

Ashok Kumar Tripathi Vs. Union of India (Uoi) and ors.

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Court : Madhya Pradesh

Decided On : Dec-17-1999

Reported in : 2000(2)MPHT193

Judge : D.M. Dharmadhikari and ;S.K. Kulshrestha, JJ.

Acts : [Constitution of India](#) - Articles 14, 39, 191, 193, 226, 243, 243D, 243E, 243K, 243K(4), 243M, 243M(4), 243O, 243ZG, 244, 244(1), 329, 330, 332, 334, 335 and 368; Madhya Pradesh Panchayat Raj Adhiniyam, 1993 - Sections 13, 13(4)(2), 22, 23, 23(3)(2), 25, 29, 30, 30(3)(2), 30(6), 32, 129E and 129E(1); Madhya Pradesh Panchayat Raj (Dwitiya Sanshodhan) Adhiniyam, 1997 - Sections 13(4), 13(5), 13(6), 13(7), 17, 17(2), 17(3), 17(4), 17(5) and 17(6); [Constitution of India](#) (Seventy-third Amendment) Act, 1992; Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 - Sections 4; Madhya Pradesh Panchayat Nirvachan Niyam, 1995 - Rule 4; Madhya Pradesh Co-operative Societies Act; Rent Control Act, 1947; Municipal Corporation Act; Municipalities Act; Madhya Pradesh Panchayat R

Appeal No. : Writ Petition No. 2262/99

Appellant : Ashok Kumar Tripathi

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : V.K. Tankha, Adv. General, ;S.K. Seth, Dy. Adv. General, ;Satish Agnihotri and ;Indira Nair, Advs.

Advocate for Pet/Ap. : Rajendra Tiwari, ;N.S. Kale and ;Ravindra Shrivastava, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

D.M. Dharmadhikari, J.

1. This petition under Article 226 of the [Constitution of India](#) shall decide the connected batch of Petitions Nos. W.P. 2059/99 (Ravi Thakur and Ors. v. Union of India and Ors.), W.P. 1984/99, (Rajendra Soni v. The State of M.P. and Ors.), W.P. 2080/99 (Ajay Shrivastava v. State of M.P. and Ors.), W.P. 2082/99 (Thakur Dutt Sharma and Ors. v. State of M.P. and Ors.), W.P. 2084/99 (Kanchan Singh Chouhan v. State of M.P. and Ors.), W.P. 2085/99 (Dilawar Khan and Ors. v. State of M.P. and Ors.), W.P. 2087/99 (Muinuddin v. State of M.P. and Ors.), W.P. 2124/99 (Jagdish Prasad Jaiswal and Ors. v. State of M.P. and Anr.), W.P. 2131/99 (Chhotelal Choudhary v. State of M.P.), W.P. 2152/99 (Sita Prasad Tripathi v. State of M.P. and Ors.), W.P. 2154/99 (Mithilesh Kumar Mishra and Ors. v. Union of India and Ors.), W.P. 2159/99 (Bhagwat Prasad Mahere v. State of M.P. and Ors.), W.P. 2161/99 (Pooran Pathak v. State of M.P. and Ors.), W.P. 2184/99 (Govind Lal Sahu v. State of M.P. and Ors.), W.P. 2222/99 (Ganesh Singh Patel and Ors. v. State of M.P. and 2 Ors.), W.P. 2242/99 (Ram Babu Dhakad and Anr. v. State of M.P. and Ors.), W.P. 2245/99 (Lakhanlal and Anr. v. State of M.P. and Ors.), W.P. 2248/99

(Gopal Prasad Chandra and Ors. v. State of M.P. and Ors.), W.P. 2250/99 (Laxminarayan Gour v. State of M.P. and Anr.), W.P. 2254/99 (Pulin Biswas and 9 Ors. v. State of M.P. and Ors.), W.P. 2255/99 (Totaram Mahajan and Anr. v. State of M.P. and two Ors.), W.P. 2256/99 (Soochana Patel v. State of M.P. and Ors.), W.P. 2262/99 (Ashok Kumar Tripathi v. Union of India), W.P. 2266/99 (Omkar Yadav and Ors. v. State of M.P. and Ors.), W.P. 2270/99 (Vijay Bahadur Singh v. State of M.P. and Ors.), W.P. 2271/99 (Ratan Singh v. State of M.P. and Ors.), W.P. 2272/99 (Bharat Yadav v. State of M.P. and Ors.), W.P. 2273/99 (Hari Om Chouksey v. The Union of India), W.P. 2274/99 (Kashiram and Ors. v. The Union of India and Ors.), W.P. 2276/99 (Rajendra Patel v. Union of India and Ors.), W.P. 2277/99 (Mohan Lal Shrivastava v. Union of India and Ors.), W.P. 2278/99 (Sardar Raminder Singh Kalra v. Union of India and Ors.), W.P. 2279/99 (Chandra Bhan Yadava v. The State of M.P.), W.P. 2280/99 (Netram Yadav v. The Union of India and Ors.), W.P. 2281/99 (Shakti Singh v. Union of India and Ors.), W.P. 2282/99 (Arvind Chouhan and Ors. v. State of M.P. and Ors.), W.P. 2285/99 (Raghvendra Singh and Ors. v. The Union of India and Ors.), W.P. 2290/99 (Vinod Kumar Guru v. The State of M.P. and Ors.), W.P. 2300/99 (Naresh Tiwari and Anr. v. State of M.P. and Anr.) W.P. 2309/99 (Uma Rao Singh Maurya and Ors. v. State of M.P. and Ors.), W.P. 2310/99 (Deoraj Singh v. State of M.P. and Anr.), W.P. 2311/99 (Ram Kishore and two Ors. v. State of M.P. and 2 Ors.), W.P. 2313/99 (Arjun Mahto v. State of M.P. and Anr.), W.P. 2319/99 (Brijlal and Ors. v. State of M.P.), W.P. 2329/99 (Ratan Chand Jain and Ors. v. State of M.P. and Anr.), W.P. 2339/99 (Kedar Patel v. State of M.P. and 3 Ors.), W.P. 2345/99 (Ramcharan Ahirwar and Anr. v. State of M.P. and Ors.), W.P. 2346/99 (Sheikh Qamaruddin and Ors. v. The Union of India and Ors.), W.P. 2353/99 (Kedar Patel v. State of M.P. and Ors.), W.P. 2355/99 (Nand Kishor Shrivastava v. State of M.P. and Ors.), W.P. 2371/99 (Kailash Das Swami and Ors. v. State of M.P. and Ors.), W.P. 2372/99 (Jasvindra Pratap Singh and Ors. v. State of M.P. and Ors.), W.P. 2373/99 (Smt. Moorti Bai v. State of M.P. and Ors.), W.P. 2374/99 (Shyam Kumar Mishra v. The State of M.P. and Ors.), W.P. 2380/99 (Balwan Singh Rathore v. State of M.P. and Ors.), W.P. 2384/99 (Mahendra Kumar Arse v. State of M.P. and Ors.), W.P. 2385/99 (Balram Patel v. State of M.P. and Ors.), W.P. 2409/99 (Raghvendra Singh and Ors. v. State of M.P. and Ors.), W.P. 2420/99 (Ramdin Sharma v. State of M.P. and Ors.), W.P. 2440/99 (Smt. Usha Shrivastava and Anr. v. State of M.P. and Ors.), W.P. 2485/99 (Mazboot Singh v. The State of M.P. and Ors.), W.P. 2506/99 (Smt. Mayu Awadhiya v. The Union of India), W.P. 2511/99 (Ram Kishore and Ors. v. Union of India and Ors.), W.P. 2512/99 (Arun Kumar Choudhary v. State of M.P. and Ors.), W.P. 2516/99 (Arshad Khan and Ors. v. State of M.P. and Ors.), W.P. 2525/99 (Pratap Singh Rajput v. State of M.P. and Ors.), W.P. 2530/99 (Rakesh Kumar Guru v. State of M.P. and 2 Ors.), W.P. 2546/99 (Umesh Kumar Thakars v. State of M.P. and Ors.), W.P. 2548/99 (Lal Mohd. and Anr. v. State of M.P. and Ors.), W.P. 2549/99 (Manish Gupta v. State of M.P. and Ors.), W.P. 2561/99 (Rameshwar Raghuvanshi and Anr. v. The Union of India and Ors.), W.P. 2563/99 (Ramswaroop Vishwakarma and Anr. v. State of M.P. and Anr.), W.P. 2567/99 (Jamna Prasad v. State of M.P. and Ors.), W.P. 2577/99 (Banga Ram Baghel v. State of M.P. and Ors.) and W.P. 2639/99 (Awadh Narayan Gurjar and Ors. v. State of M.P. and Anr.).

