution, and that the aspirations of the people being dashed to the ground by stopping the wheels of democracy even as they were spinning. Learned Counsel, expressed deep anguish at this kind of a undemocratic spin off set in motion by a Government that was democratically elected by the popular will of the people of Karnataka. I was therefore, called upon to interfere in the matter and quash not merely the offending enactment i.e., Act 1/1992 but also the orders passed by Deputy Commissioners appointing Administrators to the Panchayats in question.

6. A plain feature of the impugned orders passed by the Deputy Commissioner requires to be mentioned here. The Administrators so appointed are directed to man more than one Mandal Panchayat In other words, it is not one Administrator to one Panchayat but it is one Administrator for more than one Panchayat. I have adverted to this aspect of the matter since some argument was advanced highlighting the stymied character of these orders in handing over 2 or 3 Panchayats to one person while all these five years they were being manned by a Pradhan with a coterie of members acting as his advisors.

6. To continue the narrative, the Advocate General denied that there was any sinister design or ulterior motive in appointing Administrators to the Panchayat. It was all done, according to the Learned Advocate General, in the usual course upon noticing that the tenure of the office of the Panchayat had expired and a new Panchayat yet to be constituted. Since it was feared that if no alternative arrangement was made, it would lead to a vacuum, the Government, it is submitted, therefore asked the Deputy Commissioner to act under Section 8 to appoint Administrators as and when the tenure of office of the Mandal Panchayats coming under their jurisdiction drew to a close. Therefore, it is submitted that the Deputy Commissioners only performed their duties, acted only in consonance with the law and had done nothing other than what the law enjoined. It is made clear in the submissions made on behalf of the Government due to certain expediency the holding of elections to constitute Mandal Panchayats was rendered impermissible with the result the amendment became necessary so that it could harmonise with the situation but for which the position of the State would have become indefensible. Learned Advocate General denied the motives attributed to Government in seeking to amend the law and also denied that it is a political decision swathed in legislative apparel. It was submitted that if the impugned legislation waltzed successfully over the twin hurdles of legislative competence and Constitutional validity, the legislation cannot be imperilled or thwarted on the ground that it ran counter to the Preamble of the Constitution or it tried to or altered the basic structure of the Constitution or on the ground that it was violative of the Directive Principles enshrined in the Constitution,

7. Taking over from where the Advocate General left, Mr. Sundaraswamy, learned Senior Counsel appearing for some of the Administrators, raised a point touching the maintainability of the Writ Petitions asked that they be dismissed in limine since none of the petitioners had any enforceable right on the infraction of which they could possibly claim any relief at the hands of this Court. It is urged that all said and done the petitioners held an electoral office and even that had come to an end. To climb back to the office they had necessarily to contest the elections to be held by an authority designated under the statute. It is pointed out that the right to contest an election and to get elected is a right which is purely statutory in nature and no one can claim that privilege or right as if it was a Fundamental Right

on the infraction of which there can possibly be a remedy through a Writ Petition under Article 226 which haven of protection was unavailable to one who can but complain of the violation of a statutory right.

Touching the case of the petitioners that the State had no legislative competence to enact the amendment, Mr. Sundaraswamy urged that even if the legislation was not directly within the field set apart under Entry 5 to List-II the appointment of an Administrator being a necessary concomitant to the power to create or constitute a Mandal Panchayat, it cannot be denied that the authority which created the Panchayat should not be confined with power to ensure the continuance of Panchayat Administration in the absence of the Committee of Management. Adverting to the argument that the amended provision violated the Equality Clause under Article 14, the submission made was it did no such thing as it merely enabled the making of a transitory arrangement to ensure the smooth running of Panchayat administration for the benefit of the community at large and the appointment itself was an element of inevitability in that behalf with no other option being available to the State in a situation where the period of the Panchayats had come to an end and no new Panchayat could be constituted. It is pointed out, all said and done, the tenure of office of the Administrator is limited to a period of one year from the date of appointment and the aforesaid power to appoint an Administrator being non-repetitive the Government could not resort to that source once over to make fresh appointments unless the statute was amended again arming the State with such power. Therefore, it is submitted, the appointment of Administrators which is more in the nature of an interim arrangement to safeguard the interests of the villagers and other citizenry, action of Government in that regard cannot be dubbed as unreasonable, arbitrary or capricious. Sri.Sundaraswamy, therefore asked me to sustain the validity of the amended stature.

Adverting to the challenge to the appointment of Administrators on the ground of having been made prior to the amendment and therefore could not hold the field after the post-amendment era, Counsel submitted that it was not necessary to make fresh appointments since the amendment was per se made retrospective covering even the period during which the impugned appointments were made. It

is pointed out that if the Court takes the view that fresh appointments ought to have been made after the amendment, and if on the aforesaid ground the Court were to annul the orders already made, it being still open to the Deputy Commissioners to reiterate those appointments afresh, the success the petitioners would achieve in that event being purely phyrrie in character, making of such orders would be futile, and learned Counsel therefore urged that if what is done by the Court can be easily undone by the Deputy Commissioners by passing fresh orders, exercise of power under Article 226 in circumstances likely to prove futile and rendered nugatory by a counteracting executive or a statutory functionary should not be resorted to. Counsel again dwelt upon the catastrophic situation that would prevail if I struck down the enactment. It is pointed out that if I strike down the enactment and as a consequence strike down the impugned appointments of the Administrators, it would then result in a vacuum because there would neither be Administrators nor Pradhans to man the Mandal Panchayats, with the Administrators becoming nonest and the Pradhans who had completed their terms having had their offices snatched from them following deletion of Section 44(2) of the Act, they could not possibly continue in office although they are presently acting in virtue of the interim orders.

Adverting to the right of Government to interfere in the Mandal administration with particular reference to elections, Counsel relied on Section 272 A of the Act and urged that the said provision furnished a complete answer to this question. The contention by the petitioners that the appointments made were not made by the Deputy Commissioner but by Government and that the Deputy Commissioner having surrendered his power to an agency that had no voice under the Act, the appointments being invalid, would have no legs to stand, is sought to be effectively countered by relying on Section 272 A.

8. Senior Counsel Sri R.N.Narasimha Murthy who followed immediately after Sri Sundaraswamy, apart from giving a new slant to the power exercised by Government suggesting that such power obtained in Government was available to it under Article 162 of the Constitution, further submitted that the appointment of the Administrators even if it ema(sic) from Government and not from the Deputy Commissioner, was still valid traceable as it was to a legitimate source i.e., Article

182 of the Constitution. Apropos legislative competence, Counsel submitted that the Legislature was fully competent to enact the impugned Act as the source of legislation was clearly traceable to the legislative head in Entry-5 to Schedule VII and, therefore, it was not even necessary to depend upon the incidental or ancillary powers to support the legislative competence of the State. Sri Murthy also countered the argument resting on Article 14 as totally unsound and pointed out that reasonableness of a statute can never be a ground to strike down the statute itself. Likewise he maintained that enacting of Act 1 of 1992 with retrospective effect was per se sufficient to clothe the impugned orders with validity. While he was unsparing in his comments on the failure of the Government to hold elections and the supposed ground on which it pleaded its inability, he went on to point out, all said and done, elections not having been held, only plausible solution lay in the appointment of Administrators. According to him the gloomy doom which most of the petitioners lamented, was, in the present situation totally unavoidable and could not have been helped at all.

9. Mr. Acharya, the third Senior Counsel who followed thereafter, very interestingly brought out the aftermath of striking out the amended provision of Section 8 of the Act. Counsel highlighted the image of a truncated statute would itself demonstrate the compelling need to appoint an Administrator and that would be the outcome of accepting and upholding the challenge to the statute by the petitioners.

10. Following him was the last of the quartet appearing for the Administrators being Sri T.S. Ramachandra. Referring to the demand to conduct elections, Counsel said that unless there was a prior demand to hold elections such a prayer could not be granted. He, therefore, submits that the Writ Petitions are totally misconceived. He also pointed out that the result of continuing the Pradhans till fresh elections are held and concluded would tantamount to continuance in office persons who had no legal right at all to such office, amounting further to an offence punishable under Section 287(2) of the Act.

For these and other reasons, Counsel for the respondents -Administrators urged that the Writ Petitions be dismissed and the Administrators allowed to man the Mandal Panchayats and run them for a period of one year as indicated in the

orders of appointments.

11. Then followed a spirited reply on behalf of the petitioners several of whom cited a large number of Authorities in reply, a practice which in my view was quite unconventional but then Counsel had their own way pleading as they did that the citing of Authorities at this stage would actually contribute to the effective resolution of the controversial questions debated right through at the hearing of the Writ Petitions. With the reply, the formal hearing of the Writ Petitions having come to an end, the Court reserved them for orders and the time has now come to unfold my views on the several questions raised for consideration.

12. If I have adverted to the wide panorama of arguments advanced on either side, it is only to highlight the traverse of the competing views these cases have brought out. I, propose however to deal with them by capsules the contending view points into short issues or points on the basis of which I shall dispose off these Writ Petitions by recording a finding on each of the points.

13. All the while and hitherto I have been referring to the day-to-day developments in the career of these Writ Petitions as they were argued before Court and as I have stated earlier, they were meant only to be a prelude or a precursor leading to the resolution of the contentious issues raised in these cases. But before I proceed to grapple with the task rendered somewhat difficult and complex by the wide-ranging arguments advanced and a plethora of Decisions copiously cited on either side, I deem fit apposite to outline in brief the salient features of the Act or the Statute which has given rise to this full blown controversy.

14. The State of Karnataka brought forth Act 20 of 1985 an enactment under the nomenclature The Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983. The Act is actually a three-tiered one with its base located at the level of village administration governed by Mandal Panchayats and that is what we are concerned with presently. The Act then climbs up to the Taluk Level culminating in an apex body called the Zilla Parishad at the District level. Right now we have not much to do with Zilla Parishad or Taluk Panchayat Samithi except to notice that the apex body the Zilla Parishad has a controlling right over the Mandal Panchayat extending even to supersession of

Mandal Panchayat for misconduct. There may probably be some more provisions under which the Mandal Panchayat or the Pradhan has some role to play but, then, it is not necessary to address ourselves full-tilt to those facets of the statute. The long title or Preamble to the Act which, however, is referred to as 'short title' of the Act has many a laudatory object, the cardinal one being recognition of the need to decentralise powers and functions under the various enactments. It would probably be even better to excerpt the title to the Act so that it would obviate the need to explore independently with some elaboration the aims and objects of the Act, It reads:

'An Act to provide for the constitution of Zilla Parishads, Taluk Panchayat Samithis, Mandai Panchayats and Nyaya Panchayats and others matters connected therewith.

Whereas it is expedient to provide for the establishment in rural areas, of Zilla Parishads, Taluk Panchayat Samithis, Mandai Panchayats and Nyaya Panchayats to assign to them local Government and judicial functions and to entrust the execution of certain works and development schemes of the State Five Year Plans to the Zilla Parishads, Taluk Panchayat Samithis, Mandai Panchayats and to provide for the decentralizations of powers and functions under certain enactments to those local bodies for the purpose of promoting the development of democratic institutions and securing a greater measure of participation by the people in the said plans and the local and Governmental affairs and for purposes connected with an incidental thereto;'

It is common ground that the Act 'itself was conceived and promulgated with a view to give effect to the cherished ideals of self-governance at the village level. Article 40 of the Constitution intended to ensure the same reads:

'40. Organisation of Village Panchayats:-

The State 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.'

Mainly to embody and to bring to the centre stage the idea of village administration being carried on by the elected representatives of the villages, these Mandai Panchayats appear to have been conceived. It is not to say that prior to this enactment there was no village administration at all. As a matter of fact there was viz., the Taluk and Village Development Board. It may also not be out of place to mention that the English who ruled us nearly for two centuries were pioneers in introducing a democratic system of Government and were responsible for enacting laws under which self governing bodies were constituted in the provinces that were directly under the control of the British regime in contrast with native States.

15. The antecedent history of development of civic bodies with emphasis on self-administration by the locals is adverted to in great detail in the Decision of the Allahabad High Court in ANUGRAH NARAIN SINGH v. STATE OF U.P. : AIR1992 All62 It is not necessary to allude to the aforesaid aspect right now but suffice it to note that the seeds sown for creating local bodies began their germination under the British rule. The said feature furnishes a contrasting scenario to the present development whereby a self-governed institution is being steered into the hands of a bureaucrat. I am only adverting to the foregoing circumstance to bring out the paradoxical situation in which, by State action powered by the peoples' representatives a self-governing body created under a Statute has to yield and make room for bureaucratic administration which seems to me a historical parody since we in this Country have been inculcated into the very healthy practice of the people running and being responsible for civic administration. This really is the crux of the matter in these cases. The above observations are not, however, intended to convey an impression that the take-over of a self-governing institution cannot be done at all or should not be done even when it was essential and necessary, it would be interesting, however, to notice that the origin and development of self-governing bodies is traced to cities steeped in antiquity in ancient Greece. Even in Egypt roots of self-governing institutions appear to have sprouted, The movement for self-government had its hey-day in the Roman Empire and in later years local self-administration took firm roots in England and may be for a considerable extent the Roman experiment was responsible. In Volume-I of the treatise, Municipal Corporation by Yokley there is abundant reference to the earlier history of municipal corporations. Some passages in

Chapter-I do not yet or kindle interest in the development of these self-governing institutions although for the present I am concerned only with the dry stick rights of the petitioners under a statute and under the Constitution the growth and origin of municipal administration may not be very relevant although a brief reference may be handy. But it is certainly interesting to know that way back in 430 B.C., when science and technology were practically unknown, and the dawn of civilization had but just begun, the ideal of people governing themselves had been recognised and promoted. A quote from the treatise by Xenophon, attributed to the Situation in England of yore, depicts the existence of self-government in a totally democratic set up as follows:-

'Each, judged by witness of the kinsfolk, made laws in the assembly of its freeman, chose leaders for its governance, and the men who were to follow headman or alderman to hundred, court or war.'

If this was the situation in the Countries of the West, our Country does not appear to have lagged behind at all for the system of self-administration appears to have been part of the fabric of life as ancient in point of time as it was in the case of European Countries. This becomes apparent on a reading of the following passage in the Book 'Glimpses of World History', by Pandit Jawaharlal Nehru:

'This system of village self-government was the foundation of the Aryan polity. It was this that gave it strength. So jealous were the village assemblies of their liberties that it was laid down that no soldier was to enter a village except with a royal permit. The Nitisara says that when the subjects complain of an officer the king 'should take the side not of his officers but of his subject'; and if many people complain the officer was to be dismissed, 'for', says the Nitisara, 'who does not get intoxicated by drinking of the vanity of officer?' Wise words which seem to apply especially to the crowds of officials who misbehave and misgovern us in this Country today'

'As late as 1830 a British Governor in India, Sir Charles Metcalfe, described the village communities as follows;

'The village communities are little republics having nearly everything they want within themselves and almost independent of foreign relations. They seem to last where nothing else lasts. This union of the village communities, each one forming a separate little State in itself.... is in a high degree conducive to their happiness, and to the enjoyment of a great portion of freedom and independence.' This description is very complimentary to the old village system. We have a picture of an almost idyllic state of affairs.

Undoubtedly, the great deal of beat freedom and independence that the villages had was a good thing, and there were other good features also... The work of rebuilding and rebirth (of Village Republics) still remain to be done by us,'

16. As f have mentioned earlier although there was in the State of Karnataka a Statute under the nomenclature of the Village Panchayats and Local Boards Act 1959, a feeling probably that the aforesaid enactment was not adequate enough to translate into reality the dynamic notions of village administration indicated in Article 40 of the Constitution, the State of Karnataka ventured to place on the statute book the enactment now under consideration. It would be of some use to make in passing a brief reference to some of the provisions of the Act,

17. To start with a Mandal Panchayat is created under Section 4(1) of the Act by the Deputy Commissioner subject to the orders of the Government by declaring any area comprising of village or group of villages having a population of not less than 8000 and not more than 12,000, as a Mandal by appropriate publication specifying interlaid the headquarters. Under the proviso thereof the Government is given power to declare as Mandal certain area in Districts like Belgaum and Chickmagalur etc., with a population of less than 4000, The provisions enable the State and the Deputy Commissioner to limit or extend the area of Mandal Panchayat without reference to the population. Section 5 empowers the Deputy Commissioner to make appropriate changes in the composition of the Mandal Panchayat. The next important Section to be noticed is Section 8. The Section enables the Deputy Commissioner to appoint an Administrator or an Administrative Committee if he is satisfied that a Mandal Panchayat cannot be constituted. The Section fays down the various contingencies on the happening of

which Deputy Commissioner could exercise the power under Section 8. The ongoing controversy arises from exercise of power by the Deputy Commissioner to appoint an Administrator to run the Mandal Panchayat in terms of Clause (c) of Section 8(1). I shall refer to it much later when I deal with the somewhat knotty question raised and argued in these Writ Petitions wherein the appointment of Administrators, by the Deputy Commissioners is challenged. Section 39 fixes the terms of office of the members limiting it to five years. Section 40 heralds the commencement of the term Of office of the members and states that the term of office of the members shall commence immediately after the expiry of the term of office of the outgoing members of the Mandal Panchayat. Sections 42 to 46 deal with the election of Pradhan, Upapradhan, term of office and conditions of service of Pradhan and Upapradhan, appointment of Pradhans during vacancy in the office and resignation of Pradhan or Upapradhan. The next Section to be noticed is Section 61 which prescribes the functions and powers of the Pradhan. The Section says that in addition to the functions and powers exercisable under any other provision of the Act, the Pradhan shall convene meetings, have access to records of the Mandal Panchayat and exercise supervision and control over the act of the officers and employees of the Mandal Panchayat. The Pradhan may, if he thinks it necessary in public interest, call a meeting of the Administrative Committee within 24 hours. There are Rules made under this Act. Some portions of which it may be necessary to call attention to but that could be done at a later juncture.