2. The Division Bench of this Court which admitted the petition on 13-5-99 stayed the entire elections of Panchayat in all levels in the State with grant of permission to the State to make interim arrangement for a period of six months consequent to the dissolution of the Panchayat on expiry of their terms. The State of M.P. against the order of stay passed by the Division Bench in this batch of petitions went in Special leave to Appeal (Civil No. 8334/1999) and the Supreme Court passed the following order on 16-7-99 :-

'Issue Notice. Notice shall state that the matter might be disposed of at this stage. Pending further orders the order under challenge is stayed. The process for holding a fresh election after six weeks may be continued but election itself shall not be held without further orders.

Dasti service in addition is permitted on the S.L.P.

List after four weeks.'

3. The above interim order passed by the Supreme Court was clarified by order made on 20-8-99 which reads as under :-

'Leave granted. The interim order passed on 16th July, 1999 shall operate, pending the disposal of the appeal.

This order shall not be construed as a bar to the hearing of the writ petition by the High Court and, if the parties apply for expeditious hearing of the writ petition, the High Court should endeavour to dispose it of as early as possible. All contentions shall be available to all the parties in the writ petition.'

4. This is how the matter has been placed before the Special Bench for expeditious hearing and decision. On behalf of the State Advocate General also prays alongwith counsel for the petitions for early decision of the petitions as crores of rupees have already been spent in making preparations for Large Scale Elections for Panchayats in whole of the State and there is likelihood of that amount of money going waste if the elections are not allowed to be held within a reasonable time after re-scheduling the programme.

5. By these petitions the alleged reservation of seats for election to Panchayats in excess of 50% for Scheduled Castes, Tribes, Women and Backward Classes and 100% reservation of seats of Chairpersons in the Panchayats in scheduled areas of Madhya Pradesh for the ensuing elections to be held as per the programme notified under the provisions of M.P. Panchayat Raj Adhiniyam, 1993 (hereinafter referred to shortly as the Act of 1993) have been challenged.

6. Before taking up the various grounds urged to assail the so called excess reservations of seats for the reserved categories and women, it is necessary to mention the provisions of the Constitution, the Act of the Parliament and the State Legislature under which the reservation of seats for reserved categories and women have been permitted.

7. By the Constitution (73rd Amendment) Act, 1992 Part IX has been introduced w.e.f. 24-4-93 in the Constitution for laying down procedure for constitution of Panchayat on uniform basis through out India in all the States. The relevant provision permitting reservation of seats for Scheduled Castes, Tribes and Other Backward Classes for the members of the Panchayats and for the Chairpersons is contained in Article 243D which needs reproduction in full :-

'243-D. Reservation of Seats :-

(1) Seats shall be reserved for--

(a) the Scheduled Castes; and

(b) the Scheduled Tribes,

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

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

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

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

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled

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

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

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

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

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

8. From the above provisions in Article 243D what is to be noted is that it permits reservations of seats under Clause (1) in favour of Scheduled Castes and Tribes in a Panchayat to the extent of number 'which shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that area which bears to the total population of that area'. Clause (1) of Article 243D thus adopts the principle of proportionate representation to the reserved categories for giving them reservation on the seats based on their population in an area.

9. Sub-clause (2) of Article 243D provides horizontal reservations for amongst the reserved seats to the extent of 1/3rd for women belonging to Scheduled Castes/Scheduled Tribes. Clause (3) of Article 243D also provides for horizontal reservation to the extent of 1/3rd of seats from reserved categories including women of Scheduled Castes, Scheduled Tribes to women by rotation.

10. Under Clause (4) of Article 243D reservation for the offices of Chairpersons of the Panchayats is left to the legislature of the State to be provided by law. The first proviso below Sub-clause (4), however, provides that for reservation of seats for Chairpersons also there should be reservation for Scheduled Castes and Scheduled Tribes at each level in any State 'which shall bear, as nearly as may be; the same proportion to the total number of such offices in the Panchayat at each level as the population of Scheduled Castes in the State or Scheduled Tribes in the State bears to the total population of the State. The first proviso thus permits certain number of seats of Chairpersons to be reserved for reserved categories on the basis of proportion of their population in the State at each level. The second proviso to Article 243D mandates horizontal reservation of not less than 1/3rd seats for women including the number of seats reserved for women belonging to Scheduled Castes & Scheduled Tribes categories. Third proviso to Clause (4) permits allotment of seats of reserved category by rotation. Sub-clause (6) of Article 243D enables the legislature of the State to make a provision for reservation of seats in Panchayats or offices of Chairpersons at any level in favour of Other Backward Classes of citizens. Under Article 243K of the Constitution the Superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats is vested in a State Election Commission. Under Article (4) of Article 243K the State legislature has been empowered to make law with respect of all matters relating to, or in connection with, elections to the Panchayat. Article 243K(4) is also reproduced as under :--

'243-K Elections of the Panchayats :--

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.'

11. Article 243M is for the purpose of applicability of Part-IX to Scheduled Areas in Clause (1) and the Tribal Areas referred to in Clause (2), of Article 244. Article 243M is directly under consideration before us for interpretation and its application and, therefore, needs full reproduction :--

'243-M. Part not to apply to certain area.--

(1) Nothing in this Part shall apply to the Scheduled Areas referred to in Clause (1), and the Tribal Areas referred to in Clause (2) of Article 244.

(2) Nothing in this part shall apply to--

(a) the States of Nagaland, Meghalaya and Mizoram;

(b) The Hill area in the State of Manipur for which District Councils exist under any law for the time being in force.

(3) Nothing in this Part,--

(a) relating to Panchayats at the district level shall apply to the hill areas of the District of Darjeeling in the State of West Bengal for which Darjeeling Gorkha Hill Council exists under any law for the time being in force;

(b) shall be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under such law.

(4) Notwithstanding anything in this Constitution--

(a) the Legislature of a State referred to in Sub-clause (a) of Clause (2) may, by law, extend this Part to that State, except the areas, if any, referred to in Clause (1), if the Legislative Assembly of that State passes a resolution to that effect by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting;

(b) Parliament, may, by law, extend the provisions of this Part to the Scheduled Areas and the Tribal Areas referred to in Clause (1) subject to such exceptions and modifications as may specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of Article 368.'

12. Article 243O contains a bar to interference by Courts in election matters and reads thus :--

'243-O. Bar to interference by Courts in electoral matters.--

Notwithstanding anything in this Constitution,--

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243K, shall not be called in question in any Court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.'

13. From the provisions of Article 243M quoted above what is noticeable is that under Sub-clause (b) of Clause (4) thereunder Parliament has been empowered to make a law to extend the provisions of Part-IX of the Constitution to the Scheduled Areas and Tribal Areas referred to in Article 244 read with 5th Schedule of the Constitution 'subject to such exceptions and modifications' as may be specified in such a law and such law need not be passed by the same procedure as amendment of the Constitution. It is expressly stated in Sub-clause (b) of Clause (4) of Article 243M that no such law shall be deemed to be an amendment of this Constitution for the purpose of Article 368.

14. Article 244 of the Constitution provides for Scheduled Areas and Tribal Areas. It reads thus :-

'244, Administration of Scheduled Areas and Tribal Areas.-- (1) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram.

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram.'

15. The Fifth Schedule under Article 244(1) of the Constitution in Part-C Clause 6 confers powers on the President to declare an area to be scheduled area and in accordance with Sub-clause (2) of Clause 6, make any such order which contains such incidental and consequential provisions as appear to the President to be necessary and proper. Part-C of Fifth Schedule contains the power of the President concerning the specification of Scheduled Areas and making any change or alteration in the same. It reads thus :-

'Part-C--

Scheduled Areas

6. Scheduled Areas.--(1) In this Constitution, the expression 'Scheduled Areas' means such areas as the President may by order declare to be Scheduled Areas.

(2) The President may at any time by order,--

(a) direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area;

(aa) increase the area of any Scheduled Area in a State after consultation with the Governor of that State;

(b) alter, but only by way of rectification of boundaries, any Scheduled Areas;

(c) on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of a Scheduled Area;

(d) rescind, in relation to any State or States, any order or orders made under this paragraph, and in consultation with the Governor of the State concerned, make fresh orders redefining the areas which are to be Scheduled Areas;

and any such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order.'

16. In exercise of powers conferred by sub-paragraph 2 of Paragraph 6 of the 5th Schedule to the Constitution the President issued an order in the year 1977 specifying in Madhya Pradesh 21 areas including many districts as 'specified areas'. The Presidential notification containing the Scheduled Areas (States of Bihar, Gujarat, Madhya Pradesh and Orissa) Order, 1977 with the list of areas declared Scheduled Areas in Madhya Pradesh is annexed as document Annex. R-1 with the return of Union of India and the State of M.P.. The entire districts of Jhabua, Mandla, Sarguja and Bastar have been declared as specified areas. Similarly Tahsils in district Dhar, district Khargone, districts (East Nimar) Khandwa, Ratlam, Betul, Seoni, Balaghat, Hoshangabad, Shah-dol, Sidhi, Raigarh, Bilaspur, Durg, Rajnandgaon, Raipur, Morena, Chhindwara and Amarwara Tahsil have been declared as specified areas. A large population in Madhya Pradesh consists of Tribals which are spread up in different pockets of the State particularly in hilly and forest areas.

17. Deriving powers from Article 243M Sub-clause (b) of Clause (4) the Parliament passed Act No. 40 of 1996

named the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996. Section 4 contains the Exceptions and Modifications to Part IX of the Constitution applicable to the Scheduled Areas. The relevant part of Section 4 which is for consideration before us reads thus :-

'4. Exceptions and modifications to Part IX of the Constitution.--Notwithstanding anything contained under Part IX of the Constitution, the Legislature of a State shall not make any law under that Part which is inconsistent with any of the following features namely :-

(a) a State legislation on the Panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources;

(b) (c) (d) (e) (f) (g) the reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in that Panchayat for whom reservation is sought to be given under Part-IX of the Constitution :

Provided that the reservation for Scheduled Tribes shall not be less than one-half of the total number of seats :

Provided further that all seats of Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes.'