18. I may at this point notice the powers and functions of the Panchayat, Chapter IV of the Act deals with the functions of the Mandai Panchayat Section 56 to Section 111 come under this Chapter. A reading of these Sections indicate that the Panchayat has been empowered to perform wide ranging duties and functions deemed essential for the wellbeing of the people in the Panchayat area. The Mandai Panchayat certainly has vast responsibilities making the Mandal Panchayat virtually responsible for not merely organising but also striving for the betterment of the village community. It is almost a parallel Government functioning at the village level. The main theme and the central object of creating this enactment appears to have been to provide for controlled decentralisation of powers channelling it to the grass-root level and entrusting the management of the

villages to the villagers themselves. For an orderly administration of the village community the Panchayats had been presumably constituted not by choice and selection of the personnel manning the Panchayats by the party in power, but by means of an election from amongst the people of the Panchayat conducted in an orderly fashion secured through the several provisions of the Act appropriately made for that purpose. This very salutary piece of legislation enacted by the State of Karnataka finds a place in the Statute Book and received the Presidential assent on the 10th of July, 1975 the date on which it was notified but put into operation by the State Government on the 2nd of August, 1985 through a Gazette Extra- ordinary. Ever since then it has been in the reckoning and i am now given to understand another Bill has been introduced in the State Legislature for a comprehensive overhauling of this enactment which even on a casual study appears to be quire substantial and comprehensive enough. Even as the contemplated move to give a new look to the Act was on the anvil, time was taken out, first to promulgate the Ordinance 1/92 very recently in the month of January, 1992. Five days later came Act 1 of 1992 which apart from repealing the Ordinance referred to supra made some changes in the format of Section 8 with particular reference to Section 8(1)(c) of the Act, it also amended the provisions of Section 272(3) of the Zilla Parishad. The Ordinance did very little except snipping the right of the Pradhans to stay in office on a care-taker basis after their tenure is up but the Act of the Legislature did not merely do just that but also changed the format of Section 8(1)(c) and that of course is really the potion in the crucible simmering and threatening to spill over, hurting in that course one or the other side as the case may be. While I am still on the changes brought about by Amending Act 1 of 1992 I may point out that there are two other provisions apart from Section 8 under which the Government can appoint an Administrator, Section 271(6)(a) of the Act empowers the appointment of an Administrator by Zilla Parishad or by Government on dissolution of the Mandal Panchayat under Section 271. Under Section 272 the Government shall appoint an Administrator if 2/3 of the members of Mandal Panchayat submit their resignation and also when any election or proceedings thereon has been stayed by a competent Court or authority. This in brief is the background of the Act.

19. Now what we have the statutory backdrop of the Act, in line, it is now time to move into the controversy proper. As I have stated hereinbefore the elections to constitute the first Mandal Panchayat under the Act having been held in January, 1987 most of the Panchayats stood constituted in the month of February, 1987 with a few exceptions such as Bijapur, Dharwar, Gulbarga and Kharwar. While Bijapur Mandal Panchayat was constituted on 31.3.1987, Dharwad and Gulbarga Mandal Panchayats were constituted on 4.4.1987 with Karwar being the trendsetter in the matter of constitution of the Mandal Panchayat in that the Mandal Panchayat in Raichur District came to be constituted as early as 27.1.1987. Likewise the closing term of office of these Panchayats varied from January to April, 1992. Although when the first batch of Writ Petitions arrived in this Court and that probably was in the month of January, 1992, some of the Panchayats still had a small residue of their tenure to run through. After the term of the Mandal Panchayats came to a close, the members of the Panchayat and probably the populace as well were expecting that elections would be held either before or some time after the 5 years period. The expected elections were not held and there were no signs at all of elections being in the offing. On the contrary starting with 8th January, 1992 the Deputy Commissioners began issuing notifications purportedly under Section 8(1)(c) of the Act appointing Administrators to the various Mandals making the appointments effective from the date on which the period of the Panchayat expired indicating inter alia that the Administrators so appointed would hold office for a period of one year.

20. The main reason that appears to have impelled Government to opt for appointment of Administrators instead of holding elections is the circumstances of a comprehensive amendment to the Zilla Parishad Act being under consideration of the Legislature as also the need for incorporating the basic features of the Constitution 'Seventy Second Amendment Bill' and it was, therefore, felt that since such an exercise would consume time and in the meanwhile the period of office of the Panchayats were drawing to a close, the only option available being the appointment of Administrators that option was found feasible and was duly accepted by the Karnataka Cabinet in the meeting of 3rd January, 1992. This becomes quite clear from the proceedings of the Cabinet meeting held on 3.1.1992 made available to me by the learned Advocate General. Following the

Cabinet decision Circular Instructions came to be issued to the various Deputy Commissioners. The Deputy Commissioners in pursuance of the Circulars issued by Government proceeded to appoint Administrators to the various Mandals. It is this action which is assailed in these Writ Petitions.

21. The State Government has herein filed its objections confining itself to explaining the reasons that mainly weighed with the Government in advising the Deputy Commissioners to appoint Administrators in lieu of holding elections. The Deputy Commissioners who are parties to the Writ Petitions have remained outside the arena of contest but very strangely their appointees, the Administrators have joined the fray and on their behalf four Senior Counsel having been retained, has led to a full and through argument on all the material questions arising for consideration. A counter is also filed on behalf of the Administrators by teamed Senior Counsel Sri Sundaraswamy who appears for the Administrators of the Mandal Panchayats situate in Bangalore District.

22. I am to mention before the State shot back with the Ordinance and Act 1 of 1992 the Writ Petitions coming before Court were mainly confined to the validity of the appointments made, basically resting on the circumstance that in some cases the period of the Panchayat not having expired the appointment of the Administrator was assailed as premature and untenable. Even as these Writ Petitions started rolling-in and reached almost a stage when it had not become just torrential but a deluge, the State Government came forward at first by passing the Ordinance and thereafter promulgating Act 1 of 1992. After the promulgation of Act 1 of 1992 such of the petitioners who had earlier challenged the appointments on the narrow ground that the same were invalid because they were made when the period of Panchayat was stilt in force, took leave of this Court to file additional grounds challenging the validity of the Amendment Act itself on the ground that it lacked legislative competence and that in any view of the matters it is a totally arbitrary piece of legislation enacted in brazen violation of the Fundamental Rights guaranteed to the petitioners under Article 14 of the Constitution, However, in the Writ Petitions that followed after the amendment, the validity of the amended provisions were directly attacked on the ground that they were not merely inept but totally inapposite. Following the advent of such Writ Petitions the State filed an

objection statement placing before Court the circumstances under which it decided to appoint Administrators in place of holding elections, it is inter alia pointed out that the amendments made to the Act was a legislative exercise undertaken to blot out the blemish, if any, in the orders appointing Administrators. Yet another stand taken is apropos the deletion of Section 44(1) and substitution of Section 8(1)(c) by the amendment Act having taken much of the sting in the contention urged by the petitioners based on the right of the Pradhan to continue even after cessation of Office until fresh elections are held and concluded. The sea change brought about by the amendment Act in the complexion of the law, it is contended, had resulted in a total denial of the right of the petitioners to continue in the Office of the Pradhan to which they had been clinging so far. The Government set out the grounds and reasons that weighed with it in reaching the decision not to hold the elections in a fairly extensive manner. The State denied the allegation that the real reason behind the Government's decision not to hold election was the fear that the Congress Party would be routed because most of the Mandal Panchayats were in the hands of the Janata Party. It is asserted that the decision not to hold elections was neither political nor was it malafide. Adverting to the ground taken up by the petitioners that the Administrators appointed are ill equipped to manage the affairs of the Panchayat, it is said, regard being had to the nature of work and extent of responsibility, officers of fairly high ranking in the official hierarchy had been appointed to the Panchayats and all of them hail from Group 'A' or 'B' of the State services. It is further stated that the right to vote and stand in the election is not a legal right but purely a statutory right. On the allegation that there is an infraction of a statutory right the petitioners would not be entitled to any relief under Article 226 of the Constitution much less do they have a right to ask the Court to command the Government to hold the elections. To more or less similar effect are the objections filed by some of the Mandal Panchayats for whom learned Senior Counsel Mr. Sundaraswamy appeared. The main theme of the objections is that the petitioners had no subsisting right to seek any remedy at the hands of this Court and whatever rights they had being purely statutory in character any violation of the same would not give any cause of action to assail the impugned orders before this Court in a Writ Petition under Article 226 and irrespective of the question whether there was any other remedy before any other forum it is

emphatically denied that the petitioners could seek any remedy at the hands of this Court.

23. I must at this juncture notice again the discreet silence maintained by the Deputy Commissioners who were responsible for the impugned orders under which the Administrators were appointed. They have remained discreet and rest content in being mere onlookers to the ongoing feud between the petitioners, the State and the Administrators, without taking any part whatsoever in this skirmish except standing glued to their position outside the area, they have maintained throughout the hearing of these petitions in sphinx-like silence. The lack luster attitude adopted by them is strongly criticised by almost all the Counsel appearing for the petitioners herein. Although day in and day out comments on the impassive stand adopted by the Deputy Commissioners being the butt of criticism, they have remained unmoved and seemed to turn the other way. Till it was disclosed that Circular Instructions were issued to the Deputy Commissioners to make appointment of Administrators, the Court was actually in the dark as to how the Deputy Commissioners had passed the impugned orders on the basis of policy decision taken by Government, without being aware of the same. In the initial stages of argument despite incessant interrogation by me, the Advocate General himself was not able to tell me what were the channels through which the policy of Government was communicated to the Deputy Commissioners. One of the learned Counsel produced the circular in question taking even the learned Advocate General by surprise. It is only thereafter the Cabinet proceedings were handed over and it was acknowledged that Government had in fact issued the Circular Instructions adverted to by some of the petitioners in their Writ Petitions. From the foregoing circumstance, the Deputy Commissioners having acted at the behest of the Government becoming thus clear, the same can no longer be denied and at any rate is not now denied by the State. The Deputy Commissioners by maintaining a stoic silence in these matters I must conclude, they have since accepted the fact that the developments leading to each one of them passing the impugned orders was clearly traceable to the decision of the Cabinet referred to supra and that it was not at their choice. The question of course arises whether in those circumstances the appointment of Administrators has to be upheld or knocked down on the short ground of the statutory functionary having been moved

or having acted at the behest of the command of somebody else which in this instance happens to be the Government whose subordinate the Deputy Commissioner is. But, in my opinion to follow that course would not be an exercise that can be readily recommended in these cases since I feel there is more harm in knocking down these appointments than in sustaining them. I am also to consider the argument led on behalf of respondents who contend that Government has sufficient powers under the Act to control or regulate the exercise of authority by the Deputy Commissioners in the matter of appointment of Administrators. The foregoing is in fact a very crucial issue and should merit serious consideration and that task I shall undertake in the course of this Judgment at the appropriate stage.

24. What remains, to be done now is draw the battle lines based on the inputs supplied by the petitions during the onslaught directed against the legislative action and the statutory orders passed on the basis thereon, both of which were defended with equal fervour by the State and other entities in these cases. The battle lines is the synonym I have employed to indicate the issues arising for determination. Since part of the action lies in deciding the validity of the Legislation viz Act 1 of 1992 and its tenability based on the alleged incompetence of the Legislature to enact the same and the alleged unconstitutionality resting on the possible violation of Article 14, it would be only appropriate to bear in mind an aspect of the Constitutional law which has come to be regarded as an essential rearguard action a Court must employ before proceeding to probe and to investigate into the areas the Legislative competence and of the statute being opposed to the salient features of the Constitution. The first and the foremost thing the Court has to ask itself in such matters is to examine whether those who seek relief on the foregoing lines are themselves competent in the sense, whether they can be said to be aggrieved and can point out to any injury suffered by State action. The Court in such a case is advised to ascertain whether it is possible to dispose of such cases on grounds other than the Constitutional validity of the statute. I may in this connection invite attention to the well known treatise on the Constitutional limitations by Thomas M.Cooley. The learned author adverts to this aspect of the matter in the passage at page 163. It reads:

'Neither will a Court, as a general rule, pass upon a Constitutional question, and decide a statute to be invalid, unless a decision upon that very point becomes necessary to the determination of the cause. While the Courts cannot shun the discussion of Constitutional questions when fairly presented, they will not go out of their way to find such topics. They will not seek to be drawn in such weighty matters collaterally nor on trivial occasions. It is both more proper and more respectful to a co-ordinate department to discuss Constitutional questions only when that is the very *lis mota*. Thus presented and determined, the decision carries a weight with it to which no extra-judicial disquisition is entitled'. In any case, therefore, where a Constitutional question is raised, though it may be legitimately presented by the record yet if the record also presents some other the clear ground upon which the Court may rest its judgment, and thereby render the Constitutional question immaterial to the case, the Court will take that course, and leave the question of Constitutional power to be passed upon when a case arises which cannot be otherwise disposed of and which consequently renders a decision upon such question necessary.

Nor will a Court listen to an objection made to the Constitutionality of an Act by a party whose rights it does not affect, and who has consequently no interest in defeating it. On this ground it has been held that the objection that a Legislative act was unconstitutional, because divesting the rights of remainder men against their will, could not be successfully urged by the owner of a particular estate, and could only be made on behalf of the remainder-men themselves.

xxx xxx xxxThe Statute is assumed to be valid, until someone complains whose rights it invades...

xxx xxx xxxRespect for the Legislature, therefore, concurs with well-established principles of law in the conclusion that such an act is not void, but voidable only, and it follows, as a necessary legal inference from this position, that this ground of avoidance can be taken advantage of by those only who have a right to question the validity of the Act, and not be strangers. To this extent only it is necessary to go, in order to secure and protect the rights of all persons against the unwarranted exercise of legislative power, and to this extent only, therefore, our Courts of

Justice called on to interpose.'

To similar effect is the statement of the law made by Willoughby in the Constitution of United States, Volume I, Second Edition at page 25. Writing on the topic of consideration of Constitutionality of a Law the learned author states:

'In recognition of the fact that the substitution of the opinion of a Court for that of the enacting legislature as to the constitutionality of a questioned law is a serious matter, all American courts guide themselves by the self-set rule that they will not declare a law unconstitutional if the case in which the question is raised can be properly disposed of in some other way.'

I may also in this connection notice the interesting disposition made by the learned author in taking the view that the Courts in invalidating the statute do not defeat the real will of the people. In Article 5 of page 9 the learned author says in the above context.

'Thus, In exercising this high authority, the judges claim no judicial supremacy, they are only the administrators of the public will. If an act of the legislature is held void, it is not because the judges have any control over the legislative power, but because the act is forbidden by the Constitution, and because the will of the people, which is therein declared, is paramount to that of their representatives expressed in any law.'

The authoritative statements by the acknowledged matters in the fields of Constitutional law, laying down undoubtedly valuable precepts for guiding the Court regards the stand to be adopted in deciding issues that arise for consideration touching Constitutional matters is certainly of invaluable help. The first thing to notice is that certain amount of judicial restraint that would lead to obviating the necessity of undoing legislative exercise by those who are the repositories of the will of the electorate. The second aspect to be noticed is it would be quite appropriate to steer clear of the controversy relating to the constitutionality of a legislation and instead decide the case on some other ground upon which the Court could rest its Judgment thoroughly. More than all it is necessary to enquire into the injury the litigant suffers either directly or indirectly,

remotely or closely from legislative action that he complains of.

25. These parameters I find are also repeated in the book 'Shorter [Constitution of India](#) by learned author Durga Das Basu. The learned author echoes similar views and counsels an approach that must be closely deliberated before embarking on the course of investigating the validity of a statute. Under the topic 'Court's power and duty to declare a law unconstitutional' at page 21, the learned author says:

'Our Constitution expressly confers upon the Courts the power of judicial review and as regards Fundamental rights, the Court has been, by the present Article, assigned the role of a sentinel on the 'qui vive'. While the Court naturally attaches great weight to the legislative judgment, it cannot desert its own duty to determine finally the constitutionality of an impugned statute.'

After having read and reblemished myself with the forewarning sounded by distinguished Authorities on Constitutional Law on the lurking danger in locking horns with constitutional issues if it can be bypassed it seems to me that in these cases however I cannot but look straight at the issues raised in these cases and cannot take the escape route.

26. Now having completed the reference to the pleadings in these cases in which the concomitant attitude of the State is challenged as being ultravires of not only the Statute but also the Constitution, it now becomes necessary to determine and set out the actual format of the controversy in the form of issues or points arising for consideration and I deem it appropriate to formulate them as follows:

- 1) Can the law i.e., Act 1 of 1992 be struck down on the ground that it is opposed to the basic structure of the Constitution or on the ground that it contravenes the Directive Principles contained in Part IV of the Constitution?
- 2) Have the petitioners the right to challenge the impugned orders appointing administrators and also to test the Constitutional validity of the change made to the format of the Act?
- 3) Is Act 1 of 1992 beyond the competence of the State Legislature?

4) Is the Amended Act with particular reference to Section 8(1)(c) thereof so arbitrary and capricious needing to be struck down as violative of Article 14 of the Constitution.

5) Are the impugned orders relating to appointments of Administrators not sustainable in law because:

(i) they have been passed by the Deputy Commissioners at the behest of the Government and not on their own volition?

(ii) the Act having been amended by Act 1 of 1992 the impugned orders not conforming to the same... are they to be struck down as legally untenable?

6) What order?

Point No. 1

27. The conspectus of the issue leads at once to the need to take note of the restraint, if I may put it that way, the Court is required to exercise before turning into an arbiter of a dispute raised by a person or persons who may or may not have a right that could possibly be enforced at law. Besides the principle advocated by Constitutional Experts to which I have adverted to supra counsel the by-passing of a Constitutional controversy based on an alleged infraction of a Constitutional right or the law and if possible to dispose off the case that on other grounds if that could be done satisfactorily.

The foregoing really offers what I should call a safe haven to the Court seized of the onerous task of deciding Constitutional issues. It seems to me that if I did in fact opt to adopt either of the two courses, in all probability I would not be accused of availing of some kind of escapist strategy. It also seems to me if the Administrators whose appointment is so keenly contested with such fury and verve are to last for only one year from the date of their appointment and if the said power of appointment is not capable of being exercised repeatedly, the question that arises is why all this furore. Attention is invited to another provision in the Act under which the Zilla Parishad is empowered to dissolve a Mandal Panchayat in exercise of power under Section 271 which, however, provides for reconstituting

the Mandai Panchayat by the end of six months from the date of dissolution and in the meanwhile enabling the powers and duties of the dissolved Mandai Panchayat to be exercised and performed by such personnel or persons the Zilla Parishad may appoint in that behalf. Reference is also made to the powers of the Government to appoint an Administrator under Section 272 whereunder in the light of the circumstances adumbrated therein the Government can appoint an Administrator for a stipulated period with power to curtail or extend such appointment, it is submitted even without reference to a provision like Section 272 which does appear to be more severe than Section 8(2) of the Act, the intention of the Legislature being to place these Panchayats under an Administrator the exercise of appointing Administrators cannot be treated as so unjust rendering it incapable of being endured. It is submitted on behalf of the respondents that whenever it becomes a necessity, Administrators are appointed and is done, so that the Panchayat administration does not suffer as otherwise there will be stagnation in the working of the Mandal Panchayat which would seriously affect the public at large for whose benefits the Mandal Panchayats have been formed and given such wide powers so that the interest of the public at large on all aspects is well served. It is pointed out the difference is just of the person manning the administration of the Panchayat but nonetheless if the administration goes on as well as ever, why should there be so much of hue and cry all because of a temporary aberration resulting in the switch over from the peoples' representatives who have served out their term, to a Government's nominee who will last only for a short period. Per Contra, it is contended for the petitioners that the course of democracy should never suffer the slightest of interruption nor should it suffer any sleight that affects the course of its even flow being the exclusive bastion of the people into which no bureaucrat or officer can or should be allowed to step in. Reference in this connection is made to the Preamble to the Constitution which to every Indian who believes in freedom, liberty and dignity of the person is indeed the veritable song celestial ensuring the traverse of democracy found the clock throughout the length and breadth of the Country permeating in its traverse all institutions designed to be governed by the people, of the people and for the people. It is also contended that the interruption of the democratic process even if it be for a short duration, let alone a year, would offend the basic feature of the

Directive Principles of the State Policy enshrined in the Constitution and for this reason alone, if not for any other reason, the impugned law must be struck down.