18. Deriving powers from Clause (6) of Article 243D and Sub-clause (a) of Clause (4) of Article 243M, the State Legislature of Madhya Pradesh passed Act No. 43 of 1997 named M.P. Panchayat Raj (Dwitiya Sanshodhan) Adhiniyam, 1997 to further amend the M.P. Panchayat Raj Adhiniyam, 1993 to bring it in conformity with the provisions of reservation contained in Part-IX of the Constitution. The relevant provisions introduced by the Amendment Act mentioned above applicable to the Gram Panchayats for the purpose of reservation of seats for members contained in Section 13 (4), (5), (6) & (7) are reproduced :

'13. Constitution of Gram Panchayat.--..... (4) (i) Seats shall be reserved in every Gram Panchayat for--

(a) the Scheduled Castes; and

(b) the Scheduled Tribes and the number of seats so reserved shall bear, as nearly as may be the same proportion to the total number of seats to be filled by direct election in that Gram Panchayat as the population of the Scheduled Castes or of the Scheduled Tribes in that Gram Panchayat area bears to the total population of that area and such seats shall be allotted by the prescribed authority to different wards in that Gram Panchayat, in the prescribed manner. (ii) In a Gram Panchayat where fifty percent or less than fifty percent seats have been reserved both for the Scheduled Castes and Scheduled Tribes, twenty five percent seats of the total number of seats shall be reserved for Other Backward Classes and such seats shall be allotted by rotation to different wards in that Gram Panchayat by the Collector in prescribed manner.

(5) Not less than one-third of the total number of seats reserved under Sub-section (4) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes or Other Backward Classes.

(6) Not less than one-third including the number of seats reserved for women belonging to the Scheduled Castes, the Scheduled Tribes and Other Backward Classes of the total number of seats to be filled by direct election in every Gram Panchayat shall be reserved for women and such seats may be allotted by the prescribed authority by drawing of lots and by rotation to different wards in a Gram Panchayat in the prescribed manner.

(7) The wards which have no population of Scheduled Castes, Scheduled Tribes or Other Backward Classes shall be excluded for allotment of seats reserved for Scheduled Castes or Scheduled Tribes or Other Backward

Classes as the case may be.'

19. Under Section 17 percentage of reservation is provided for the office of Sarpanchas which is contained in Section 17 Sub-sections (2), (3), (4), (5) and (6) reads as under :-

'17. Election of Sarpanch and Up-Sarpanch.--..... (2) (i) Such number of seats of Sarpanchas of Gram Panchayats shall be reserved for Scheduled Castes and Scheduled Tribes in the Gram Panchayat within the block which bears the same proportion to the total number of Sarpanchas in the block as the proportion of the Scheduled Castes and Scheduled Tribes in the block bears to the total population of the block :

Provided that for the purpose of computing the number of Sarpanch of Gram Panchayat to be reserved for Scheduled Tribes in the block, other than the Scheduled Areas forming part of that block, the total population of the Scheduled Areas falling within that block and the population of Scheduled Tribes therein shall be excluded.

(ii) Where the total population of Scheduled Castes and Scheduled Tribes in the Block is less than fifty percent, twenty five percent of seats of Sarpanchas of Gram Panchayats within the Block shall be reserved for Other Backward Classes.

(3) Not less than one-third of the total number of seats of Sarpanchas within the block shall be reserved for women.

(4) The seats reserved under this section shall be allotted by the prescribed authority in the Gram Panchayat within the block by rotation in the prescribed manner :

Provided that the Gram Panchayat, which has no population of Scheduled Castes or Scheduled Tribes or Other Backward Classes, shall be excluded for allotment of seat reserved for Scheduled Castes, Scheduled Tribes or Other Backward Classes, as the case may be.

(5) The Prescribed Authority shall, as soon as may be after every election call a meeting of the elected Panchas and Sarpanch for the purpose of election of Up-Sarpanch and subject to the provisions of Sub-section (7) the Gram Panchayat shall, in the meeting, so called elect from amongst its elected members an Up-Sarpanch.

(6) If the Sarpanch of the Gram Panchayat does not belong to Scheduled Castes, or Scheduled Tribes or Other Backward Classes the Up-Sarpanch shall be elected from amongst the Panchas belonging to such castes or tribes or backward classes.'

20. Similarly provisions with same percentage of reservation of seats for members and Chairpersons are contained in Section 22 for Janpad Panchayat, Section 25 for Election to President and Section 30 for Members of Zila Panchayat and for the post of Presidents of Zila Panchayat under Section 32 of the Act.

21. What is to be noted from the provisions of the State Act, 1993 is that in conformity with Part-IX of the Constitution it provides for reservation of seats for reserved categories in proportion to their population. It further provides that where 50% or less than 50% seats have been reserved for Scheduled Castes and Scheduled Tribes, 25% seats shall be reserved for Other Backward Classes. Within the reserved category, horizontal reservation to the extent of 1/3rd is provided for women including women of Scheduled Castes, Tribes and Backward Classes. Sub-section (7) of Section 13 is also noticeable which provides that wards which have no population of Scheduled Castes, Tribes or OBC shall be excluded for allotment of seats reserved for those categories as the case may be. The provision as introduced by amendment, therefore, permits reservation of seats to the extent of 50% for Scheduled Castes and Scheduled Tribes and 25% for Other Backward Classes i.e., total reservation can be more than 50% for the reserved categories including women (of General and reserved category).

22. Chapter 14-A has been introduced in the Act of 1993 by Amendment Act No. 43 of 1997 w.e.f. 5-12-96 for

making special provisions including for reservation of seats in the Panchayats falling in the Scheduled Areas. Section 129-E providing for reservation of seats in Scheduled Areas is parimateria in every respect with the provisions contained in Section 4 (g) of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (for short hereinafter referred to as the 'Central Act'). In effect in Scheduled Areas not less than 50% of the total number of seats shall be reserved for Scheduled Tribes and all seats of Chairpersons in all the Panchayats shall be reserved for Scheduled Tribes. The remaining seats would only be open. By notification dated 24-3-99, Governor in exercise of powers under Para 5 (i) of the 5th Schedule has while making applicable the provisions of Section 129-E of the Act providing reservation of seats in favour of Scheduled Tribes to the extent as mentioned above, has added a proviso thereunder being the exception on modification to the State law. The said proviso below Section 129-E (1) introduced by the Governor by notification issued under Para 5 of 5th Schedule of the Constitution reads as under :--

'Provided also that the Gram Panchayats in the Scheduled Areas which have no population of Scheduled Tribes shall be excluded in prescribed manner from allotment of seats or the offices as the case may be, reserved for Panchas or Sarpanchas belonging to Scheduled Tribes.'

23. An Examination comparatively of the provisions contained in Section 13, as applicable to the Gram Panchayats, in Sections 23 and 25 to Janpad Panchayats and Sections 30 and 32 to Zila Panchayats, discern a uniform method of reservation of seats for offices of members and Chairpersons. The unit for working out reservation for Chairpersons is block, at Gram Panchayat level, District at Janpad level and State at Zila or District level. So far as reservation of seats for members of the reserved category is concerned, on behalf of the State a Chart was handed over in the course of hearing to show the method followed in accordance with the provisions of the Act and Rules to work out the number of reserved seats for office of members and Chairpersons in different categories. The chart reads as under :--

'Reservation of Posts and Seats in Panchayats under the MPPR Act, 1993 :

(1) Non Scheduled Areas

Sarpanch under Section 17, Rule 7 Gram Panchayat.-- Reservation is made for each category in proportion to its population in the total population of the Block (Janpad Panchayat Area).

Where the percentage of ST and SC is 50% or less, 25% of the posts would be reserved for the OBCs.

Panchayats are selected in descending order of population for ST and SC and the remaining are rotated among OBCs (if any) by drawing lots. A similar rotation is made in respect of posts for women in each of the categories.

Member (Panch) under Section 13, Rule 4 Gram Panchayat.--Reservation is made for seats in each category in proportion to its population in the total population of the Village Panchayat area. Where percentage of ST and SC is 50% or less, 25% of the seats would be reserved for OBCs.

Seats are selected in descending order of population of ST and SC and the remaining are rotated among OBCs (if any) by drawing lots. A similar rotation is made in respect of seats for women in each of the categories.

Chairperson under Section 25 Janpad Panchayat.-- Reservation is made for each category in proportion to its population in the total population of the District (Zila Panchayat Area).

Where the percentage of ST and SC is 50% or less, 25% of the posts would be reserved for the OBCs.

Panchayats are selected in descending order of population for ST and SC and the remaining are rotated among OBCs (if any) by drawing lots. A similar rotation is made in respect of posts for women in each of the categories.

Member under Section 23, Rule 6 Janpad Panchayat.-- Reservation is made for seats in each category in

proportion to its population in the total population of the Janpad Panchayat Area.

Where percentage of ST and SC is 50% or less, 25% of the seats would be reserved for the OBCs.

Seats are selected in descending order of population for ST and SC and the remaining are rotated among OBCs (if any) by drawing lots. A similar rotation is made in respect of seats for women in each of the categories.'

24. The above method of working out the seats for reservation for members and Chairpersons in a Panchayat has been prepared in accordance with Rule 4 of the Election Rules framed under the Act of 1993. The Rules are known as M.P. Panchayat Nirvachan Niyam, 1995. Separate Rules almost of identical nature have been framed for working out the reserved seats for Panchayats at all levels. The procedure indicated in the election Rules is that for allotting wards the prescribed authority shall publish a notice to enable residents and persons interested to be present at the time of drawal of lots. The formation of wards also requires notification of the proposal for inviting objections from general public or residents of the area, considerations of their objections and taking a decision after holding a summary enquiry into the objections. Similar procedure for public notice and hearing of objections is contained in Rules for reservations of offices of Sarpanch and posts of other Chairpersons. It is not necessary for us to go in detail in the provisions of the Rules as that is not necessary for the purpose of deciding the grounds urged in these petitions.

25. On behalf of the petitioners arguments were advanced by Shri Rajendra Tiwari learned Senior Counsel and Learned Counsel Shri Ravindra Shrivastava, on behalf of the State Shri V.K. Tankha learned Advocate General and on behalf of Union of India learned counsel Shri Satish Agnihotri gave separate replies to support the provisions of the Central and State Act and the methodology adopted in reserving seats for various reserved categories.

Preliminary Objection

26. On behalf of the State and Union of India a Preliminary Objection has been raised based on the provisions contained in Article 243O of the [Constitution of India](#) stating that the Article bars interference by Courts in electoral matters of Panchayats. It is urged, under the said Article validity of any law relating to de-limitation of constituencies or the allotment of seats to such constituencies cannot be called in question in any Court. It is submitted that the Article mentioned above only recognises right of challenge to election after conclusion of election by an election petition in accordance with the law governing the said election. In support of the preliminary objection to the bar of interference by this Court, reliance is placed on State of U.P. and Ors. v. Pradhan Sangh Kshetra Samiti and Ors. (1995 Suppl. (2) SCC 305), Prannath Bhatia v. State of Punjab (A.I.R. 1977 P. & H. 309) and Anugrah Narain Singh and Anr. v. State of U.P. [(1996) 6 SCC 303].

27. Learned counsel appearing for the petitioners in reply to the preliminary objection submit that Articles 243O and 243ZG creating a bar of interference of Courts in election matters cannot take away the power of judicial review of the High Court under Article 226 of the [Constitution of India](#). It is submitted that the power of judicial review of the High Court under Article 226 of the Constitution is part of basic structure of the Constitution and the said power cannot be curtailed or whittled down even by a constitutional amendment by insertion of Part IX and Part IX A in the Constitution. Reliance is placed on the Constitution Bench decision in Keshwanand Bharti v. Union of India (A.I.R. 1973 S.C. 1461), K. Venkatachalam v. A. Swamickan (A.I.R. 1999 S.C. 1723). Reliance is also placed on Full Bench decision of Punjab & Haryana High Court in Lalchand v. State of Haryana (A.I.R. 1999 P & H 1). On behalf of the petitioners in order to meet the preliminary objection raised on behalf of the respondents attempt was made to distinguish decisions of the Supreme Court in the case of Anugrah Narain Singh & Pradhan Sangh Kshetra Samiti (supra).

28. We have given our anxious consideration to the weight of the preliminary objection. We have also considered the decisions of the Supreme Court and of Punjab & Haryana High Court cited at bar. We find, as held by Supreme Court, the purpose of creating a bar under Articles 243O and 243ZG in electoral matters by

the Court is obviously that objections or alleged breach of law in the process of election here or there by one Section of people or one section of contestants in a particular ward/s of constituency should not be allowed to stifle the election process to the detriment of not only the willing contestants but also the entire electorate and to cause waste of huge expenditure, energy and time of the staff employed in election machinery. As has been observed by the Supreme Court in Anugrah's case (supra) if such interferences at the instance of an individual or group of individuals is permitted on some or the other illegality in the process of election, no election can ever be completed within the time schedule.