28. The Preamble to the Constitution sets out the goals and undoubtedly one of the cherished goals enjoined by the Preamble is securing and preserving of democracy. Instead of dilating on what the Preamble says, it would be appropriate to set it out. It reads:

'WE, the people of India, having solemnly resolved to constitute India into a sovereign socialist secular democratic Republic and to secure to all its citizens:

Justice Social, economic and political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity; and to promote among them all

Fraternity assuring the dignity of the individual and the unity and integrity of the Nation;

I n our Constituent Assembly this twenty sixth day of November, 1949, do
HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION'

At this stage I am tempted to quote a passage from the Judgment of Chief Justice Gwyer in *BHOLA PRASAD v. EMPEROR* AIR 1942 FC 17. Dwelling on the purpose for which resort may be had to the preamble of the statute, His Lordship says:

'If any doubt arises from the terms employed by the Legislature, it has always been held a safe means of collecting the intention to call in aid the ground and cause of making the statute, and to have resource to the preamble, which, according to Chief Justice Dyer, is a key to open the minds of the makers of the Act, and the mischiefs which they intended to redress'.

Therefore, if what the preamble conveys is the aspirations of the Founding Fathers of the Constitution and if they envisaged a nonstop run for the process of democracy and its course, a question may well be asked can any one muchless a

Legislature of the State produce a law which puts democracy on the hold for the time being. But, this question to some extent is answered by an authoritative pronouncement of the Federal Court in *REX v. BASUDEV*, AIR 1950 FC 67. Dealing with the argument that Legislature cannot be unmindful of the limitation on its power to legislate, Their Lordships said:

'While a statement in the preamble of a statute as to its ultimate objective may be useful as throwing light on the nature of the matter legislated upon and must undoubtedly be taken into consideration, it cannot be conclusive on a question of vires, where the Legislature concerned has powers to legislate on certain specified matters only. The Court must still see, in such cases, whether the subject-matter of the impugned legislation is really within those powers.'

Before the Supreme Court this question was canvassed in the celebrated case of *SMT INDIRA GANDHI v. RAJ NARAIN* : [1976]2SCR347. Adverting to the argument that the preamble could operate as a limitation on the powers of the Parliament to enact legislation, the Court said that the 'preamble' though a part of the Constitution, is neither a source of power nor even a limitation on that power. At para 666, the Court pointed out the utilitarian aspect of the preamble making it clear that the preamble was not something which was too holy to suffer the human touch, as indicated in the passage that runs thus:-

'I find it impossible to subscribe to the view that the Preamble of the Constitution holds the key to its basic structure or that the preamble is too holy to suffer a human touch. Constitutions are written, if they are written, in the rarefied atmosphere of high ideology, whatever be the ideology. Preambles of written Constitutions are intended primarily to reflect the hopes and aspirations of people. They reason at the ideal which the Nation seeks to achieve, the target, not the achievement. In parts, therefore, they are metaphysical like slogans. For example, the concept of Fraternity which is referred to in our preamble is not carried into any provision of the Constitution and the concept is hardly suitable for encasement in a coercive legal formula. The Preamble, generally, uses words of 'Passion and power' in order to move the hearts of men and stir them into action. Its own meaning and implication being in doubt, the preamble cannot affect or throw light

on the meaning of the enacting words of the Constitution. Therefore, though our preamble was voted upon and is a part of the Constitution, it is really 'a preliminary statement of the reasons' which made the passing of the Constitution necessary and desirable. As observed by Gajendragadkar, J in *Enclaves* : [1960]3SCR250 what Willoughby has said about the Preamble to the American Constitution, namely, that it has never been regarded as the source of any substantive power, is equally true about the prohibitions and limitations. The Preamble of our Constitution cannot therefore be regarded as a source of any prohibitions or limitations.'

(underlining by me)

The authoritative pronouncements of the Supreme Court and the Federal Court adumbrated hereinbefore appear to leave no room for canvassing the invalidity of the legislation on the ground that it defies the Preamble to the Constitution. The view appears to be, as I have understood it, the many ideas visualized by the Constitution as reflected in the Preamble are ideals more. Utopian in nature with the result more often than not legislation may not vibrate with the glorious aspirations of the Preamble and as alleged by the petitioners herein may even result in giving a go-by to the ideals enshrined in the Preamble to the Constitution. At any rate, I am certain the validity of a law however cannot depend upon the extent it accords with or detracts from the Preamble.

29. But another argument of a kindred nature canvassed by Sri B.T.Parthasarathy, Sri Ko.Channabasappa, Sri P.V. Shetty and Sri Veerabhadrapa is that in any view of the matter, the provisions of Act 1 of 1992 offending as it does, Article 40 of the Constitution has resulted in the transgression of the basic structure of the Constitution and, therefore, if not for anything else at least on this solitary ground the impugned piece of legislation must be struck down.

Per Contra, the contesting respondents join in and submit just as the Preamble is no limitation on power to legislate likewise the circumstance of a legislation being contrary to any of the Directive Principles of State Policy cannot render the legislation invalid,

30. Sri Channabasappa relied in this connection on a Decision of Supreme Court in U.P.S.E. BOARD v. HARI SHANKAR, AIR 1979 SC 65. Therein Chinnappa Reddy, J., as his Lordship then was, pointed out that, while the Directive Principles of State Policy shall not be enforceable by any Court, nevertheless Courts are bound to evolve, affirm and adopt principles of interpretation which will further but not hinder the goals set out in the Directive Principles of State Policy. His Lordship further observed, that, 'this command of the Constitution must be ever present in the minds of Judges when interpreting statutes which concern themselves directly or indirectly with matters set out in the Directive Principles of State Policy.' Sri Veerabhadrapa who followed Sri.Channabasappa cited two more Decisions of the Supreme Court, (i) STATE OF KERALA v. N.M.THOMAS : (1976)ILLJ376SC and (ii) MINERVA MILLS v. UNION OF INDIA : [1981]1SCR206 to emphasise the primordial importance the Constitution accords to the Directive Principles of State Policy. In the case of State v. Thomas copious reference is made to the setting and place of Directive Principles of State Policy in the Constitution and ways and means of considering them in harmony with the Fundamental Rights while determining the scope and ambit of the Fundamental Rights relied on by or on behalf of any person or body. The discussion on this topic as summed up in para 199 merits exception. It is to the following effect:

'In view of the principles adumbrated by this Court it is clear that the directive principles form the fundamental feature and the social conscience of the Constitution and the Constitution enjoins upon the State to implement these directive principles. The directives thus provide the policy, the guidelines and the end of socio-economic freedom and Articles 14 and 16 are the means to implement the policy to achieve the ends sought to be promoted by the directive principles.'

Although a reading of the Decisions referred to supra make it abundantly clear that there is an imperative need to adhere to the Directive principles of State Policy, I have not found anything in any of these Decisions indicating that a failure to adhere to the Directive Principles of State Policy would render the impugned legislation a piece of cannon fodder meant to be blazed away by the Court,

31. Mr. Sundaraswamy, learned Senior Counsel brought to my attention a passage in the Shorter [Constitution of India](#), by Durga Das Basu, Tenth Edition of July, 1989, wherein the learned Author while listing the grounds on which a law cannot be assailed as invalid, points out among other things that any law contravening the Directive Principles of the State Policy cannot be invalidated on that ground. The passage is at page-20 and is to the following effect:

'On that other hand, a law cannot be invalidated on the following grounds:

(a) That in making the law (including an Ordinance), the law-making body did not apply its mind (even though it may be a valid ground for challenging an executive act) or was prompted by some improper motive.

(b) That the law contravenes some Constitutional limitation which did not exist at the time of enactment of the law in question.

(c) That the law contravened any of the Directives contained in Part IV of the Constitution.'

In STATE OF TAMILNADU v. ABU KAVUR BAI : [1984]1SCR725 Supreme Court advertent to this aspect held that although the Directive Principles contained in Part IV of the Constitution are not enforceable, the importance of these Principles cannot be depleted. Head Note A succinctly sets out the enunciation in that behalf and needs to be excerpted, it reads:

'A careful consideration of the legal and historical aspects of the directive principles and the fundamental rights, there appears to be complete unanimity of judicial opinion of the various decisions of the Supreme Court on the point that although the directive principles are not enforceable yet the Court should make a real attempt at harmonising and reconciling the directive principles and the fundamental rights and any collision between the two should be avoided as far as possible.'

The aforesaid Decision and the Decision of the Supreme Court in U.P.S.E., Board v. Hari Shankar, laying down as they do the salutary principle of asking Courts to take note and of paying heed to the Directive Principles although they are not

enforceable in law, never went to the extent of holding that a law contravening Directive Principles as unconstitutional which is the argument advanced on behalf of the petitioner, I find no support for the same either in the decided cases or on any apriority principle, for which reason I must reject this submission and the challenge to Act 1/1992 based on the alleged violation of Article 40 or any other provisions under the Directive Principles of State policy.

32. A kindred argument based on the same drift is the submission that the impugned law offends the basic structure of the Constitution and is, therefore, invalid and unconstitutional. The point is highlighted in particular by Sri Channabasappa. He urged that the perennial run of the process of democracy being the cherished objective of the Constitution and being something which the Constitution had assured at all times, any incision or clipping of that ideal injured the very fabric of the Constitution, for which reason alone the law is liable to be branded as unconstitutional and invalid. I am afraid the argument assumes too much. In these cases, the process of democracy will but remain suspended for a period of one year only, thereafter to be revived in all its effulgence and, therefore, cannot be treated as an onslaught on the basic structure of the Constitution. Besides the Constitution itself provides for a situation in which the process of democracy can remain suspended. To cite an instance viz, the prevalence of emergency, breaking down of law and order necessitating the suspension of the Legislature are instances in point although they may not be in direct parlance with the present situation. If I have adverted to these aspects, it is only to assess the credibility and tenability of the argument that on the democratic horizon, even the sun shall not set after dusk, But then it is not necessary to go into the sublime claim created by an atmosphere of idealism, for the Supreme Court in more than one Decision has laid down that in interpreting the provisions of a statute consideration such as the basic structure of the Constitution is too alien. The learned Advocate General who sponsored this argument relied on a Decision of the above Court in *BHIM SINGHJI v. UNION OF INDIA* : AIR 1981 SC234 . That was a case in which Supreme Court was considering the Constitutional Validity of Urban Land Ceiling and Regulation Act 33 of 1976. It upheld the validity of all Sections except Section 27 of the said Act Therein Krishna Iyer J., as his Lordship then was, agreed with the majority of the Court and rejected the argument based

on the breach of the basic structure of the Constitution aimed at getting a declaration from the Court declaring the act as unconstitutional and invalid. At page 242 and para 21 of the Judgment his Lordship sums up in his own inimitable style, his views as follows:

'The question of basic structure being breached cannot arise when we examine the vires of an ordinary Legislation as distinguished from a Constitutional amendment, Keshavananda Bharati : AIR 1973 SC1461 cannot be the last refuge of the Proprietariat when benign legislation takes away their 'excess' for societal weal. Nor, indeed can every breach of equality spell disaster as a lethal violation of the basic structure.'

Sri R.N.Narasimhamurthy took the matter further by relying again on the Decision of Supreme Court is Smt Indira Nehru Gandhi v. Raj Narain⁴. The passage relied upon runs thus:

'The theory of basic structures or basic features is an exercise in imponderables. Basic structures or basic features are indefinable. The legislative entries are the fields of legislation. The pith and substance doctrine has been applied in order to find out legislative competency and eliminate encroachment on legislative entries. If the theory of basic structure or basic features will be applied to legislative measures it will denude Parliament and State Legislatures of the power of legislation and deprive them of laying down legislative policies. This will be encroachment on the separation of powers.'

As pointed out in the foregoing passage the basic structure of the Constitution does not provide a distinct ground to examine the validity or otherwise of the statute. The validity or otherwise of an ordinary statute can only be examined under two circumstances viz., (i) whether it is within the competence of the Legislature that enacted it (ii) whether it offended any of the Fundamental Rights. Otherwise there can be no challenge much less can there be a challenge founded on the alleged violation of the basic structure of the Constitution. For the reasons mentioned above the foregoing submissions by Counsel for the petitioners fail and stand rejected. Therefore, it is, I answer Point No. 1 in the negative.

POINT NO. 2

33, This point hinges on the right of the petitioners to challenge the impugned Legislation and to seek relief consequent upon the same. This point arises not merely on the stand taken by Sri Sundaraswamy, the learned Senior Counsel appearing for one of the respondents but also from the Constitutional precepts to which I have earlier referred to, in that, before a Court embarks upon an investigation touching the Constitutional validity of the Legislation it must first address itself to the question whether the petitioners are entitled to challenge the validity of the enactment and must also ascertain if the petitions themselves could be disposed off otherwise than by considering the validity of the statute under Article 226 of the Constitution. If I were to opt for the latter ground viz., stifling the petitioners approach to this Court invoking Article 226 of the Constitution on the ground that it could be disposed off otherwise it may then be possible to make short shrift of the whole thing by saying that all said and done the petitioners would be out of Office for a period of one year only which is brief enough to endure this situation. What is more, the petitioners before Court have necessarily to face an uncertain prospect of success at the polls a circumstance that can probably be treated as an adequate ground the law itself furnishes for rejecting these Writ Petitions in limine holding that the petitioners have not suffered any injury which calls for invoking the Courts' jurisdiction under Article 226 by this Court. But I don't propose to choose this escape route but will go on to examine the other limb of this contention touching the maintainability of the Writ Petitions on the ground of the petitioners not being endowed with any rights that are enforceable at law.

34. By hindsight it does look as if these Writ Petitions are really an exercise in futility. The petitioners are no longer the Pradhans of the Mandal Panchayats. During the pendency of these Writ Petitions they have also lost their right to continue as caretakers of that Office when the Legislature repealed Section 44(2) of the Act. Undoubtedly, not merely they, but also their former colleagues, the members of the Panchayats, have all run their full term of Office lasting for a full 5 years the terminus a quo having occurred between January to April, 1992. After this period they had not even a semblance of a right to continue in the office to which they had been elected for a fixed period, that has already expired. But

nonetheless we have the curious spectacle of these people remaining in Office and that is because of the interim orders of this Court.

35. Be that as it may, if as mentioned earlier, to seek the remedy under Article 226 the existence of a right and its violation is as essential as a beacon light is to the harbour. The question then arises what is this right, what is its nature and what is its content the infraction of which is alleged in the Writ Petitions. Mr. Sundaraswamy submits that all said and done the petitioners who hold an elected Office and still continue in that Office have only a right to seek that Office again in an election if and when one is held, under the auspices of the Act. That right is purely statutory in nature. He goes on to elaborate, that the right to stand for election, the right to vote and participate in an election is a right which is purely statutory in nature and never assumes the nature of a right guaranteed under the Constitution and therefore any infraction of what clearly is a statutory right can only be remedied by the statute and under the Statute, He urges in those circumstances Writ Petitions are thoroughly misconceived and totally unsustainable in law. He cited in this connection the Decision of the Supreme Court in JYOTHI BASU v. DEBI GHOSAL : [1982]3SCR318 . That was a case in which in an Election Petition where the election of somebody else was challenged but the appellant Jyoti Basu and two others had been impleaded as party respondents allegations having been made against them that all of them had colluded with a returned candidate to commit certain corrupt practices. Denying the allegations in the written statement filed in the Election Case tried before the High Court, the appellant Jyoti Basu made an application to the Court to strike out his and the names of two other persons who were impleaded in the Election Petition as none of them were themselves candidates at the election in dispute. The High Court having turned down that application they appealed to the Supreme Court. In the course of the Decision his Lordship Justice Chinnappa Reddy as he then was considered the character and nature of the right to contest or participate in an election either as a candidate or as a voter. The views of his Lordship on this aspect obtains at para 8 at page 986 as follows:

'It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a

special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to Common Law and Equity must remain strangers to Election Law unless statutorily embodied. A Court has no right to resort to them on considerations of alleged policy because policy in such matters, as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes the court is put in a straight jacket. Thus the entire election process commencing from the issuance of the notification calling upon a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1951, different stages of the process being dealt with by different provisions of the Act. There can be no election to Parliament or the State Legislature except as provided by the Representation of the People Act, 1951 and again, no such election may be questioned except in the manner provided by the Representation of the People Act. So the Representation of People Act has been held to be a complete and self-contained code within which must be found any right claimed in relation to an election or an election dispute. We are concerned with an election dispute. The question is who are parties to an election dispute and who may be impleaded as parties to an Election Petition. We have already referred to the scheme of the Act, We have noticed the necessity to rid ourselves of notions based on Common Law or Equity.'

The authoritative pronouncement of the Supreme Court in the above case, apart from counselling that the Court should rid itself of notions based on common law and equity, also lays down further that any controversy touching an election being purely statutory in character a solution therefor should be found within the four corners of the statute that gave the right to elect some one after contest at an election. In more than one Decision of this Court touching the appointment of an Administrator, the nature and character of the right the appointing authority exercises in that behalf has been considered. Both, the learned Advocate General and Mr. Sundaraswamy have referred to those Decisions. The first of them is DAMODARAN. G v. STATE OF KARNATAKA, 1989(1) KLJ 365 Bopanna J. as he then was held:

'Government has absolute right to appoint an administrator for a period of one year without assigning any reasons and to extend the term beyond one year after giving reasons if conditions stipulated for appointment of administrator exists.'

His Lordship referred in this connection to the Decision of the Supreme Court in Jyoti Basu's case and went on to observe:

'It is well settled that a right to become a Councillor of the Corporation is a statutory right and not a fundamental right or common law right conferred under the relevant provisions of the Act and that statutory right could be taken away by the other provisions of the Act.

XXX XXX XXX

It is not open to aggrieved person to plead any equitable considerations in support of his case that he has been unlawfully prevented from becoming a Councillor and from discharging his duties as a duly elected representative.'

I notice that to similar effect is a Bench Decision of this Court in R.V.PATIL v. STATE OF KARNATAKA : ILR 1988 KAR829 . It was a case which arose under the Co-operative Societies Act, the question in issue related to the appointment of a Special Officer under Section 30-A. Shivashankar Bhat J. speaking for the Bench pointed out that 'an elective office is the creation of statute. None has a Fundamental Right to be a member of the Committee of Management of the Co-operative society. Principles enunciated to test the validity of procedural law affecting a person's fundamental right cannot be extended to cover the case of such a statutory right.' The precedent, referred to supra and in particular the Decision of the Supreme Court in Jyoti Basu's case makes it obvious that seeking an electoral office or inducting someone into Office through an election is after all not a hallowed right considered on par with the towering heights of the Fundamental Rights. All infractions of that right must necessarily be remedied by the statute if it provides a remedy but if one is not available under the statute then this Court cannot be turned into an asylum of last resort by the aggrieved person is what the Decisions lay down and I am certainly bound by them.