29. The bar, however, cannot be read as meaning to curtail the constitutional power of judicial review conferred on Constitutional Court like High Court under Article 226 of the [Constitution of India](#). Provisions of Articles 243O and 243ZG require the Constitutional Court to exercise self restraint, in interfering with the election when the process for holding it has already commenced. No election should be interdicted or stalled merely on the ground of some alleged infraction of Rules or Procedure in holding the election and all disputes should be relegated to a stage after the conclusion of the election, through the election petition and on grounds available in election law. The Articles, however, cannot be read that where the election has not been held in accordance with the Constitution or there are inherent defects or breaches of the election law rendering the whole election a farce or a mockery, the Court ' should still refuse to interfere. In taking the above view, we are supported by the observations of the Supreme Court in the cases of Lakshmi Charan Sen v. A.K.N. Hassan Uzzaman [(1985) 4 SCC 689] and K. Venkatachalam (A.I.R. 1999 SC 1723) (supra) where irrespective of the constitutional bar for interference in election matter, if the election is found to be inherently vicious and fundamentally defective in law, Constitutional power of the Court under Article 226 has been held to be available. In the case of K. Venkatachalam (supra) a candidate who lacked basic qualification of being a voter to be able to contest for the Assembly Constituency had been elected and participated in the deliberations of the Assembly. When his election was challenged bar of Article 329(b) of the Constitution was urged in support of his elected status. It was held that power of the Court under Article 226 is not taken away by Article 329(b) when it is found that the person elected had committed a fraud as he was not qualified to seek election in accordance with the Constitutional provisions in Articles 191 and 193. In our considered opinion, therefore, Articles 243O and 243ZG to not create absolute bar on the power of the Court under Article 226. This Constitutional Court is competent, to examine whether there are any fundamental breaches of the Constitution and the laws calling for its interference. The power of this Court would, however be exercised not unmindful of the fact that the Constitution and the Legislature of the State discourage interference in the process of election only on stray and trivial breaches of procedure and laws. Any alleged inherent and vital defects in election cannot, however, be held to be beyond judicial scrutiny of this Court under Article 226 of the Constitution.

30. For the aforesaid reason, keeping into consideration the self imposed limitations in exercise of powers for interfering in election matters, this Court rejects the preliminary objection and would proceed to examine the merits of the Writ Petitions as to whether any of the grounds urged make out a strong case for interference by us at a stage when the election process is already in the offing.

31. We shall now take up the various grounds urged on behalf of the petitioners by their learned counsel in seriatum.

Alleged excess reservation of seats for Members over 50% in Scheduled and Non-Scheduled Areas

32. On behalf of the petitioners it is argued that by the method of reservation provided by the Constitution and the Central and State Legislature the extent of reservation of seats for categories such as Scheduled Castes, Scheduled Tribes, OBC and Women of all categories exceeds far in excess of 50%. For example from the Chart Annex. P-2 for Janpad Panchayat Anuppur it is pointed out that it works out to 82%. It is submitted that reservation in excess of 50% has been held as bad by the Supreme Court in the matter of appointments in public services. Reliance is placed on the Constitution Bench Decision in the case of Indra Sawhney v. Union of India (A.I.R. 1993 S.C. 477). It is pointed out that the Division Bench of this Court consisting of one of us

(Kulshreshta, J.) in W.P. No. 1013/96 (Anand Manohar Tambe v. State of M.P. and Ors.), decided on 12-12-96 has struck down reservations in excess of 50% for election to Co-operative Societies under the M.P. Co-operative Societies Act. The said decision of the Division Bench of this Court has been upheld by the Supreme Court by rejecting S.L.P. by a reasoned order (S.L.P. (C) No. 6168 of 1997) dated 25-3-98. It is submitted that the Supreme Court in rejecting the S.L.P. has passed a reasoned order holding that the High Court was justified in taking a view that the reservation of seats in Co-operative Societies in excess of 50% was bad. The division bench of this Court in the case of Anand Manohar Tambe (supra) in election to Co-operative Societies has relied on the decision of the Supreme Court in the case of Indra Sawhney (supra) relating to appointment to public services. Reliance is placed on three full Bench decisions of Patna High Court in Amarnath Datt v. State of Bihar (A.I.R. 1983 Patna 151), Janardhan Paswan v. State of Bihar (A.I.R. 1988 Patna 75) and Krishna Kumar Mishra v. State of Bihar (AIR 1996 Patna 112) and in the case of Aniruddh Pd. Shastri v. State [1993 (2) MPJR 33].

33. It is submitted that the provisions of the Constitution contained in Chapters IX and IX A and the Central and State Legislation recognize principle of proportionate representation to the reserved communities on the basis of their population. It is urged that reservation above 50% both in Scheduled and non-Scheduled areas is far in excess of the proportionate population of the reserved categories. Such arbitrary and excessive reservation has resulted in creating a rule of minority in Local Self Government Institutions over majority which is not countenanced by Rule of Equality under Article 14 of the [Constitution of India](#) which is fundamental to the governance country. It is submitted that Right of Franchise may not be a fundamental right but is a legal right and has to be protected on the anvil of fundamental right of equality contained in Article 14 of the [Constitution of India](#). It is submitted that such excessive reservation of seats for reserved categories in Scheduled and non-Scheduled Areas is neither constitutional nor just nor fair.

34. On behalf of the State, Advocate General points out that in making reservations as permitted by the Constitution by definition of word 'population' in Article 243(f) and 243E(g) the 'population figures ascertained on the basis of last preceding census i.e., of the year 1991 have been taken and the reservations have been worked out in Scheduled and non-Scheduled Areas for members on that basis. It is submitted that Part IX and IX A of the Constitution permit reservation of seats on the basis of proportionate population of the reserved categories and the reservation may exceed 50%. It is submitted that the ratio as laid down in Indra Sawhney's case (supra) in matters of appointment to public services cannot be applied to election to local bodies where the principle of proportionate representation based on population and the right of self governance has to be extended to Scheduled Castes, Tribes and Backward Classes who had no share of governance since time immemorial. It is stated in the return filed jointly on behalf of Union of India (in the Ministry of Law) and the State of M.P. that census figures of 1991 have been taken as basis for identifying and ascertaining the number of Scheduled Castes, Tribes and Women. For other Backward Classes in the State of M.P. a separate Commission known as Mahajan Commission was set up. The figures of OBCs spread up in the entire State have been ascertained on the basis of the report of Mahajan Commission. According to the Union of India and the State the total reservation in the State in favour of the reserved categories excluding women does not exceed 50%. It would be better to reproduce the contents of Paragraphs 17 and 18 of the return in which basis and figures have been disclosed to demonstrate that total percentage of reservations in favour of categories in the whole State does not exceed 50%, which read as under :-