36. I must however make it clear any right that would have accrued to the petitioners having been mauled by the impugned Act cannot take within its ambit the larger question of locus standi. Mr. Sundaraswamy made that very clear in the course of his submissions, He does not deny that the petitioners may have a right to approach the Court but what he says is they must be turned away and they must make their exit with empty hands and no relief can be given to them since their rights if any are purely statutory and any injury to those rights could be remedied only by the forum prescribed under the statute or they should seek their fortunes once again at the hands of the electorate when polls are held. On the basis of this argument he says that the Writ Petition must be dismissed in limine. There is of course considerable force in his contention. A spirited reply to this objection came from Sri Veerabhadrapa who lost no opportunity at castigating the Government, the Deputy Commissioners and other respondents by mounting a scathing attack on the deliberate inaction contrived to put an end to the administration of these Mandal Panchayats. He says if not anything else his clients and others like him who have been elected to the office of Pradhan being people interested in the welfare of the community at large cannot and should not be turned out on a plea he characterised as highly technical.

37. It is not denied these are not public interest litigations. These are litigations fought by private individuals for their own ends and I have no doubt about it. Otherwise, there was no need to move this Court for interim orders stopping the take over by the Administrators of an Office which has become defunct following the scrapping of Section 44(2) of the Act. The action taken by the petitioners in approaching this Court being predominantly an effort to justify their continuance in Office as Pradhans of the Mandal Panchayats, I am afraid the petitioners cannot ask the Court to treat this litigation as some kind of public interest litigation, or a social action litigation being fought for the maintenance and perseverance of democracy or for achieving of the cherished values enshrined in the Constitution. But I am to notice that they cannot also be dismissed out of hand on the ground that the petitioners are not armed with any enforceable right for if not anything else at least for asking this Court to hold the elections to constitute the Mandal Panchayats they have a right since, it is a statutory obligation under the Act. As a matter of fact many of the Writ Petitions seek that relief though a few of them may

have gone without it. There is indeed a lot of argument particularly emanating from the side of the respondents and in particular from the Advocate General that an obligation to hold election there may be, but, the Act being silent as to when elections will have to be held, the petitioners could not compel the State or the Deputy Commissioner to hold elections at a given time. But then he had to ultimately acknowledge that elections will necessarily have to be held at least before the expiry of the period for which the Administrators have been appointed under the impugned order, which is just for a period of one year as noticed earlier. The respondents however insist on a shorter period basing themselves mainly on Section 272 of the Act granting power to the Zilla Parishads to dissolve a Mandal Panchayat for persistent default in the functioning thereof which was required to be reconstituted within six months from that date. Mr. Veerabhadrappe pointed out that the Panchayat being enjoined to hold a monthly conclave for reviewing its administration and in particular of the projects undertaken by the Panchayat the interval if any between the two facets one of Panchayat going out of the Office and the other of staging a come back should not exceed a month in between. It is not necessary to go into this controversy which at one time appeared to be very much in the eye of the storm but died down with the emergence of a consensus that the vacuum now created must necessarily be filled up by elections to be held within the twelve month interregnum during which the administrators appointed under Section 8(1)(c) should possibly act. Merely because the time, the juncture at which and the period between which the elections are to be held is not made explicit in the statute, the authorities could hold elections at their own sweet will and discretion is an argument that was brushed aside by a Bench of this Court in *PANCHAKSHARAPPA v. RETURNING OFFICER*, 1968 (2) Mys.L.J. 289 Somanath Iyer J. as His Lordship then was, speaking for the Bench said:

'The normal feature of an election to a local authority of any other body is that it is conducted on the eve of the expiry of the term of the sitting members and at a reasonably antecedent point of time so that there is no hiatus in administration. Section 17(2) of the Mysore Municipalities Act does not say that an election should not be held until after the efflux of time in the Office of the Councillors. It only speaks of the purpose and does not prescribe the point of time at which the election should be conducted.'

That was also a case in which the statute did not fix a time for holding general elections and in that context their Lordships held that in case of omission to prescribe a period within which elections had to be held to a local body to constitute it once again, such elections will have to be held on the eve of the expiry of its term or within a reasonable period of time thereafter so that in between the two there is no vacuum or hiatus. If that be the declared position in law may be even the interval of twelve months would on general principles be intolerable but even so the intervening circumstance of Administrators having been appointed immediately after the term of the Mandal Panchayats would enable the respondents to postpone the holding of elections till such time the Administrators continue to be at the helm of affairs. But, in the event of the administrators now appointed under the impugned orders are held to be so appointed without any justification or if it is held that their appointments do not stand the test of law then the situation will certainly be not conducive to the respondents, it will then be necessary to hold elections immediately. I do not propose to go into this aspect any rate right now. I must therefore conclude on the point touching the maintainability of the Writ Petitions by holding that although the petitioners are without any enforceable right nonetheless, they can maintain these Writ Petitions even if it be only for asking the Court to direct the authorities to hold elections to constitute the Mandal Panchayats afresh.

POINT NO.3

38. This pertains to the legislative competence of the State Legislature to enact impugned Act 1 of 1992. In main the challenge to the legislative competence of the Legislature rests on the following:

- (i) The act is a product of fraudulent exercise of power and is a piece of colourable Legislation,
- (ii) The taking of power from the source available in Entry 5 of List 2 to Schedule 7 was clearly beyond the scope of that Entry because Legislation in this case was for the purpose of local Government and not for the purpose of local self Government.

If this be the argument on behalf of the petitioners the respondents viz., the State and the Administrators contend that motive, illwill, evil design and malafides are factors that cannot be attributed to the Legislature or to its wisdom in enacting a Legislation. In examining the vires of an act all that the Court should notice is whether the impugned Legislation is within the field ceded to the Legislature for the purpose of Legislation. On a careful reflection of the nature, content and more importantly the width or the amplitude of the legislation, the Court finds that it is within the framework of the legislative field then nothing else matters and certainty not like the impugned legislation having been engineered with some sinister design or motivation, it is pointed out that Legislatures like body corporates have neither a body to kick nor a soul to be denounced, although they are packed with men who have earned the mandate of the electorate. Apropos the second limb of the attack based on the impugned act not being for the purpose of local self Government but is indeed designed for the purpose of local Government, Sri Sundaraswamy for the Administrators urged that even if it is not directly within the field prescribed therefor legislation can yet be sustained where it provided for matters that are ancillary, subsidiary or incidental to the main topic of legislation. In short, his argument is the appointment of administrators for a temporary period for the purpose of carrying on administration of the self governing bodies pending holding of elections was legislation for the purpose of local-self-Government and therefore beyond the criticism of the Act, not lying within but outside the legislative field. But learned Senior Counsel Mr. Narasimhamurthy was altogether on a different wicket. He did not subscribe to the foregoing argument of the Act that if it provides for ancillary or subsidiary matters being therefore intravires, but, on the other hand, he sought to contend that the Legislative Entry itself was for a local Government, inter alia providing for such Institutions referred to alongside the Entry such as those run by the people's representatives. In other words, his contention is the Legislative head in Entry 5 supra being referable to local government the argument that by inducting an Administrator in a self governing body, legislation was therefore rendered ultravires, is untenable. Both Counsel relied on few Decisions to which I shall call attention to a little later.

39. It seems to me I should take this opportunity of making a few observations touching the sensitive zone of judicial review of legislative action in a federal polity

like ours. Founding Fathers of our Constitution have thought it prudent to provide for a continued review of legislation produced by Legislators regard being had to the fact that the Constitution guarantees several Fundamental Rights envisaged as immutable pillars sustaining this fundamental document viz., the Constitution, Article 13 is on point and reads:

'13. Law inconsistent with or in derogation of the fundamental rights:-

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires, -

(a) 'law' includes any Ordinances, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) 'laws in force' includes laws passed by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed; notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas,

(4) Nothing in this article shall apply to any amendment of this Constitution made under Article 368.

Unlike in England and some other Countries in the West which do not have a written Constitution, judicial review in this Country, has come to be looked upon over the years as the sentinel on the qui vive serving reminders to the Parliament and the Legislatures that, although sweeping their powers may be, nonetheless they remain tramelled by the limitations enjoined by the Constitution for enforcing which the Courts are the designated arbiters or authority. But even so, between the three wings of the body politic viz., Legislature, Executive and the Judiciary, it

need hardly be emphasised that there should be a healthy regard or affinity towards each other and not a haunting suspicion of one trying to over-reach the other. The Courts like the legendary Cyclopes eye have to keep a vigilant watch over the action of the other wings of the Government that are likely to jeopardise the Constitutional protection afforded and the rights guaranteed to the citizens of this Country. Indeed this is a very difficult and delicate task. The power of the Court to judicially review legislative action may be very wide but they are nonetheless not without any limitations and nobody should be beguiled into thinking that these powers are almost oceanic in character. To avoid treading on one another's corns is at all times the most apposite mode of displaying the required modicum of affableness although as far as the Judiciary is concerned it must be treated as the detached link that nonetheless forges with the other wings of the Government a kind of vinculum however fragile it may be. Albeit, I have so far dwelt on my own thoughts, men of yore more superior in caliber and intellect appear to have held more or less similar views. In the Book 'Democracy, Equality & Freedom' which is a collection of speeches and articles by, His Lordship Justice Mathew, now of revered memory, known for his felicitous language, in a Lecture delivered on the topic 'Democracy and Judicial Review'; said:

'Judges must remember that shaping the future law is primarily the business of legislature; they must be keenly sensitive to the subtle forces that are involved in the process of reviewing the judgment of others, not as to its wisdom, but as to the reasonableness of their belief of its wisdom. Tolerance and humility in the judgment on the experience and beliefs expressed by those entrusted with the task of legislation should become a decisive factor in constitutional adjudication. Judges must cultivate an imagination and humility which would enable them to transcend the narrowness of their personal experience, lest their emotional compulsions compel them to translate their own economic or social views as constitutional commands. Even if their personal views run counter to the legislation before them, they should not attempt at improving society by setting up their judgment against conscientious effort of those whose primary duty it is to govern.

They are not there to prescribe for the society or to deny the right of experimentation within very wide limits, for, the science for government as Justice

Johnson said, is the science of experiment. It has been said that Chief Justice Marshall's supremacy lay in his recognition of the practical needs of Government and the need for statecraft in constitutional adjudication. The judges must also be aware that democratic result can be achieved only by their disbelief in ultimate answers to social and economic questions and that legislative judgment on economic policy is to a large extent conditioned by time and circumstances and that there are 'few scientifically certain criteria of legislation.'

Reflecting as I have been on the perspective of Judicial review, it seems incumbent to refer to the views of old masters like Jefferson, Cardozo, Frankfurter and others found concisely collected in the book 'Judicial Process' by Henry J. Abraham, Third Edition. Therein under Chapter VIII, dealing with Judicial Review, Controversy and Limitations under the attractive caption, 'Judicial Review in a Democratic State, Saint or Sinner', the learned author had collected views of contemporary Judges in America. After excerpting a passage from a speech by Justice Cardozo which highlights the need for judicial restraint, the learned author then deals with the drift towards judicial legislation and the justification therefor. I was in that connection some what struck by the down-to-earth views of Justice John H. Clarke in (HOYT L. WARNER, THE LIFE OF MR. JUSTICE CLARKE (CLEVELAND: WESTERN RESERVE UNIVERSITY PRESS, 1959, page 69) who it appears said:

'I have never known any judges, no difference how austere of manner, who discharged their judicial duties in an atmosphere of pure, unadulterated reason. Alas! we are all 'the common growth of Mother Earth - 'even those of us who wear the long robe.'

The learned author then refers to the statement of Justice Harlan Fiske Stone made in connection with the UNITED STATES v. BUTLER, (1936) 294 US 78 @ 88 case, as follows;

'While unconstitutional exercise of power by the executive and legislative branches is subject to judicial restraint the only check on our own exercise of power is our own sense of self-restraint... Courts are not the only agency of government that must be assumed to have capacity to govern... For the removal of unwise laws

from the statute books appeal lies not to the courts but to the ballot and to processes of democratic government.'

I would round off this discussion by making a reference to an observation made by Justice Frankfurter in *TROP v. OULLES*, (1958) 356 US 86 (c) 113:

'All power is, in Madison's phrase, 'of an encroaching nature'... Judicial power is not immune against this human weakness, it must also be on guard against encroaching beyond its proper bounds, and not the less so since the only restraint upon it is self-restraint.'

I have only quoted these learned Judges to strike a note of caution that in interpreting the Constitution, it is very necessary to steer clear of one's own notions and predilections of what the law ought to be or what it should be,

41. The question now is whether the recent legislation amending Section 8(1)(c) of the Act is within the legislative competence of the Karnataka State Legislature. As I have noticed earlier the argument advanced for the petitioners is that the legislation is beyond and outside the legislative competence of the State Legislature since the Legislature provides for taking over of the self-governing bodies by the Government under Entry Five, List-II to Schedule VII whereas under the said Entry only a law pertaining to local self-government or village administration can be made. On the other hand the respondents contend that the Entry provides for introducing self-Government to local bodies and incidentally also provides room for Government to interfere in the functioning of local self-Governments and therefore the Legislation is well within the ambit of the Entry in question, I must also mention that more than the law being inside or outside the legislative field, the brunt of the attack is directed on the mode or method of exercise of power in passing this legislation, it is pointed out that it appeared as if the Government was waiting like a hawk for the tenure of the Panchayats to come to an end and thereafter moved in and piloted successfully these legislations with a view to ensure that elections are not held not just for the time being but for a long time to come, such action was without doubt clearly aimed at muting the voice of the elected Pradhans with a sinister design. Resting on these submissions the petitioners submit that the legislation is the result of fraudulent exercise of

power and is a piece of colourable legislation to be mercilessly struck down.

42. Before I proceed to consider the argument touching the validity or otherwise of the impugned legislation, it would be apposite to draw attention to the established principle of interpreting an Entry in these lists which form the fountain source of all legislation. I have already pointed out that when any legislation is attacked branding it as unconstitutional every effort has to be made to sustain it rather than destroying it straightway. To this must be added the widely accepted principle that a legislative entry must be given the widest possible construction and the Court must examine the pith and substance or the core and heart of the legislation while ascertaining whether the controversial enactment was within or without the arena earmarked for the Entry concerned. Even if the legislation is not strictly within the Entry, if its pith and substance disclosed that the legislation is as a matter of fact within the entry, the competence of the Legislature in passing the enactment has necessarily to be upheld. These principles have been enunciated times without number and the Decisions emphasising them are indeed a galore but in the context I shall refer only to a few of them.

43. In *SYNTHETICS & CHEMICALS LTD. v. STATE OF UP.*, AIR 1990 SC 1929 the Court dealt somewhat elaborately on the technique to be adopted in interpreting Entries and Lists of Schedule VII. The Courts dicta apropos the above topic is succinctly set out in para 66 at page 1950. It reads:

'It is well-settled that widest amplitude should be given to the language of the three entries but some of these entries in different lists or in the same list may override and sometimes may appear to be in direct conflict with each other, then and then comes the duty of the Court to examine the particular Legislature in question. Each general word must be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. In interpreting an entry it would not be reasonable to import any limitation by comparing or contrasting that entry with any other in the same list.'

The Entry to which the impugned legislation traces its birth is as stated earlier Entry 5 of List II to Schedule VII. It reads:

'Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.'

As pointed out by Supreme Court in the Decision referred to supra, the Courts should not in interpreting the Lists coming under Schedule VII, adopt a narrow or pedantic approach. These legislative heads are like war-heads with their tails fixed and in these cases the appended tail comprises of other capsule entries which are merely descriptive or illustrative in character not intended to either restrict or amplify the legislative head. That the foregoing being the purpose becomes evident from the expression employed in the fasciculus of the provision itself and I refer to the phrase 'that is to say'. What that phrase means is the subject matter of a Decision of the Supreme Court and I shall point out presently it was also considered by a Bench of the Allahabad High Court and a learned Single Judge of our very Court.

44. Before I go to the actual Decisions, I must notice the content and legal import of the expression 'that is to say' is very well extolled in Stroud's Judicial Dictionary, 4th Edition, Vol.5 at page 2753, as follows:

'That is to say' is the commencement of an ancillary clause which explains the meaning of the principal clause. It has the following properties: (1) it must not be contrary to the principal clause; (2) it must neither increase nor diminish it; (3) but where the principal clause is general in terms it may restrict it;

the Supreme Court has accepted the foregoing interpretation of the expression 'that is to say' as found in Stroud's Dictionary referred to supra. In STATE OF TAMILNADU v. PYARILLAL : 1983(13)ELT1582(SC) although there is ample reference to Court's dicta under Headnote 'C' I would rather read in para 7 of the Decision at page 803 since the exposition therein should throw a lot of light on the interpretation of the expression 'that is to say' as to how and in what manner it has to be employed in construing the statute in which it occurs. The Supreme Court observed: (Vide Para 7 @ page 803)

'The expression 'that is to say' is employed to make clear and fix the meaning of what is to be explained or defined. Such words are not used as a rule, to amplify a meaning while removing a possible doubt for which purpose the word 'includes' is generally employed. In unusual cases, depending upon the context of the words 'that is to say' this expression may be followed by illustrative instances. In *Megh Raj v. Allah Rakhia*, AIR 1947 PC 72, the words 'that is to say' with reference to a general category 'land' were held to introduce, 'the most general concept' when followed inter alia, by the words, 'Right in or over Land'. We think that the precise meaning of the words 'that is to say' must vary with the context.'

As pointed out in the Decision referred to supra, the expression 'that is to say' may connote in some statutes a wider power to legislate but in another context it may mean or connote a thing to be explained or defined and in such cases it should not be employed to amplify its meaning. I would say in this case the object of using the same was obviously to lay down a wider power to legislate. In the instant case the field for legislative action is thrown wide open since the Entry starts with the words 'local government' and then goes on to describe or illustrate what it means by that. The emphasis, therefore, is on 'local Government' which may include municipal corporations, improvement trusts, district boards etc. etc. It must be remembered and there is also no gainsay in denying that entities like municipal corporations, improvement trusts etc. referred to in the Entry are also local self-bodies. At any rate all of them pass into the compendium denoting a local self-body. While it may be noticed that a municipal corporation or municipality is a totally self-governed institution in the sense of being run, managed and administered by the people's representatives, the same cannot be said of the kindred institutions referred to in the Entry, for eg. improvement trust and mining settlement authorities which have since come to be known as development authorities not constituted through the democratic process of election. They are manned by officials and non-officials both of whom are chosen and appointed by the Government. The reason why I have adverted to the composition of these bodies is to show that institutions which are run in the democratic pattern and style have been allowed to rub shoulders with institutions that are not so run or managed democratically. It, therefore, seems to me the principal clause in the Entry being 'the local government' and is not subjected to a reading up or reading down and is not amplified or restricted,

the Entry could easily be held to relate to all matters touching 'local government' i.e., if 'local government' could be allowed any play inside a corporation and a city improvement trust board, there is very little reason to deny its access to other self-governing bodies or to village administration. The use of the conjunction 'or' does not make any differences since it does not exclude either local self-government or village administration. Therefore any law made for the purpose of 'local government' can also be made applicable to any self-governing institution be it a municipality, trust or even a village panchayat under Entry 5 to List II of Schedule VII. In fact this is the argument advanced by learned Counsel Sri Narasimha Murthy appearing for some of the Administrators as against the contentions urged by learned Counsel Sri B.T.Parthasarathi, Sri Veerabhadrappe and Sri Ko.Channabasappa, who made repeated reference to the word 'local self-government' and argued that it denotes the conferment of separate and special power to enact a law touching 'local self Government' or 'village administration' which is different and distinct from 'local Government'. I am afraid this argument which merely takes into consideration just the sequence in which these Entries are arranged has little to do with the content and the substance of the Entry which is 'local Government' that in turn comprises of both 'local self Government' and/or Village administration'. Therefore, it is, I do not find any substance in the contention urged for the petitioners that the expression 'local Government' preceding the expression 'local administration' with a disjunctive barrier 'or' in between attracted the well known principle of construction or interpretation of viz., *Noscitur a sociis*, I am afraid I cannot agree and it is not necessary for me to repeat the reasons which I have already provided earlier,

45. Sri Veerabhadrappe drew my attention to Entry 3 to List-I of VII Schedule. The said Entry reads:

'Delimitation of cantonment areas Local self-government in such areas, the constitution and powers within such areas of cantonment authorities and the regulation of house accommodation (including the control of rents) in such areas'

Learned Counsel pointed out that cantonment boards are for the most part comprised of army personnel who are inducted by nomination and are governed

by ex-army personnel and that even into such institutions the Government has thought fit to infuse the democratic spirit by encouraging governance through local-self-government, Elaborating the point further, learned Counsel submitted that if it be the intention of Government to invigorate even such authoritarian entities with a whiff of democratic aura provided by representation of people of that area, Government cannot make an invidious distinction in the case of village Panchayats and impose on them a non-democratic executive. The content and scope of Entry 3 to List-1 of Schedule VII is different from the scope and content of Entry 5 to List II of Schedule VII in that while Entry 3 is intended to enthuse an element of democracy in an otherwise authoritarian institution Entry 5 aims at providing mainly for the run of focal government. At this stage I must refer to the argument of Senior Counsel Sri Sundaraswamy on the ambit and scope of Entry 5 of List-II. While learned Counsel Sri.Narasimha Murthy would not settle for anything less than defining the amplitude of Entry 5 as being wholly for the purpose of local government, Sri.Sundaraswamy was content with submitting that the entry even if held as not envisaging wholesale legislation for the purpose of local Government and granting that the Entry treated and catered only to the needs of the local self government and village administrations, even so any legislation partaking the form of a long whip for the local government can nonetheless double as incidental or subsidiary legislation pertaining to local self-government and village administration in which case such law would still form part of Entry 5.

46. While I am on this topic it would be useful to refer to a few Decisions. In *Bhola Prasad v. Emperor*, their Lordships while holding that the power to legislate with respect to intoxicating liquors could not well be expressed in wider terms than those to be found in Schedule 7, List 2, item-31, said:

'The words 'that is to say, the production manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs' in Schedule 7, List 2, item 31 explain or illustrate and do not amplify or limit the words, 'intoxicating liquors and narcotic drugs' immediately preceding them and cover the whole field of possible legislation on the subject.'

In CHIKKAMUDDU v. STATE, CHIKKAMUDDU v. STATE, AIR 1930 Karnataka 169; Puttaswamy. J, as he then was, had occasion to interpret Entry 5, List II of Schedule VII. In that case an argument was advanced that Entry 5, List II of Schedule VII did not enable the State Legislature to legislate in respect of local bodies, local government or whatever name they are called, Repudiating that argument, His Lordship held:

'Firstly, the interpretation suggested by Sri.Raikar is too literal and cannot be accepted more so in ascertaining the meaning of an entry in VII Schedule of the Constitution. Secondly the words, 'that is to say' are merely explanatory or illustrative and not words either of amplification or limitation (vide Bhola Prasad v. Emperor) (1942 FCR 17) and (AIR 1947) FCR 77 (Megh Raj v. Alia Rakhia). I therefore reject the contention of Sri.Raikar that Section 38(1) of the Act is beyond the legislature competence of State Legislative.'

I notice the learned Judge followed therein the Decision in Bhola Prasad's case and Megh Raj's case. However, His Lordship did not have occasion to refer to the authoritative pronouncement of Supreme Court in State of Tamil Nadu versus Pyarillal. But, the Decision of Puttaswamy J more or less places the point on the anvil in the no longer reintegrate category and I am bound by it. Then there is amore direct Decision on this very point apropos the competence of the State Legislature to legislate for a local body under which an Administrator could be appointed in place of an elected representative. In SARJU PRASAD v. STATE, AIR 1970 Allahabad 570 a Division Bench of the Allahabad Court had occasion to consider the content and ambit of Entry 5, List EI of Schedule VII. In that case the local Panchayats were sought to be replaced by the appointment of District Magistrates till elections were held afresh. Dealing exhaustively with the submission made that the law enacted under Entry 5, List II to Schedule VII enabling the manning of the local bodies by the District Magistrate could not be sustained because the said Entry did not relate to 'local self-government', the Court held:

'The key to item 5 of List II is to be found in the opening expression 'local government'. The natural and ordinary meaning of this expression is very

comprehensive. The phrase 'for the purposes of local self-government' in items 5 does not qualify and limit the scope of the opening expression 'local government'. The subject matter of U.P.Ordinance No. 6 of 1970 falls within its wide scope.'

The said Decision deals in great detail with the scope and ambit of the entry and I am in respectful agreement with the aforesaid Decision. But, petitioners rely on the later Decision of the Allahabad High Court in Anurug Narain's case. While I will deal with this Decision sometime later, I may point out at this stage that the later Judgment in Anurug Narain's case made no reference to the Bench Decision in Sarju Prasad's case and is therefore a Decision rendered per incuriam. The earlier Decision in Sarju, Prasad's case was very much binding on the Court that decided the later case unless it was distinguished or not followed for some reason. But no such contingency arose because the Decision in Sarju Prasad's case was not noticed at all. I shall take up this controversy a little later since I am yet to advert more fully to the submissions made by Sri. Sundaraswamy on this point.

47. As noticed earlier Sri. Sundaraswamy submitted that a legislation which covered matters which are ancillary, incidental and subsidiary to the main topic of the legislation can stiff and must be treated as part of the main legislation, itself and in such cases, it is pointed out, the vires of the legislation would be beyond question and above any reproach on grounds of want of legislative competence. Mr. Sundaraswamy cited three Decisions of Supreme Court viz. (i) UJAGAR PRINTS v. UNION OF INDIA : [1989]179ITR317a(SC) , (ii) EXPRESS HOTELS PRIVATE LIMITED v. STATE OF GUJARAT AIR 1989 SC 949 (iii) THE ELEGANT HOTELS AND INVESTMENTS LTD v. UNION OF INDIA, AIR 1989 SC 1664. All of them lay down the general principle that the legislative entry must not be narrowly construed and pedantically viewed. I have also referred to the recent view of the Supreme Court in Synthetic Chemical's case which lays down the guidelines for evaluating the content and ambit of an entry. I have already adverted to the width of the construction which should be brought to bear on these legislative entries and the need to dig into and ascertain the heart and core of the legislation, I need hardly add that the three Decisions referred to above have only laid down the foregoing dicta.

48. But of more pertinence is the Decision of MOHD MAQBOOL v. STATE, AIR 1982 Bombay on which Mr. Sundaraswamy places considerable reliance. That is also a case in which the scope and ambit of Entry 5 of List II to Schedule VII was in issue. This Decision is by a Bench of the Bombay High Court, The challenge therein was to Section 48A of the Municipalities Act on the ground that the said Act was not merely beyond the legislative competence of the Maharashtra State Legislature but the said Section also violated the Fundamental Right guaranteed under the Constitution. The Decision is more or less on all fours with the cases I have been dealing with herein and appears to furnish a complete answer to the various facets of the controversy raised herein, Suffice, however, to rely on this Decision to once again measure the extent and scope of Entry 5 of List II to Schedule VII Section 48 A debated in that case reads as follows:

'Notwithstanding anything contained in Section 40 or any other provisions of this Act, where the term of office of five years of the Councillors of any Council has expired and the State Government is of opinion that in the changed circumstances the continuance of such Councillors in office is not necessary or expedient, the State Government may, at any time, even during the period the term stands extended under Sub-section (1) or (3) of Section 40, by order, published in the official gazette, direct that --

(a) all Councillors of the Council (including the President and the Vice President) shall, as from the date specified in the order, cease to hold and shall vacate their offices as Councillors or otherwise; and

(b) the person appointed by the State Government, from time to time, shall be the Administrator to manage the affairs of the Council, during the period from the said date up to the date preceding the date on which the first meeting of the reconstituted Council after the general elections is held, where there is a quorum. Such general election shall be held within a period of one year, from the date of publication of the order issued under this sub-section in the Official Gazette.

(2) During the said period all the powers and duties of the Council and its various authorities under this Act or any other law for the time being in force shall be exercised and performed by the Administrator.

(3) The Administrator may delegate any of his powers and duties to any officer for the time being serving under the Council.

(4) The Administrator shall receive such remuneration from the Municipal Fund, as the State Government may, from time to time, by general or special order, determine.'

It may be seen that Section 48A of the said Act is more drastic than Section 8(1)(c) of the impugned Act. The provision under the Maharashtra Act enabled the Government to dissolve the existing Council and appoint an Administrator. Repelling the contention that Section 48 A was beyond the competence of the State Legislature their Lordships, after interpreting the Entry 5 in List 2 to Schedule VII, Court observed at para 13 of the Judgment as follows:

'The powers could be exercised by the State Government under Section 48A of the Act only in cases where the State Government has extended the term of Councillors from five years to six years and such extension is still subsisting, it could not be said that the Legislature intended to confer the power upon the Government to appoint the Administrator to prevent the elected representatives of the people from taking over charge of Councils. Reading the amended section as it is, the State Legislature was perfectly competent to enact the Section.'

With respect I follow the above Decision for in these cases also the situation being quite similar in that the Panchayats having completed their term with the Government pleading its inability to hold elections, and it was therefore, without any option left except to appoint an Administrator with the result the Legislature had to step in to remedy the situation caused mainly by executive remissness or callousness as Mr. Narasimha Murthy put it at one stage of his argument. The Decision in Maqbool's case thoroughly discredits the contention that Entry 5 in List 2 to Schedule VII has been literally abused by the Government to impose the bureaucracy on a democratic institution. The Decision also repels the challenge to Section 48A therein resulting on Article 14 and that part of the Decision may merit reference at a later stage when dealing with the fourth point raised for consideration.

49. The question is whether the loss of the right to manage a self-governing institution for a little while by virtue of an enactment of the State Legislature is it so obnoxious and repugnant? Not merely that, the question under consideration in the present context is whether the legislature has not the power to make such a law however vile it may be, however, much it may be opposed to the concept of local self-government and self-governing institutions. If the Legislature has the power, and I have so held it to be, its competence to pass such a law is not undermined by the fact that it is opposed to conceptualised notions of local self-government or a self-governing body,

50. In the result, therefore, I must hold that Entry 5, in List II to Schedule VII does provide for making of legislation in relation to local Government. If this premise is not acceptable then in the alternative I would say granting that the Entry had to be confined only for making a law for the purpose of local self-government and village administration, I would still say that the law which provided the props or support to run the administration of a local self-body would even then be within the legislative sphere of Entry 5 so long as the legislation is confined to matters that are ancillary or incidental and even subsidiary to the topic of legislation i.e., even if it is confined to local self-government or village administration. Providing for the appointment of an administrator to man the administration of a body like the Mandal Panchayat in the absence of elected representatives who would ordinarily manage them would be a law made for the purposes of local self-government and must be clearly beyond reproach and cannot be considered as a piece of legislation providing for rule by local Government.

51. I must now consider the allied argument that the impugned legislation is a piece of colourable device trying to pass muster by masquerading as legislation within Entry 5, List II to Schedule VII, although it was clearly beyond it. In a relative fashion it is urged that the Legislature in enacting this legislation was clearly motivated politically, intended as it was to smother the self-governing institutions, put them in to the moth-ball for a period of one year as a measure of punishment for voting into Office large number of persons belonging to another political party and Government being fearful of history being repeated if elections are held on time had resorted to this gimmick of amending the law by taking power to appoint

Administrators without holding elections. Most of the Counsel appearing for the petitioners fear that the Administrators would continue indefinitely although as the Act now stands there is no scope for repetitive exercise of power to appoint Administrators, even so, according to them Government may opt for the continuance of the Administrators for a long time to come by making necessary amendments to the Act. Some of the Counsel appearing for the petitioners said that the legislation is so draconian in character that it is clearly a case of fraud on powers. I am afraid there is nothing much in this argument as rightly pointed out by the Counsel appearing on behalf of the Administrators and by the learned Advocate General. The question resolves itself into one of competence or the lack of it in making the impugned enactment. If the Legislature has the competence, the motive, the design and the intention which prompted the Legislature to pass the impugned legislation are beyond the scope of investigation by Court and at any rate the Court cannot, on that score, decimate the legislation. This, is a well settled principle of law and a number of Decisions have been cited in this connection. But suffice to refer to the leading case viz. NARAYAN DEO v. STATE OF ORISSA : [1954]1SCR1 . In that case the Orissa Agricultural Income Tax Act, 1950 was under challenge on the ground that the Act is a piece of colourable legislation, it was a fraud on powers and as such invalid. MUKHERJEA J, as His Lordship then was, speaking for the Court observed in para 9 at page 379:

'Scope and meaning of doctrine of colourable legislation examined -- If the Constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the legislature in a particular case has or has not, in respect to the subject-matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers. Such transgression may be patent, manifest or direct, but it may be disguised also, covert and indirect and it is to this latter class of cases that the expression 'colourable legislation' has been applied in certain judicial pronouncements.'

The above Decision was followed by this Court in BHUVANESWARIAH v. STATE : AIR1965 Kant170 . One of the Judges, Mr. Justice Hegde, as His Lordship then

was, dealing with the argument that the Mysore Building Tax Act under consideration was a piece of colourable legislation, held:

'As long as a Legislature has competence to enact a law, it is immaterial with what motive it enacted the same. The true question for decision always is, whether the Statute enacted, taking its pith and substance into consideration, is one within the legislative competence of the Legislature. If it is, it is a valid statute. If it is not, it is ultra vires of the Legislature. Hence no question of bona fides or mala fides on the part of the Legislature arises for consideration.'

However, Bhat, J as His Lordship then was, went on to hold that the piece of legislation was beyond the competence of the State Legislature, a conclusion contrary to that reached by Hegde J. Ultimately, however, the learned Judge struck down the Act as violative of the equality clause under Article 14 which ensured the success of all the Writ Petitions. Hence, it is and for the reasons mentioned above, I must discard the second limb of the argument that all said and done the Act 1/92 is a colourable legislation and a case of fraud on powers.

52. The petitioners next contend that the impugned Act has been ill-timed or strategically timed and, therefore, is a fraud on powers. It is their contention that when a Bill for the complete overhauling of the Act itself was on the anvil there was no necessity or any compelling exigency for State Legislature to have picked up parts of the Bill to promulgate on Ordinance at first and thereafter the impugned Act unless it be for some ulterior motive. The submission about the propriety of the timing of the law enacted by the Legislature is without substance. That it is not open anybody to question the timing of any enactment is the principle laid down by this Court in C. NARAYANASWAMY v. STATE, AIR 1992 Karnataka 28. Speaking for the Bench Shivashankar Bhat J., brushed aside an argument based on the propriety of the timing of the law enacted by the Legislature. His Lordship observed at para 18:

'Courts cannot examine the propriety of the timing of a law enacted by the legislature; it is for the legislature to choose the appropriate time to enact a law; having enacted the law the legislature may entrust the power to select the point of time from which the law should be enforced. In such a situation, no Court can

examine as to whether the legislature was justified in enacting the law at a particular point of time; in other words, the legislature is the sole judge to be satisfied of the circumstances for enacting the law. This exclusiveness in arriving at its own satisfaction, by the Legislature has been recognised as available to the Governor also, while promulgating the ordinance.'

Thus, this question being no longer *res integra* and bound as I am by the aforesaid Decision, I have to hold that the petitioners cannot complain about the timing of the enactment by the Legislature.

In conclusion I must repel the attack resting on the alleged incompetence of the State Legislature to enact Act 1/92 and uphold the validity apropos the competence of the State Legislature.

53. The discussion so far leading to the conclusion that the impugned legislation is not beyond but well within the competence of the State Legislature has nonetheless one more hurdle to cross, and that is the Bench Decision of the Allahabad High Court in *Anugrah Narain Singh v. State*. The Decision in *Anugrah Narain's* case does nodoubt appear to hold that the enactment impugned therein was beyond the legislative competence of the Legislature. In that case by virtue of the impugned legislation Administrators were enabled to be appointed from time to time with the result the local self-bodies in the State of Uttar Pradesh appear to have been kept under the spell of Administrators for decades together. If such a thing had happened herein also, even I might have felt moved to follow suit and to strike down the law. The Judgment itself makes for a fascinating study of the growth and origin of local self-government over the years freely interspersed by the debates in the Central Legislature of yester years. It is the pernicious circumstance of keeping the local self-government for a long period under the tight leash of the bureaucracy that commended itself to their Lordships to strike down the law and that aspect becomes clear from the Head Note to the Decision which is to the following effect:

'The Uttar Pradesh Municipalities, Notified Areas and Town Areas (Alpkalik Vyavastha) Adhiniyam 1977, U.P.Act No. 13 of 1977, the Uttar Pradesh Mahapalika (Alpkalik Vyavastha), Adhiniyam 1966, U.P.Act No. 4 of 1966, Section

10AA of the Municipalities Act 1916, U.P. Act No. 2 of 1916 and Section 8A of U.P.Nagar Mahapalika Adhiniyam, 1959, U.P. Act No. 2 of 1959 are ultra vires the [Constitution of India](#) and repugnant to the spirit of local self government. (Para 85)

Uttar Pradesh, Nagar Mahapalika (Alpkaik Vyavastha) Adhiniyam, 1966, U.P. Act No. 14 of 1966 and the Uttar Pradesh Municipalities. Notified Area and Town Areas (Alpkaik Vyavastha) Adhiniyam, 1977, Section 10AA of the U.P. Municipalities Act 1916 and Section 8A of the Uttar Pradesh Nagar Mahapalika Adhiniyam 1959 are retro gate legislations which permit the local self-government to function under fear with attributes of arbitrariness and not compatible with the fabric of the [Constitution of India](#) to perpetuate local self government in continuity and not in tune with a parliamentary democracy from top to bottom. (Para 82)

If local government is the fabric of the Constitution then it must function in continuity except where its dissolution or super cession is for a very temporary period. The concept of local government must be clear. Local government is understood to be that part of the Country which by delegation from a federal or Central Government is conducted by bodies to conduct it within the specified areas. The examples of these are Parishes, Boroughs, Local government, District, Country Boroughs and counties. These are the generalities. (Para 45)

Entry 5, List II of VII Schedule of the Constitution is self explanatory, One need not go into any other external aid to extract the meaning of local government. The interpretation of this entry is that there shall be a local government but it will be constituted as local self government. This simply descends to mean that there will be government of the people, by the people and for the people, but not a corporate entity run by those who are not the people. The entry in the [Constitution of India](#) has been extracted out of the Government of India Act, 1935. The constitution of local government as local government is, thus, explained in continuity for the last half century to permit local government to exist as local self government. To see it otherwise does not reconcile with the Constitution. (Paras 47, 51)