'The answering respondents respectfully submit that as per the 1991 census the total population of State of M.P. is 6,61,81,170. Out of total population 96,26,679 is of the S.C. and 1,53,99,034 is of the S.T.. Percentage-wise population of S.C. of the State of M.P. is 14.80% of the total population and that of the S.T. is 28.02% of the total population of the State. The respondents specifically stated that the reservation in respect of S.C. and S.T. at all levels in the Panchayats is in the same proportion as the percentage of the population of S.C. and S.T. in the State as far as practically possible. The respondents herewith file a Chart showing the total population, the percentage of population belonging to the S.C. and S.T., the number of seats and posts of Chairpersons at all level in the Panchayats and the percentage thereof reserved for the S.C. and S.T. which

clearly demonstrates that the reservation for S.C. and S.T. is not excessive as alleged by the petitioners and in fact combined reservation for the 2 categories comes to only about 43%. As far as reservation for OBCs is concerned, the relevant provision of the State Act namely Sections 13 (4) (2), 23 (3) (2) and 30 (3) (2) provide that in case where reservation for S.C. and S.T. combined together is 50% or less, 25% of the seats shall be reserved for OBC. It is respectfully submitted that the reservation for OBC is, therefore, conditional and subject to the fact that the combined reservation for S.T. and S.C. is less than 50% and, therefore, the above mentioned provision is reasonable and in accordance with the constitutional scheme.

The respondents submit that as far as the reservation for Other Backward Classes is concerned, the provisions for said reservation has been made by the State Legislature in exercise of the powers conferred by Article 243(d)(6) of the [Constitution of India](#). It is submitted that a flat reservation of 25% in favour of OBC has been done because persons belonging to those classes are evenly spread in the State. According to the Mahajan Commission the population of OBCs in Madhya Pradesh was about 48% as on 1982. On looking to the fact that the percentage of population of OBCs of State of M.P. is nearly 50% at flat rate of 25% reservation has been made for OBCs under the Adhinyam, 1993 which cannot be said to be excessive. The Mahajan Commission submitted its report in December, 1983 and as per report of the commission it was estimated that population of the OBCs in the State of M.P. was 48.08%. In the light of the above mentioned facts, the reservation for OBCs at the flat rate of 25% is neither arbitrary nor unreasonable and is based on available data and has been made after proper application of mind. Relevant extract of Mahajan Commission report is filed herewith as Annex. R-5.'

35. On behalf of Union of India, learned counsel appearing for them also supported the reservation policy laid down by the State and the Central Legislature which, it is said, is strictly in conformity with the constitutional provisions contained in Part-IX and IX-A read with Articles 330 and 332 of the Constitution.

36. After giving our careful consideration to the submissions made by the rival parties and the facts and figures supplied by the State and Union of India, we find no ground to interfere in the policy of reservation laid down in the Constitution and applied by the Central and State Legislature. Article 14 no doubt forbids denial of equality before law and equal protection of laws to the citizens. Article 14, however, does not envisage equal treatment of unequals. The Constitution itself has recognised necessity of special treatment and protection to the socially and the educationally Backward Classes or citizens like Scheduled Tribes, Scheduled Castes and Socially Economically Backward citizens. Article 14 of the Constitution permits, therefore, protective treatment to deprived classes of citizens vis-a-vis the forward and advanced classes of the Society. To safeguard interests of Scheduled Tribes living in remote or hilly areas or forests with primitive culture of their own, the Constitution envisages formation of Scheduled Areas for them, and application of laws to them with 'exceptions and modifications', so that they are able to preserve their culture and occupation and are not exposed to exploitation by forward classes of Urban Population. The protective discrimination in favour of such deprived section of the Society can go to the extent of complete exclusion, if the circumstances so justify, of advanced classes in Local Self Governance of Scheduled areas. The main object and purpose behind such reservations based on population, even in excess of 50% is with a view that the exclusive participation of deprived and oppressed sections of the Society in Local Self Government bodies in their areas is ensured because in open competition with the advanced sections of the Society they can never have any share to participate in Self Governance. A close and careful examination of the provisions of the Central and State Act, in the light of Constitutional provisions, shows that principle of proportionate representation based on the population of the reserved categories has been adhered to but only departure has been made from it in giving them larger share of self governance by reserving seats for them as member and in the Scheduled Areas a monopoly of seats of Chairpersons has been created for them so that they conserve their culture and way of living. The case of Indra Sawhney (supra) of the Supreme Court was concerning proportion of reservation for reserved categories including OBCs in public services where 'maintenance of efficiency of administration' as laid down in Article 335 of the Constitution, is held to be an important factor in putting a ceiling to reservation of 50%. The said decision was relied by the Division Bench

of this Court in invalidating reservation in excess of 50% in matter of election to Co-operative Societies. See the Judgment in the case of Anand Manohar Tambe (supra) without dissenting from the view taken by the Division Bench in the Co-operative election case, we find the Panchayat election matter completely distinguishable. Here elections are to be held under a prescribed method for which there is constitutional sanction in Chapter IX and IX A of the Constitution. In the case of Anand Manohar Tambe (supra) pertaining to Co-operative elections, no constitutional provision was involved and that makes the said case totally distinguishable in application of its ratio to these batch of petitions concerning Panchayat election and challenge to the extent of reservation therein. We find that the challenge to the alleged reservation being far in excess of 50% for membership to the Panchayats is not properly founded on any facts and figures ascertainable from 1991 census which are published. There is, therefore, a fallacy in the argument advanced. The petition is founded on few stray examples of alleged excess reservation of seats in one or the other block in Panchayats. As has been pointed out on behalf of the State the basis of reservation has been 'the population' figures ascertained from 1991 census and may be that in a given block or Panchayat area the reservation of seats is more than 50% but the over all extent of reservations in whole of the State in reserved categories does not exceed 50%. For taking a decision on the policy of reservation as to whether it is reasonable or unreasonable, the Court has to examine the over all Scheme of the Constitution as envisaged in Part IX and IX A and the corresponding Central and State Legislation brought to implement it. The aim and object of the reservation policy contained in Part IX and IX A is that the Backward and oppressed sections of the Society have to be encouraged in the democratic process by giving them a share of governance which hither-to was denied to them since the times of British India and after independence. The other object at the same time is to protect them from urban influences so that they may be able to conserve their culture and way of life and are not exposed to exploitation by the advanced or socially and economically powerful sections of the society.