The process which degrades local self government to local government is hostile to the text of the Constitution and is arbitrary to the core, as it is laying down the

foundation for the destruction of parliamentary government which cannot exist except for its roots in local self government. (Paras 48, 57)

Thus the history of local self government reveals that supersession of local bodies and making them function through the agency of civil servants without elected representatives as a corporate soul is not appropriate. It neither blends with history nor represents progress of local self government, nor can it be sustained under the law. (Para 52A)

In India the laws which regulate or govern local self government have the odour of colonialism and as long as this continues there will be dents in permitting local government to function only with people's participation. There will be excesses both ways. There will be interference by the State Government in the name of the State of local affairs. Likewise, elected representatives not having had the experience of obligations of working within the constraints of democracy within the framework and rule of law, will flex their muscles to project an image that what they say is local law. Recently, world opinion in journals has shown concern over a 'functional anarchy' in India despite freedom of the press.' (Para 62)

The learned Judges undoubtedly appear to think that the rule by local government for long spells is something intolerable although it would not be so if it was for a short spell. Clearly such a situation does not obtain in these cases. Here there is no supersession of the Mandal Panchayat. The Panchayats had either completed their term or their term was drawing to a close when the Government pleading its inability to hold the elections interfered and put the Administrators on the saddle. Their Lordships, in that case held that in any view of the matter keeping away people's representatives from the self-governing institutions all done under the cover of law was clearly outside Entry 5 of List II to Schedule VII. With great respect to their Lordships, if it is borne in mind that the Entry has for its head 'local Government' and what follows it merely illustrative or explanatory of the amplitude of the legislation, there will then be no occasion to mix-up the two things viz, local government with local self-government. Significantly the expression 'local self-government' follows 'village administration' not with a conjunction but by a disjunctive preposition 'or'. The above aspect in my view is of considerable

significance which cannot at all be missed or overlooked. I have discussed this aspect of the matter at great length with particular reference to an earlier Bench Decision of Allahabad High Court which I notice ironically takes a view which is contrary to the Decision in Anugrah Narain's case. That Decision was rendered some 22 years ago and somewhat regrettably the earlier Decision which was also a Bench Decision was neither referred to nor adumbrated at all, although the said Decision was binding on their Lordships who decided Anugrah Narains' case. Therefore, if not for other reason, I would say the Decision in Anugrah Narain's case is clearly per incuriam apropos the topic of legislative competence. I would not, however, contribute to the adoption of a course of inaction, if year after year for nearly two decades democracy had been mothballed and consigned to darkened dungeons in which event it would be quite proper and valid to strike down such retrograde legislation. The Decision in Anugrah Narain's case that appears to be based clearly on the view that the legislation therein was, according to their Lordships, outside the scope of Entry 5 of list II to Schedule VII, I must respectfully dissent from that view for the reasons mentioned earlier.

But, then, I am sharply reminded of the circumstance of a Bench of our High Court following the Decision in Anugrah's Narain's case. This Court in VENKATEGOWDA v. STATE OF KARNATAKA : ILR 1992 KAR1447 followed the Decision in Anugrah's Narain's case step by step in a clock-like method city accompanied by considerable eulogy. I am therefore, not just cautioned but warned against the consequences of riding rough shod over a Bench Decision of this Court. Of course, I realise that a single Judge cannot simply brush aside a Bench Decision which is likely to lead to impairment of the probative value of that Decision. I should reflect very seriously over such a step before I could even raise my eye-brow and pitch my sight above and beyond the Decision of a Bench of this Court that is ordinarily binding on me. But their Lordships have however, given me no room for recording my views on the points decided by them muchless expressing any dissent. For the most part the Decision rested on the need for keeping the winds of democracy blowing full-tilt at all times taking care at the same time to check-mate the endeavours of the executive and may be of the Legislature trying to short-circuit the process of democracy replacing it with bureaucratic rule. In para 9 of the Judgment at page 1464 adverting to the argument of Counsel that

legislative action impugned in the case was liable to be struck down on the ground of arbitrariness and as violative of Article 14, their Lordships said,

'There can be no doubt that even a legislative action can be struck down if it is unreasonable and arbitrary on the ground that it is violative of Article 14, in view of the interpretation of Article 14 in *E.P.ROYAPPA v. STATE AND MANEKA GANDHI v. UNION OF INDIA*. The third dimension of Article 14 unfolded in the two landmark Judgments of the Supreme Court furnishes the basis for striking down an Act of Legislature, if it is found to be totally unreasonable and arbitrary,'

Their Lordships then go on to make extensive reference to Anugrah Narain's case before concluding that the postponement of general elections to all the Zilla Parishads was not a simple matter and such postponement dealt a severe blow to the democratic system which is one of the basic structures of our Constitution. Their Lordships then lauded the view point of the Allahabad High Court in highlighting the dangers of replacing the people's Government by bureaucratic rule and after excerpting that portion of the Judgment, their Lordships observed:

'These observations are not without force and therefore should weigh against appointment/continuance of Administrator for Zilla Parishads or for that matter for any local self Government'

Then the learned Judges went on to consider the reasons that weighed with the Government not to hold elections immediately to the Zilla Parishads and in its place to impose an administrator and found that the grounds adduced by the Government are somewhat unconvincing and totally unbecoming. The Government groping about for a convenient excuse to put off the elections appear to have thought it fit to latch itself on to the fortuitous circumstances of the Seventy Second Constitution Amendment Bill of 1991 pending before Parliament without for a moment ascertaining as to what exactly it was all about. While there cannot be any doubt whatsoever that the worst faux pas committed by Government was of latching on to the Constitution Amendment Bill which in fact advanced the case of the petitioners who were clamouring for elections to be held, the Bench in *Venkategowda's* case did nothing more than asking the Government to hold elections within a particular time frame. The Bench ultimately rejected the prayer

by the petitioners to continue in office the existing members of the Zilla Parishad and also refused to nullify the appointment of Administrators. A Decision is only a precedent for what it decides as pointed by Supreme Court in *SOMAWANTI v. STATE OF PUNJAB* : [1963]2SCR774 . Firstly, the authority in Anugrah Narain's case was rendered per incuriam because it failed to take into account an earlier Decision of the same Court which laid down a principle contrary to the one laid down in Anugrah Narain's case. The earlier Decision was completely overlooked by the Bench deciding the case of Anugrah Narain. Secondly, the reliance placed by this Court in Venkagowda's case notwithstanding, the result having gone against the petitioner in that the Court having rejected the petition and refused to quash the appointment of Administrators to the Zilla Parishads, the petitioners in those cases cannot now contend that Venkategowda's case is binding on me. Their Lordships having left open the question as to whether a legislation enabling the appointment of Administrators was violative of Article 14 or not and having refused to express any affirmative view touching the validity of the impugned legislation in that whether it was ultravires or intravires, the view I have taken, herein, upholding the validity of Act 1 of 1992 must remain wholly untrammelled by the Decision of this Court in Venkategowda's case referred to supra.

55. Before I part with this issue I must make a passing reference to the criticism by learned Senior Counsel Sri Narasimha Murthy who contended that in neither of the two cases referred in Venkategowda's case viz., Rayappa's case and Maneka Gandhi's case there was any occasion for the Apex Court to strike down any enactment as the Decision in Rayappa's case was confined to the denial of the promotion to petitioner Rayappa and the Decision in Menaka Gandhi's case was all about refusal to grant to the petitioner the permission to go abroad. It is pointed out that what was struck down in both the cases was executive action treating the same to be arbitrary and capricious and no occasion arose either for striking down any legislative enactment and nor was there any occasion to challenge any legislative enactment- All that I should say is there is considerable force in the submission of Counsel but I should not in this context concern myself about what happened in those two Decisions insofar as the Court in Venkategowda's case did nothing positive in the matter, being of the view that any buffeting to be done to the impugned legislation should be done later as the occasion arises. This would sum

up or conclude my view on the Decision of Allahabad High Court in Anugrah Narain's case followed with certain amount of parenthesis by this Court in Venktegowda's case which, however, does not preclude me or deny me the freedom to express my own views in the matter to which I have testified hereinabove and in time hold that the impugned enactment Act 1 of 1992 is well within the competence of the Karnataka State Legislature.

POINT NO. 4

56. The facet arising for consideration herein is of arbitrariness and capriciousness underlying Section 8(1)(c) of the Act and whether it is liable to be struck down as violative of Article 14 of the [Constitution of India](#). The impugned provision makes for very plain reading and what is more it conceals nothing at any rate outwardly. Its purport would become plainly manifest if the Section itself is set out juxtaposed with the provision that stood earlier to the amendment Introduced through Act 1 of 1992. I propose to excerpt the provision as it stood before and after the amendment. The twain together read:

BeforeAmendment

AfterAmendment

Appointmentof an administrative committee or Administrator on failure to elect members ofMandal Panchayats:

Appointmentof an administrative committee or Administrator on failure to elect members ofMandalPanchayats:

(1)If the Deputy Commissioner is satisfied that a Mandal Panchayat of a Mandalimmediately after the establishment of such Mandal Panchayat cannot be constitutedby reason of:-

(1)If the Deputy Commissioner is satisfied that a Mandal Panchayat of a Mandalimmediately after the establishment of such Mandal Panchayat cannot be constitutedby reason of:-

(i)any difficulty in holding an election of the members of the Mandal Panchayat;or

(i)any difficulty in holding an election of the members of the Mandal Panchayat;or

(ii)failure to elect such members at two successive elections held under subsection(7) of Section 5, or

(ii)failure to elect such members at two successive elections held under subsection(7) of Section 5; or

(iii)any other sufficient reason whatsoever; or

(iii)any other sufficient reason whatsoever; or

ifthe term of the outgoing members of the Mandal Panchayat has expired and ithas not been possible to complete general elections to the Mandal Panchayatbefore the expiry of the term

ifthe term of the outgoing members of the Mandal Panchayat has expired and the newMandal Panchayat has not been constituted in accordance with the provisionsof this Act.'

theDeputy Commissioner shall by notification either-

theDeputy Commissioner shall by notification either-

(i)appoint an Administrative Committee consisting of persons qualified to beelected, the number of such persons being equal to the number of members determinedunder sub-section (1) of Section 5, or

(i)appoint an Administrative Committee consisting of persons qualified to beelected, the number of such persons being equal to the number of members determinedunder sub-section (1) of Section 5, or

(ii)appoint an Administrator.

(ii)appoint an Administrator.

It will at this juncture be appropriate to point out that the task of Section 8 is in main to confer power on the Deputy Commissioner to appoint an Administrator to

tide over some difficulty in the smooth running of the Mandal Panchayat. What however, is of considerable significance is the fact that the Administrator appointed by the Deputy Commissioner cannot be in office for a period exceeding one year. It remains so both under the old provision and under the amended provision. The question then arises as to why, in what manner and how the new provision is so obnoxious compared with the old provision although in either case the Deputy Commissioner had power to appoint an Administrator for a period of one year. Of course it is no doubt pointed out that under the unamended provision the right to appoint an Administrator would arise and be available only in case where the concluding of the elections already called could not be completed and would require more time. In such a situation the Deputy Commissioner had the power to appoint an Administrator. But in the present situation i.e., after the amendment the power to appoint an administrator is available and could be resorted to by the Deputy Commissioner even without initiating steps for holding elections. Not unnaturally it is pointed out that the Deputy Commissioner being duty bound to hold elections to constitute the Mandal Panchayats once the Panchayats had run out of their tenure, if the power to act otherwise is also vested in the Deputy Commissioner it would lead not only to concentration of lot of power in the hands of the Deputy Commissioner but would also make a mockery of the democracy. It is this travesty of democracy that is not merely criticised but it is urged with great emphasis that such unlimited powers in the hands of an Executive Officer would be wholly ruinous of the embodiment of democratic principles underlying the creating of these self-governing bodies thereafter nurtured and fostered with great care and dedication under the statute. It is urged that the sole object of bringing to fruition the ideals and in particular the Directive Principles of Article 40 of the Constitution would be defeated and, it is, therefore, contended with considerable aplomb and fervour that the Deputy Commissioners having been given the power to make the appointment of administrators in a machine-like fashion without regard to the fundamental duties enjoined on them to hold elections and it is this feature which makes Section 8(1)(c) of the Act wholly obnoxious, capricious and totally violative of Article 14 of the Constitution.

57. Per contra, the learned Advocate General appearing for the State and his companion Counsel appearing for some of the Administrators contend that the

amendment had done very little to change the format of the legislation itself and as a matter of fact there is nothing new or startling about it so as to let loose a cascade of vitriolic argument terming the Section as something unparalleled in the history of democracy. It is pointed out that all that the Legislature has done was to bring about a small change most required in the circumstances because of the Panchayats having outlasted their tenure. The old Panchayats having completed their term and the new Panchayats not having been constituted, it became imperative and absolutely necessary to make some kind of an interim and ad-hoc arrangement for running the panchayat administration by an Administrator so that the citizen does not suffer for want of a pair of hands to run the panchayat administration. It is urged that given the background of the inability to hold elections either before or immediately after the expiry of the term of office of the panchayat and pending holding of such elections, a small change is effected in the Act to enable the appointment of Administrators to see that the Panchayats do not suffer for want of hands to manage them, such a miniscule change cannot be described by the petitioners as if it was something that sounded the death-knell of democracy itself. The respondents assume that no such thing is intended and no such thing would happen.

58. Repeatedly it was submitted by Counsel for the respondents that the statute as it now stands no power on earth could stretch the tenure of the office of the Administrators, unless it is done by a further amendment of the statute which at the moment appears to be not round the corner, although Counsel could not say whether the Legislature had also at the back of its mind such intendment as well, which of course is pure speculation and I cannot take it into account. Suffice to note as pointed out by respondents the aspirations of the people's representatives for rededicating themselves to public service through the aegis of the Panchayat is now postponed for a period of one year during which period the administrators will take hold of the Panchayat and run it. It is, therefore, urged for the respondents that the amendment brought forward being well warranted and could not have been avoided at all, thus the Legislature in its collective wisdom having projected its vision touching the need to make some temporary adjustment for running the Mandal Panchayat which power was already there under the old Act but of course with a slight difference, there was no case for crying foul and rooting for the

maximum penalty to be imposed by striking down a solemn act of the Legislature made and enacted with all sincerity and in the interest of the people at large. It is pointed out that the amendment is neither arbitrary nor capricious but it became inevitable because of plain inability to hold elections.

59. The petitioners, on the other hand, point out the Deputy Commissioner having a duty to perform in holding elections when it was due having failed in his duties cannot feign to put on a face of injured innocence, and having almost become a plaything of the executive he cannot now exercise the power of appointing Administrators without in the first instance paying heed to his foremost duty viz., of holding elections. It is contended that the action of the Deputy Commissioner was a two-in-one joint in that he could not appoint the Administrators without in the first instance holding elections or making any attempt at ascertaining the feasibility of holding elections. It is, on this aspect of the matter the Deputy Commissioner is stated to have failed miserably paying blind-folded allegiance to the statute by churning out Administrators in a mechanical fashion as if they were being produced from out of the moulds fixed to a shop floor that turns out mass produced products. While there may be some substance in this criticism, it must be said that all things being equal and granting that there has been some negation of duty by the statutory authorities, the Section, itself cannot be faulted since in my view it has been conceived in the interest of public welfare.

60. I must in this connection refer to the legal maxim, 'SALUS POPULI EST SUPREME LEX' which means regard for public welfare is the highest law and the aspirations of every member of the society must yield to that of the community: To a fuller discussion on this aspect I invite attention to 'Brooms Legal Maxims' Chapter I page 1. The underlying principle of the maxim is explained thus:

'This phrase is based on the implied agreement of every member of society that his own individual welfare shall, in cases of necessity, yield to that of the community; and that his property, liberty and life shall, under certain circumstances, be placed in jeopardy or even sacrificed for the public good.'

It seems to me that the law attacked herein as unconstitutional is really conceived in the interest of the general public. In order to make room for such a law,

conceived in public interest, an individual or may be a particular section of society is made to suffer a little and did suffer a little, I for one would counsel enduring of such suffering if of course it be in the interest of the community at large. If for a period of one year an Administrator is appointed in circumstances noticed herein, all said and done, a legislation enabling the appointment of an Administrator even without election being called or held having an element of inevitability about it, the same will probably have to be tolerated even if it did result in shackling of democratic ideals for a little while. Therefore, it is, I am inclined to support the legislation viz., Section 8(1)(c) on the aforesaid ground resting on the principle of public necessity. Another factor that weighs in favour of upholding this legislation is that the Administrator, unlike his counter-part under the Zilla Parishad Act, cannot look forward to further amplification of his tenure which of course is the least of the circumstances that has weighed with me. If I have found it necessary to save this piece of legislation from annihilation it is mainly because if one wishes away this piece of legislation what survives then would only be the mere debris of democracy that is totally dysfunctional with the prospect of anarchy and administrative chaos brought about by the absence of even a pair of hands to run the show.

61. Having said so much it now seems wholly unnecessary to examine the legal position vis-a-vis the galore of precedents cited on either side both in favour of and against the amended provision. In a lighter vein, Mr Acharya, learned Senior Counsel appearing for some of the Administrators pointed out that if the amendment is struck down as invalid what would then survive is the power of the Deputy Commissioner to appoint an Administrator once the term of the panchayat had expired. I am afraid that would be the position as vividly etched out by Sri Acharya, a circumstance almost comedy like, lending more grist to the executive to do what they wanted and to do the same without any let or hindrance. I have heard so much of argument on the scope and ambit of the Equality Clause in the Constitution enshrined by Article 14, indeed a pulsating provision which over the years has grown from strength to strength by the interpretive ingenuity of Judicial precedents reaching its nadir through the pronouncement of the Supreme Court in the trio logy of Decisions viz. RAYAPPA v. STATE : (1974)ILLJ172SC ii) MANEKA GANDHI v. UNION OF INDIA : [1978]2SCR621 and iii) RAMANA v.

INTERNATIONAL AIRPORT AUTHORITY OF INDIA : (1979) IILLJ217SC which have enabled the application of this Article to varied situations calling for action against arbitrary and capricious exercise of power and authority be it by the executive or the legislature. However, it is said that there are undoubted limitations to its applicability. The Courts particularly are cautioned and counseled not to run themselves into a super legislature in judging and weighing legislation enacted by a competent Legislature or Parliament. To me this new found use of Article 14 is like the sensitive electronic eye capable of round the clock vigil without over batting an eye lid or dropping an eye lash.

62. While it is true that this Equality Clause is of great assistance in hounding out executive or administrative arbitrariness, but when it comes to interfering with legislative action, there is considerable limitation. It cannot be deemed the Legislature is deemed to and is expected to understand the felt-needs of the society and to take necessary care in fulfilling them. Again the fact that the legislative intent is manifested by the will of the people acting through their representatives is certainly a deterrent. In *STATE OF GUJARAT v. SHRI AMBICA MILLS*, (1935) 296 US 404 @ 441 His Lordship Mr. Justice Mathew, as he then was, speaking for the Bench reiterated the dissenting opinion of Justice Brandeis, Mr. Justice Stone and Mr. Justice Cardozo of the Supreme Court of United States in *COLGATE v. HARVEY* : AIR 1991 SC1153 , wherein their Lordships observed:

'We do not sit as a super-legislature'

In the recent Judgment of *MAHAJAN v. JALGAON MUNICIPAL COUNCIL* : AIR 1991 SC1153 . His Lordship Mr. Justice M.N.Venkatachalaiah repelling the contention that a project envisaging a self-financing scheme, by reason alone of the particular policy behind it was beyond the powers of the local authority, pointed out, that a project otherwise legal would not become any the less permissible because the local authority instead of executing the project by itself, enters into an agreement with the developer for its financing and execution. The Decision although it has for itself a wide ranging perspective, suffice for our purpose to rely on the following observation at para 14, page 1160:

'The criticism of the project being 'unconventional' does not add to or advance the legal contention any further. The question is not whether it is unconventional by the standard of the extant practices, but whether there was something in the law rendering it impermissible. There is, no doubt, a degree of public accountability in all governmental enterprises. But, the present question is one of the extent and scope of judicial review over such matters.

xxx xxx xxxIn regard to Courts and policy we might recall the following words of a learned author:

The Courts are kept out of the lush field of administrative policy, except, when policy is inconsistent with the express or implied provisions of a statute which create the power to which the policy relates or when a decision made in purported exercise of a power is such that a repository of the power, acting reasonably and in good faith, could not have made it.

The considerations by reference to which the reasonableness of a policy may be determined are rarely judicially manageable. (see The purpose and scope of Judicial Review - By Sir Gerard Brennan in 'Judicial Review of Administrative action in the 1980s' Oxford University Press.)

The vivid introspection made of the limitations of Judicial power in correcting the alleged arbitrary exercise of authority reflected in the foregoing passage illuminated to a large extent by the forceful and well brought out need to forbear from interference with the exercise of Legislative authority should sufficiently highlight the need to tread warily on ground that appears not merely hallowed but decidedly preclusive so far as Courts are concerned.

63. Barrister Reddy relied on SHRI LEKHA VIDYARTHI v. STATE OF U.P. : AIR 1991 SC537 wherein the removal en bloc of all District Government Counsel by the State Government was held to be arbitrary. Their Lordships held that State action in contractual matters can be reviewed coming as it did under the head 'administrative law'. The Court examined many decided cases with particular reference to arbitrariness of action in administrative law and in the context chose to strike down the impugned action of the State in disbanding en masse all District

Government Pleaders in the State of UP. I am unable to see what assistance Mr. Reddy gains by citing this Decision and I would certainly agree with learned Counsel that if action taken herein was so drastic as it was in the case relied upon, I would have had little hesitation in giving it short shrift myself. In this context I must turn to one other Decision cited by learned Counsel Sri.Veera-bhadrapa in *AJAY HASIA v. KHALID MUJIB* : (1981)ILLJ103SC . It related to an educational matter and the question mainly raised and argued in that case was whether an incorporated society was an instrument of the State falling with the definition of 'authority' under Article 12. Although their Lordships held that the Society was an 'authority' within the meaning of Article 12 and hence subject to the basic obligation to abide by the Fundamental Rights, the Court however, refused to interfere in the matter taking note of the considerable lapse of time following the selections made and impugning of the same before Court. The Court in that case had even come to the conclusion that allocation of 33 1/4% of marks for oral interview of candidate for selection was plainly arbitrary and unreasonable. The well-known trio logy of Decisions which are generally relied on in such cases have been adumbrated. While there can possibly be no exception to the principle that equality in a dynamic concept and Article 14 really strikes at arbitrariness in State action thus ensuing fairness, and equality of treatment, however, there appears to be no occasion herein to turn to any of these epoch making Authorities since come to be treated as bulwarks against arbitrariness and capriciousness. It does seem to me that there is little use in decantation of a plethora of Decisions for consideration in these matters. The Mandal Panchayats have completed their term of office. The elections to induct a new set of office bearers to the Mandal Panchayats could not be held due to administrative reasons, raising the question, as to what should happen to the administration of the Panchayats in existence, as I have been repeatedly pointing out, in the interest of the citizen. Government with a view to end this growing incertitude has though fit to intervene by bringing out Act 1 of 1992. Thus it cannot be said that the Amendment Act 1 of 1992 was either capricious or arbitrary, I have not found it necessary to call attention to many other Decisions cited on this aspect of the matter because there is nothing new in them since all of them tread the same path.

64. Before I finally part with this topic I must refer to the removal of Clause (2) of Section 44 of the Act by the Legislature, first through the Ordinance and, thereafter, by Act 1 of 1992. The removal of Clause (2) Section 44 is challenged only by Mr. Veerabhadrapa. No other Counsel appearing for the petitioner has taken exception to it. Section 44 relates to the terms of office and conditions of service of Pradhana or Upapradhana. The Section as it stood before the Amendment Act 1/92 reads:

'(1) The terms of Office of every Pradhana and every Upa-Pradhana shall, save as otherwise provided in this Act, cease on the expiry of his term of office as a member of the Mandal Panchayat.

(2) After the expiry of his terms of office the Pradhana shall continue to carry on the current duties of his office until such time as a new Pradhana shall have been elected and shall have taken over charge.(3) xxx xxx xxx

What has now happened is with the repealing of Section 44(2) the Pradhan whose term of office is up and is out of reckoning has now lost the chance to officiate for some more time before the new Pradhan takes over from him. The repealing of the Section does remove a privilege but not a right. While I am not quite sure whether it was at all necessary for the Legislature to have done away with Clause (2) of Section 44 since it only catered to a situation where elections are actually in the offing and not to a situation obtaining herein the Legislature having stepped in to displace the Pradhan denying him even the pleasure of greeting the new office-bearer, there is very little the Court can do and much less can any one ask the Court to strike down Act 1 of 1992 for repealing Clause (2) of Section 44. Removal of Section 44(2) is a clear case of repeal and not an amendment as in the case of other provision viz., Section 8(1)(c). Between a repeal and an amendment there is considerable difference and I have during the course of the order I made rejecting the emphatic plea of the Advocate General to vacate the interim orders made in these cases, dealt with this aspect of the matter in detail. The Legislature which makes a particular provision can certainly unmake it. Therefore, the repealing of Clause (2) of Section 44 cannot be questioned at all.

65. I must at this juncture take notice of the effect of deleting Section 44(2) from the Statute Book. Reference in this connection may be made to Section 39 of the Act, which fixes the term of office of Mandal Panchayat as 5 years. The provision that follows thereafter being Section 40 it enjoins that the term of office of the members selected at a General Election or at a second election held under Sub-section (7) or Section 5 of nominated shall commence on the date immediately after the expiry of the term of office of the outgoing members of the Mandal Panchayat or the period of appointment of an Administrative Committee or Administrator under Section 8 or on the date of publication of their names under Sub-section (9) of Section 8 whichever is later.

66. The two Sections aforesaid lead to the conclusion that the term of office of panchayat as a whole comes to an end after the expiry of 5 years from the commencement thereof, the starting point being publication of particulars of the names of successful members published under Sub-section (9) of Section 5. The elections which are now to follow hereafter whenever they may be held, will mark the commencement of the second tenure in office of each of these Mandal Panchayats. With the result, as enjoined by Section 40, the term of office of the members elected at a General Election being a second election will commence and date back to the expiry of the office of the members elected at the first election.

67. A reading of these provisions leaves no doubt that following the cessation of office upon the completion of the 5 year term, nobody could continue thereafter unless re-elected. In the circumstances, having regard to the deletion of Clause (2) of Section 44, it becomes, overwhelmingly clear that these Pradhans who are now in office by virtue of the interim order could not have continued in office at all but for the indulgence of the Court granting interim orders permitting their continuance in office. The Pradhans must override two hurdles, i.e., of first getting elected as members and then getting elected as Pradhans from amongst themselves. Hazardous and may be quite arduous as all that may be, but once they cease to be members of the Panchayat they cannot continue any longer either as an ordinary member of the Panchayat and much less as its Mandarin (Pradhan). The Pradhan, I must make it very clear, does not have any wing span exceeding that of

the ordinary member of the Panchayat. The moment he ceases to be a member of the Panchayat his reign as Pradhan comes without more to an end. His position further suffers with the deletion of Section 44(2) and in consequence the prospect of continuing as a care taker Pradhan also disappears. On this conclusion, I must declare the Pradhans have no right to continue in office under law and their continuance by virtue of the interim order of this Court must in retrospect be treated as supporting a non est factor, totally incongruent in the present day situation.

68. I must also in this occasion point out that under the provisions of Section 287(2) of the Act, any one who acts as Pradhan or Upapradhan of Mandal Panchayat or Adhyaksha or Upadhyaksha of a Zilla Parishad or exercises any of his functions knowingly under the Act and Rules made thereunder, he was not entitled to or ceased to be entitled to hold office, is liable to be punished and convicted with fine as enumerated in that Section.

68. I have referred to the above provision the high-light the utility of the situation in continuing the Pradhans in office, now that it being overwhelmingly clear that they had no right to continue in office. Besides it would also result in the commission of an offence punishable under the law. I am afraid that no Court can be a party to such an arrangement that is albeit to the advantage of the petitioners, but none the less results in commission of an offence under the law namely, Section 287(2) of the Act. This is yet another circumstance, that should preclude the Court in countenancing or upholding the right of the petitioners to continue in office as Pradhans in the context of these Writ Petitions.

69. I must at this juncture recall a well established principle that the mere possibility of abuse of a provision does not by itself justify its invalidation. The abuse of a provision may invoke the wrath of the Court resulting in striking down the end result of the exercise of power but would not result in the statute itself being flogged on the ground that it lends itself or has actually lent itself to gross abuse. If this be the true position in law the claim for striking down Section 8(1)(c) as constitutionally invalid should in my view stand muted for the reason that exercise of power for an illegitimate purpose would result only in action being so

assailed being removed without affecting the provision itself.

With the foregoing I bring to a close the challenge to Act 1 of 1992 based on Article 14 of the Constitution and must for the reasons mentioned above hold the same to have failed.

POINT NO. 5

70. What remains now is the penultimate challenge to the impugned orders leading to the appointment of Administrators. The challenge to these orders is two-pronged, viz. (i) the Deputy Commissioners who have made the appointments have acted at the behest of and on behalf of the Government and have not done so on their own volition, and (ii) in any event the impugned orders do not conform to the amended provision viz. Act 1 of 1992 having even admittedly made or passed prior to the amendment itself.

71. The parameters on the basis of which the tenability of these orders are impugned lie within a very short compass. Before I take them up for consideration suffice it to just mention that the Government had taken a decision on 3.1.1992 not to hold elections to the Mandal Panchayats and instead to appoint Administrators under Section 8 of the Act. Government with a view to make its point felt had even prepared a proforma pertaining to the appointment of Administrators and also spelt-out the guidelines pertaining to the appointment of administrators confining such appointments to the cadre of officers belonging to Grade II level. We have already had an insight to the Cabinet decision and the Circular Instructions, the same having been super scribed in the course of this order, while dealing with the factual developments in the case. It is from this circumstance, the petitioners have chosen to direct the first salvo of attack against these appointments pointing out in so far as the Deputy Commissioner who are the functionaries under Section 8(1) of the Act had chosen to act as lackeys of the Government totally surrendering their power and discretion under the Act, all these appointments so made are liable to be struck down. I am to notice that this point is not without any force but to what avail and end, will it lead the petitioners, is something that leaves me doubly sceptical. As some of the Counsel for the respondents point out if the appointments are struck down, fresh appointments free of all legal and any factual

blemish can at once be made and will certainly follow. The Deputy Commissioners undoubtedly have the power and they have only to run through the process once again making it clear and apparent to any one that at the second shv they were hurling the ball all by themselves without the Government propping up their elbows. Probably if I could accept this argument it would settle the issue once and for all and none could fay at my doors any blemish. Although I could have side-stepped this issue by accepting the above argument, I have decided not to do so. instead I will proceed to consider the submissions on either side and in particular the submissions of the respondents which takes it to the plane of the Constitutional Law, Administrative Law etc.

72. Sri Sundaraswamy, learned Senior Counsel, appearing for the Administrators pointed out that the Deputy Commissioners did nothing wrong in paying heed to the well-meant advise of Government to appoint Administrators. He points out that a Cabinet decision was taken to postpone elections and pursuant to such a decision by the Cabinet, the Deputy Commissioners were instructed to appoint Administrators. According to Government the decision to postpone the elections was taken on account of certain compelling reasons. The grounds adduced by the Government in that behalf are the same as the ones put forth in the case of Venktegowda v. Zilla Parishad. The Bench had occasion to consider those grounds and found them to be totally puerile and absolutely puney. The Court held in the said case that the grounds neither justified nor explain the need for postponing elections and appears to be a mere pretext or a feigned excuse.

73. Very recently I am informed that the Seventy Second Amendment Bill which was before a Select Committee is now again before the House with one of the recommendations made by the Committee, being to hold elections atleast six months prior to the expiry of the period of the panchayat. If this be the current thinking then it needs very little to convince one about the futility of the decision taken to postpone elections to constitute the panchayats at the present juncture. But such a decision having been taken and granting that in this Court I should not question the same, it still does not solve the problem for the authorities, if, as alleged by the petitioners, the decision to appoint Administrators had been taken not by the Deputy Commissioners who are the designated authorities but by the

State Government. Would it then be still valid is indeed the point for consideration.

74. As I was saying Mr. Sundaraswamy's contention is that there is nothing wrong in the Deputy Commissioners paying heed to the advice given to them by the State Government and acting in unison. May be there is some force in that contention but, then, it is really a queer situation. All the Deputy Commissioners although parties to these Writ Petitions, none of them have chosen to utter a word of having acted under the instructions of the Government because they were convinced of the sagacious advice given to them by Government. I have pointed out earlier all the talking in these cases had been done by the Administrators appointed by the Deputy Commissioners who have in this Court chosen to be represented by a galaxy of Senior Counsel, while those who were responsible for making appointments have deliberately remained mute onlookers.

75. Be that as it may, there is no gainsay in denying that the appointments have been made by the Deputy Commissioners not on their own but on the persuasion of the Government. This perhaps is a conclusion that probably is least controverted on behalf of the respondents. Even so, Mr. Sundaraswamy invited my attention to a passage in Administrative Law by Mr. Wade at page 329. Under the topic 'permissible guidance' the learned author says:

'Clearly these rules ought not to be carried to the length of preventing one government department from consulting another, or of preventing government agencies from acting in accordance with government policy. There must always be a difference between seeking advise and then genuinely exercising one's own discretion, on the one hand, and, on the other hand, acting obediently or automatically under some one else's advice or directions. A licensing authority, for instance, may quite properly take account of government policy in its decisions provided that it genuinely decides each case itself.'

Per contra Mr. Narasimha Murthy who appearing for some of the respondents relied on the executive power of the State as obtaining under Article 162 of the Constitution. He also cited in support BISHAMBER DAYAL CHANDRA MOHAN v. STATE OF UTTAR PRADESH : [1983]140ITR1(SC) . He relied in particular on the statement of the Law in para 20, The question in that case was whether the State

Government can exercise its executive power and whether the executive power is co-extensive with its legislative power. Answering the point, their Lordships held:

'The State in exercise of its exercise power is charged with the duty and the responsibility of carrying on the general administration of the State. So long as the State Government does not go against the provisions of the Constitution or any law, the width and amplitude of its executive power cannot be circumscribed. If there is no enactment covering a particular aspect, certainly the Government can carry on the administration by issuing administrative directions or instructions, until the legislature makes a law in that behalf.'

To complete the factual matrix I might as well refer to Article 162 which reads:

'Extent of executive power of State:-

Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make Laws, the executive power of the State shall be subject to, and limited by the executive power expressly contended by this Constitution or by any law made by Parliament upon the Union or authorities thereof.'

The ambit of Article 162 is what is explained in Bishamber Dayal's case referred to supra. But, then, Mr. Jayakumar S.Patil appearing for some of the petitioners relied on Article 154 of the Constitution which reads:

'154. Executive power of the State:- (1) The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Nothing in this article shall

(a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority.(b) xxx xxx xxx

Basing himself on Article 154, Mr. Jayakumar S.Patil contends the executive power of the State notwithstanding, the executive power syndrome will be of little use once it is found that functions conferred by the existing law on any other authority stand rooted to such authority and such power or function is totally incapable of reverting back to the Governor in exercise of his executive power. The argument that the Governor ceases to be the repository of that part of the executive power of the State that was conferred by law on any other authority is no doubt quite telling. Applying the above principles to the facts of these cases, he contends that once the power of appointing an Administrator is given away to the Deputy Commissioner, the Government ceases to have the power to appoint administrators notwithstanding the supervening powers the Government enjoys as the executive head of the State under Article 154 of the Constitution.

76. Having given my careful consideration to the contending view points of Counsel on both sides, it does seem to me that the executive authority of the State transcending as it does under Article 162 of the Constitution, would still leave some kind of residual power in the hands of the State extending to matters with respect to which the State Legislature has power to make laws in which event it would over-ride the limitations imposed by Article 154(2)(a) of the Constitution on the exercise of executive authority by the Governor. In other words, if the legislature had the power to make a law as has happened herein, it would probably be open to the State to exercise its executive power under Article 162 to impose some limitation even on some of the authorities to whom it had ceded power to exercise executive or statutory authority. Looked upon in this light the authority of the State Government to advise the Deputy Commissioners to appoint Administrators could probably be tolerated and treated as something not objectionable. The statement of the law made by Prof. Wade to which I have referred to supra, would not have been sufficient, by itself, to grant to the respondents the reprieve pleaded by Mr. Sundaraswamy. That reprieve or total cover has however been provided by the counter-offensive mounted by Sri Narasimha Murthy based on Article 162 of the Constitution. In the result, therefore, I must hold that although there is possibly no doubt whatsoever that the appointment of administrators by the Deputy Commissioners was in fact spoon-fed by the State Government, I should even in such a circumstance find it more

apposite to uphold the appointments rather than to dismember them as desired by the petitioners.

77. The last limb of the argument that is still in contention apropos the non-conformity of the impugned orders of appointment with the Amendment Act 1 of 1992 in that they were passed even before the enactment of Act 1 of 1992. But before I take up this issue, I should hark back to the point of Mr. Sundaraswamy that Section 272A of the Act would furnish a complete answer to the contention urged that Government had no power at all and no voice at all in the matter of controlling elections. The said provision reads:

'272A Control of Elections:-

Notwithstanding anything contained in this Act or the rules made thereunder every election of members of a Mandai Panchayat or Zilla Parishad shall be subject to the control and supervision of the Government and it shall be lawful for the Government to issue directions regarding all matters connected with the election including direction for postponement of the poll.'

It is urged that the provision supra being almost omniscient and totally pervasive would include in its ambit anything connected with the elections including the postponement of elections. The argument constructed on the basis of this provision is that if power available under Section 272A is treated as wide enough to include the power to hold elections, necessarily the timing of it and postponement thereof, must be held to be comprised therein. In support, the meaning of the word 'control' and the word 'all' as available in Legal Dictionaries are depended upon. The word 'control' according to Black's Dictionary means 'Power or authority to manage, direct, superintend, restrict, regulate, govern, administer, or oversee.' The meaning of the word 'all' as explained by R.Ramanath Aiyer in his 'The Law Lexicon' gives the meaning of the word 'all' is 'The whole quantity of a thing: With reference to substance, extent, 'amount or degree.' Basing himself mainly on the exposition of these words in the legal dictionaries, Counsel seeks to advance the argument that Section 272A furnishes Government all-pervasive power in the matter of elections and that power necessarily should include the power to postpone the elections. According to Counsel the very wide

power available to Government under Section 272A brooks at nothing and certainly not at stopping elections that are normally held at a particular point of time.

78. But, then, Counsel for the petitioners seek to contend that the Government cannot arrogate to itself such overwhelming powers extending to issuance of a direction to the statutory authority not to hold elections. According to the petitioners however widely the powers under Section 272A may be construed, they do not extend to postponement of elections. Particular reliance is placed on the tail end of the provision which refers to the postponement of the poll which according to the petitioners indicates that in case the election process is on, it may then be open to the Government to issue a direction for postponing the elections. It is said that in no circumstance Government can claim or arrogate to itself the power to issue directions to the statutory authority not to hold elections.

79. It seems to me this exercise of spelling out the power of the Government to issue a direction not to hold an election is an exercise in futility not merely because the provision while it adumbrated to the several circumstances under which Government is empowered to give directions for the purposes of controlling elections, nonetheless, it did not envisage the power to order the authorities not to hold elections after the scheduled tenure. The provision clearly appears to have been enacted to enable Government to issue directions for regulating and controlling an on-going election which may include postponement of the polls, being the optimum power that Government could exercise under the provisions. But having regard to the Width of the power that Government can exercise under Section 272A, the Section would not enable it to postpone the election, appears quite clear. The provision aforesaid is similar to Section 38 of the Karnataka Municipalities Act which also gives power to regulate, control and to direct the drift of the elections which power in the case of Karnataka Municipalities Act even extended to the cancellation of the calendar of events. Such power of cancellation of the calender of events is not available to Government under Section 272A of the Act although it has the power to postpone the poll.

80. Thankfully I am not alone in taking this view since I am supported by the eminent authority of the Federal Court in *Bhola Prasad v. Emperor*. The question that arose for consideration in that case was whether the power to regulate the sale of intoxicating liquors included the power to prohibit the sale. Rejecting the plea that the power to regulate the sale of intoxicating liquors included the power to prohibit their sale, their Lordships held that the power to 'regulate' does not include the power to 'prohibit'. I would do well to invite attention to the relevant passage at page 20 in *Bhola Prasad's* case referred to *supra* which dealt with this aspect of the matter. It reads:

'We see no reason to dissent from the view that a power to regulate does not include a power to prohibit.

xxx xxx xxxA power to regulate may well imply the continued existence of the thing to be regulated.'

With respect, as pointed out by Chief Justice Gwyer in *Bhola Prasad's* case referred to *supra*, I must also hold that the power to regulate must necessarily imply the existence of the thing to be regulated. Where the very thing to be regulated, is not in existence at all the power to regulate such nonest feature would be meaningless. Following the logic of the dictum laid down in *Bhola Prasad's* case, I am to say nothing more than to merely point out that Section 272A only postulates control and regulation of election which is underway on its schedule and not 'cancellation' or 'postponement' of the election when no election is contemplated. Therefore, it is, for the reasons mentioned above I am unable to agree with the submissions made by Sri Sundaraswamy mooted Section 272A as a complete answer to the argument that Government had no power to give directions to the Deputy Commissioners in the matter of elections to be specific for not holding elections.

81. But the finding arrived at as aforesaid that Section 272A does not furnish Government the power to 'postpone' or 'cancel' the election is of no avail to the petitioners since I have already held that there is still power available to Government to give directions under Article 162 of the Act in exercise of the executive authority vested in it. There was, in fact, no need for me to have gone

into this aspect of the matter as in a sense the point becomes purely academic having no bearing on the result of these Writ Petitions. But, nonetheless, the point having arisen, I have taken notice of it and dealt with it if not for anything else atleast to notice the underlying basis on which the attack against the appointment of the Administrators is mounted.

82. I must now advert to the last limb of the argument advanced on behalf of the petitioners urging that the orders appointing the Administrators be struck down since they are not in conformity with the Amendment Act 1 of 1992, As I have already pointed out except in the case of one particular District viz., Belgaum wherein the appointments purported to have been made under the amended provision of Section 8(1)(c), all other orders have all been made under the old Act. I must also point out at my behest the Advocate General undertook not to make any appointments in the District of Dharwad and Gulbarga with the result no Administrators have been appointed in these two Districts. Prima facie it is possible to notice some force in the contention by the petitioners that the appointment of Administrators could not have been made under the earlier Act, on the ground that the elections to the panchayats could not be held although the period of panchayat had expired. The new format of Section 8(1) of the Act which added fresh colour to these appointments after 8.1.1992 appears to have been not noticed, by the executive who in their hurry appear to have not noted the crass or totally incongruent and absolutely inconsistent result flowing from insisting even now on serving the apothecaries prescription under the old brand name although there was a new one in vogue. A mere post-script or corrigendum would been enough to point out that the order already made be treated as made under the Amendment Act and had been made because of the expedient circumstances of the old panchayats not being in force with the new panchyats not having been formed as yet. But this precaution was not taken but even so the respondents came to the Court asserting that everything is shipshape since the Statute now enabled making appointment of Administrators without reference either to starting or not starting of elections. This was clearly a case of the hornet's nest being stirred following the grossly inapposite orders made by the executive as if they were still slumbering under the stupor of the old Act. The result was another strong bout of pugilistic exercise no doubt of the legal kind with Counsel for the

respondents relying the retrospective effect given to Act 1 of 1992.

83. Mr. Narasimha Murthy, one of the Senior Counsel who appeared for some of the Administrators, spared neither his client nor the law making authorities for the ineptitude displayed by the Government. He points out that the need for giving retrospective effect to the Act was necessitated by the circumstance that orders had been passed under the old Act so far back as 8.1.1992 and only after Act 1 of 1992 was enacted on the 13th of January, 1992, waking up to the realities of the matter the Legislature hastened to retrace the Act back to 8.1.1992 by giving it retrospective effect. Mr. Sundaraswamy learned Senior Counsel pointed out that when the Act is given retrospective effect the Court is bidden to read and consider the earlier Act as if the words and phrases in the old Act had been scored out and the altered words had been written into the old Act with pen and ink. Reliance in this connection is placed on SHAMARAO v. DISTRICT MAGISTRATE : 1952 CriLJ1503 . Head Note B refers to this aspect of the matter and reads:

'When a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed in such a way that there is no need to refer to the amendment Act at all.'

More explicit is the discussion in para 7 at page 326 as follows:-

'The construction of an Act which has been amended is now governed by technical rules and we must first be clear regarding the proper canons of construction. The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of it, in the earlier, then the earlier act must thereafter be read and construed (except where that would lead to repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all.

Learned Advocate General in his turn relied on the Decision of the Supreme Court in SUNDER DASS v. RAM PRAKASH : [1977]3SCR60 on the scope of treating fiction as fact. The question therein was whether the introduction of a proviso with

retrospective effect had the effect of rendering the decree for eviction null and void. The Court relied on the oft repeated classic passage of Lord Asquith of Bishostone in EAST END DWELLINGS CO. LTD v. FINSBURY BOROUGH COUNCIL, while is to the following effect: -

'If you are bidden to treat an imaginary state of affairs as real you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it.'

The Court basing itself on the aforesaid passage held that, 'since the proviso was introduced with retrospective effect, it must be deemed to be part of Section 3 since the time, the Delhi Rent Control Act, 1958 was enacted'. Therefore, while interpreting a provision which is thrown back in time one must imagine as real the consequences and incidents that would flow from such hindsight. In this case the amendment under Section 8(1)(c) having been made with retrospective effect the appointments made earlier to the amendment must be treated as having the necessary legal pedigree and could not therefore be denied legitimate operation. Reference in this connection may be made to the Decision in BALAKOTAAH v. UNION OF INDIA : [1958]1SCR1052 wherein it was held, 'when an authority passes an order which is within its competence, it cannot fail merely because it purports to be made under a wrong provision if it can be shown to be within the powers under any other rule and that the validity of an order should be judged on a consideration of its substance and not its form.' Therefore, if what is necessary is merely to read the orders as if they had made under the right provision and not be misled by the wrong source mentioned in the impugned orders, it would then become clear that notwithstanding the foot-in-the mouth attitude of executive officers, these orders can still be upheld. I must, therefore, uphold the appointments of Administrators and record a finding that the appointments are in conformity with the amended Act.

84. Now that I have literally come to the parting of ways after my sojourn with these Petitions for a considerable bit of time, I still notice that I have not dealt with a point somewhat energetically canvassed in particular by Sri B.Veerabhadrapa

as to the aftermath or the sequel that would have followed, had I struck down the impugned Act namely, 1 of 1992 as ultra vires the Constitution. The question as to whether the old provisions under Section 8(1)(c) of the Act prior to its amendment would stand revived and can be resurrected was an aspect that was canvassed with great vigour and in support some Decisions were also relied upon. Interesting as that question certainly is, I must however, refrain from taking up and pronounce on that controversial matter in the context of these cases, since I have upheld the vires of Act 1 of 1992 so that the question of carrying out a post-mortem of the Statute in order to ascertain whether the provisions amended by the recent Act was still intact and vibrant enough to be revived and acted upon to the advantage of the petitioners, does not now arise for consideration and I must therefore, decline to answer that point.

85. I now sum up my findings on the questions raised for consideration as follows:-

Point No. 1 :- Act 1 of 1992 cannot be struck down on the ground that it is opposed to the basic structure of the constitution or on the ground that it contravenes the directive principles contained in Part IV of the Constitution.

Point No. 2 :- The petitioners have only the right to claim that the Deputy Commissioners should hold elections to constitute the Mandal Panchayats afresh.

Point No. 3 :- Act 1 of 1992 is intravires the State Legislature and not ultravires of the same.

Point No. 4:- The amended Act with particular reference to Section 8(1)(c) thereof is not violative of Article 14 of the Constitution.

Point No. 5:- The impugned orders relating to appointment of Administrators are liable to be upheld and are upheld.

86. What remains now is just the penultimate aspect of recording a decree. But before I do that I must give vent to thoughts that have been troubling me all through the hearing of these Writ Petitions. There can be no doubt that sustaining the impugned orders may appear as if the Court has allowed democracy to fall by the roadside. But then I am not free to do as I wish to, for is it not Justice Cardozo

who said, 'the judge is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness' (The Nature of the Judicial Process, Page 141) statement followed with approval by Supreme Court in *INDUL HASAN v. RAJENDRA KUMAR JAIN* : AIR 1990 SC678 . Thus bowed down by legalistic principles that entwine me and from which I am unable to cut loose, I must therefore, refrain from assuming the role of a reformer, speaking as I do from a Judge's chair and not from the pulpit. Even so, I feel compelled to make a few observations on this occasion touching the democratic system, its principles and the possible negation thereof by a democratically ordained Government. Why does a Government of the people elected through the people's mandate resort to stifling the very life-breath of democracy by chocking democratic institutions is probably beyond my ken. To various people democracy and its ramifications have sounded differently from time to time but all of them would agree in unison that democracy is nothing more than the right of individuals as members of a community to be ruled by their own representatives. H.G. Wells, the celebrated author of the book *The Outlook for Home Sapiens* observes at page 36 as:-

'Since we now find ourselves fighting, enduring and dying for 'democracy', it seems worth while to ask for some clear definition of what democracy means, so that we can not only fight for it but be prepared to see that in the end we get it.'

XXX XXXXXXTwo words that will come out very frequently in the definitions that are given you are 'freedom' and 'liberty'. Frequent but not quite so frequent, are such phrases as the 'right' of individuals and communities to 'self-government'. A few people will make a vote the symbol of democracy. But all of them can be brought into agreement that democracy means the subordination of the state to the ends and welfare of the common individuals.'

Winston Churchill is reported to have quaintly referred to democracy as follows:

'At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil making a little cross on a little bit of paper - no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point.'

(Constitutional Challenges and Democratic Response' by Justice V.R.Krishna Iyer in Chapter 'Electoral Reform' at page-18)

His Lordship Mr. Justice M.N. Venkatachaliah in the course of the Judgment rendered in SHRI KIHOTO HOLLOHAN v. SHRI ZACHILLHU : [1992]1SCR686 assessing the role of democracy at para 42, page 616, summed up the same as follows:

'Democracy is a basic feature of the Constitution. Whether any particular brand or system of Government by itself, has this attribute of a basic feature, as long as the essential characteristics that entitle a system of Government to be called democratic are otherwise satisfied is not necessary to be gone into. Election conducted at regular, prescribed intervals is essential to the democratic system envisaged in the Constitution. So is the need to protect and sustain the purity of the electoral process'

His Lordship continuing further took occasion (at page 611) to refer to the famous speech of Edmund Burke to the Electors of Bristol, in 1774 in which Burke referred to the peoples' representatives and to their qualities in the following terms:-

'It ought to be the happiness and glory of a representative to live in the strictest union, the closet correspondence, and the most unreserved communication with his constituents. Their wishes ought to have great weight with him; their opinion, high respect; their business, unmerited attention. It is the duty to sacrifice his repose, his pleasures, his satisfactions to theirs and above all, ever, and in all causes, to prefer their interest to his own. But his unbiased opinion, his mature judgment, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living.... Your representative owes you, not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion.'

(See : Parliament function, Practice & Procedures by JAG Griffith and Michael Ryle Edn. Page 70)

Pandit Nehru in the course of a radio speech Broadcast on 22-11-1951, highlighted the importance of peoples participation in democracy as follows:-

'Democracy is based on the active and intelligent interest of the people in their national affairs and in the elections that result in the formation of government.'

(At page-80 of the Book 'Nehru's Thoughts of National Topics' by Sri N.N.Chatterjee.)

In the Endowment Lecture recently delivered under the auspices of the Bangalore Advocates' Association, on the topic 'Law as Protection from Power', His Lordship The Hon'ble Justice Mr. M.N. Venkatachaliah at Chapter (ii) Page-1 adverting to democratic values said:-

'The ideas that people who, in a democratic polity, are the source of political power and Governmental authority, themselves need protection from such authority might appear somewhat antithetical. MacIver says... 'Instead of the people acting through representatives and officials, we find the officials and the representatives controlling the 'machine'. The will of the people is set up as a mystical god, in whose name the political priests of a new oligarchy struggle and rule.'

Further on, pointing out that the only means to restore confidence in the institution of Government is determined cultivation of respect for law and a scrupulous adherence to its true spirit, His Lordship quoted Will Durant writing on 'Confucian Politics. The quote which finds a place in Part IV of the Book makes very interesting reading and its reproduction in this context would be apposite:-

'Taze-kung asked about government. The Master said, (The requisites of Government) are three: that there should be sufficiency of food, sufficiency of military equipment and the confidence of the people in their ruler. 'Taze-kung said, 'if it cannot be helped and one of these must be dispensed with, which of the three should be foregone first? 'The military equipment' said the Master. Taze-kung asked again, 'if it cannot be helped, and one of the remaining two must be dispensed with, which of them should be foregone? The Master answered, 'part with the food'. From of old, death has been the lot of all men; but if the people

have no faith (in their rulers) there is no standing (for the state). The first principle of government in the view of Confucius, is as the first principle of character-sincerity. Therefore the prime instrument of government is good example; the ruler must be an eminence of model behaviour, from which, by prestige imitation, right conduct will pour down upon his people.'

The decadence of democracy in modern times is very well articulated in the following passage by Sri H.M.Vyas in his preface to the book Village Swaraj by M.K.Gandhi. So telling are those observations, I am tempted to reproduce herein.-

'True democracy cannot be worked by twenty men sitting at the centre. It has to be worked from below by the people of every village.

Modern democracies are election-centres, party-dominated, power- aimed, centralized complicated mechanisms. Concentration of authority marks almost all present political systems which have become unwieldy and top-heavy, be they capitalist, socialist or communist systems. The individuals count no more though as voters they are styled as masters. They present themselves at periodical elections for casting votes and then sleep away until the next one. This is the only political action the individual performs once in a stipulated period. That he is driven to do under the directions of a centralized party system, and guidance of the newspapers which are mainly tools of the centralized economic powers. The individual has little or no voice in the shaping of the Government. In a welfare State or totalitarian regime he is reduced to the position of a well-fed, dumb, driven animal in human form.'

If I have referred to the foregoing statements emphasising the values and nuances of democracy, it is certainly not with a view to acquire any kind of personal aggrandisement. This appendage is the result of the incessant articulation throughout the hearing of these Writ Petitions by the petitioners who pleaded for restoration of democratic values and democratic ideals in our social and economic institutions.

Like Confucius who was even prepared to give up food to forfeit his life in exchange for faith in the system as otherwise there would be no standing for the

State I must also emphasise in order to infuse faith in the common man the ruler must be a role model in behaviour worthy of emulation so that right conduct will transcend to the people. In a Country like ours in which the majority of the people are not merely illiterate but totally ignorant of their rights, wallowing in squalor struggling for a belly-filling meal a day, it appears well-nigh impossible to locate the human element capable of appreciating the values of democracy. To them it is a mere vote to be cast at the polls once in five years and sometimes at shorter intervals. So long as people remain unschooled and unversed and fall a willing prey to the blandishments of the votaries of power, the result is, democracy, its values and ideals will remain an empty Symbol. The need of the hour is for men with strong minds and great hearts. We must have such men whom a poet visualised as follows:

'God give us Men; A time like this demands Strong minds, great hearts, true faith and ready hands;

Men whom the lust of office does not kill:

Men whom the spoils of office cannot buy;

Men who possess opinions and a will;

Men who have honour; Men who will not lie;

Men who can stand before a demagogue

And damn his treacherous flatteries .without winking;

Tell men, sun-crowned, who live above the fog in public duty and in private thinking.'

(In the Book 'We, the people's by N.A.Palkhivala at pages - 299 & 300)

Let us hope such men will emerge out of the political fog and walk tall in our midst. In quest of such tall men, we must incessantly apply ourselves, even if the effort means looking for the mystical needle in a hay-stack.

87. If I may now borrow the picturesque language employed by His Lordship the Hon'ble Justice Sri. S.Mohan in STATE OF HIMACHAL PRADESH AND ANR. v. KAILASH CHAND KAHAJAN AND ORS. : [1992]1SCR917 .

'But the State says that this is a case of 'much of muchness' in the words of Sir John Vanbrugh (in 'The Provok'd Husband').

103. How do we balance these claims except to examine the matter in the light of the law and quote Horace: 'tempus abire tibi est'. ('time you were off'),

Therefore, it is I also say to these cases 'time you were off'.

88. In consonance with the findings recorded on points raised and considered supra, I make the following order.-

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