37. At the Bar it was argued that such excess policy of reservation is bound to create a bad blood between the two classes and would be a serious deterrent to bring such oppressed classes into the main stream of democratic life. There are arguments for and against this. In the matters of policy the best judges are the Legislators who are closer to the society and represent them. They have a study of the society and have advantage of reports based on sociological surveys made by experts. They better understand the needs of the society and the various sections forming it. It is not for this Court to enter into this forbidden arena and lay down a policy of reservation. The argument advanced on behalf of the petitioners only show that the attitude of the members of the advanced sections of the society towards castes and tribes continues to be more of competition than compassion. The reservation in various walks of life made in their favour for the last 50 years of the independence has not been successful in improving their socio-economic condition and have not made them effective participant in the democratic process. The necessity is still felt by the legislators in making special provisions for them in the Constitution and the laws to ensure their effective participation atleast in the local self Government institutions as a first step to give them due share of governance in the Assemblies of the States and the Parliament. The argument that the policy of reservation would segregate them rather than assimilate them with the common stream is one for the legislator to consider on the basis of existing social situation. In the matters of policy wisdom of legislature cannot be questioned or the policy laid down cannot be upset by the Court which is ill equipped to deal with the subject.

38. When the policy of reservation is based on proportionate population of the reserved classes at various levels of the State, merely on stray instances in one or the other block, it cannot be held that the whole policy of reservation is bad and the reservation is in excess of 50%. The ceiling of 50% made applicable to public services to maintain a level of efficiency of administration cannot be made applicable when the Constitution permits reservation on the basis of proportionate population of reserved categories. The policy has a benevolent aim of giving them training and chance of participating in Local Self Government being the lowest units of democratic institutions. The challenge, therefore, on the ground that the reservation in favour of categories in excess 50% is bad, therefore, fails.

Alleged 100% reservation of seats of Chairpersons in Scheduled Areas

39. On behalf of the petitioners very forcefully it is contended that, in all events 50% reservation of seats of Chairpersons for reserved categories in Scheduled Areas is totally unsustainable and unconstitutional it being arbitrary under Article 14 of the [Constitution of India](#). Such reservation policy totally denies Right of Franchise to other communities in the Scheduled Areas who in many areas in population are far in excess than the reserved category Scheduled Tribes. Reliance is placed on Dr. Chakardhar Paswan v. State of Bihar and Ors. [(1988) 2 SCC 214] and S.R. Murthy v. State of Karnataka (J.T. 1999 (8) S.C. 525). It is contended that even in service jurisprudence reservation of single post is held to be bad by the Supreme Court as reservation contemplates plurality of posts.

40. On behalf of the State it has been stated that such reservation for Chairpersons in favour of Tribes has been made as a result of constitutional compulsions under Article 244 read with 5th Schedule and the Central Act No. 40 of 1996 enacted in exercise of powers of Parliament under Article 243M(4)(b) in Part IX of the Constitution. On behalf of Union of India (as respondent No. 1) in its return reference is made to the report of the committee of M.P.s and Experts known as Bhuria Committee which after survey of Tribal Areas and their socio economic conditions made certain recommendations. The relevant extract of the report of the said committee which resulted in 73rd Constitutional amendments and the resultant insertion of Part IX and IX A in the [Constitution of India](#) reads as under :--

'Tribal life and economy, in the not too distant past, bore a harmonious relationship with nature and its endowment. It was an example of sustainable development. But with the influx of outside population, it suffered grievous blows. The colonial system was established on the basis of expropriation of the natural and economic resources of tribal and other areas in the country. Although, theoretically, there has been difference in the approach after the departure of the colonial masters from Tribal areas, in practice, the principles enunciated in Article 39 and other Directive Principles of State Policy have to be allowed more rigorously. On account of their simplicity and ignorance, over the decades the tribals have been dispossessed of their natural and economic resources like land, forest, water, air, etc.. The dispossession has not been confined to that through private parties. For the purpose of promotion of general economic development projects, the State also has been depriving them of the basic means of livelihood. These processes have been operative since a long time causing human misery and socio-economic damage. No reliable picture is yet available, for instance, we are not seized on the total quantum of land alienated from the tribals both on private and State account nor the number of families, clans or Tribes involved. This has compelled some to perceive development as an agent of destruction. But since planned development has been an article of faith with us, it has to be ensured that implementation of the policies and programmes drawn up in tribal interest are implemented in tribal interest. Since, by and large, the politico-bureaucratic apparatus has failed in its endeavor, powers should be developed on the people so that they can formulate programmes which suit them and implement them for their own benefits.'

41. Justifying reservation of not less than 50% of Scheduled Tribes in the Scheduled Areas and 100% reservation of Chairpersons, in the return of Union of India as respondent No. 1 it is stated thus :

'The law laid down by the Apex Court in the case of Indra Sawhney fixing reservation of not more than 50% of total posts do not squarely apply in the instant case as the provisions of reservation in Panchayats for Scheduled Tribes in Schedule V Areas have been made so that they can safeguard and preserve their traditions and customs, their cultural identity and community resources. Articles 330 and 332 of the [Constitution of India](#) envisage a proportional representation for election in the Parliament and State Assemblies, without mentioning any outside limit. In any case, a proportional representation is inherently incapable of placing a minimum or maximum outline which necessarily depends on the constituent of the electorates. The provision of reservation for Scheduled Tribes in Schedule V Areas have been made so that they can safeguard and preserve their traditions and customs, their cultural identity and community resources.

The Fifth Schedule in the Constitution provides for administration and control of Scheduled Areas and of Scheduled Tribes. These provisions also moderate, modify and indeed curtail many of the provisions in the Constitution. It is important to note that these special provisions have been made because of the peculiar features of the Scheduled Areas, the foremost of which are the traditions of the people and their vulnerability vis-a-vis non-tribes within Scheduled Areas as well as the inhabitants of non-Schedule V Areas. It is this realisation which restrained the 73rd Amendment of the Constitution from being applied in toto in the Scheduled Areas and in making special provisions in Act, 40 of 1996. In view of the problems among tribal people like growing indebtedness, land alienation, deforestation, ecological degradation, displacement on account of industrialisation and modernisation, excise policy, alcohol and drug addiction, it has to be ensured that access to natural resources in Tribal Areas remains with the tribal people and they are suitably empowered to utilise and to exercise control over them for sustainable development. Such empowerment has been contemplated in Act, 40 of 1996 by providing reservation for Scheduled Tribes not less than 50% of seats at all levels of Panchayats and 100% of the posts of Chairperson at all the three levels in the Schedule-V Areas. As such Section 129-E is not unreasonable and arbitrary.'

42. In the course of arguments learned counsel appearing for the Union of India also invited our attention to the contents of the Constitutional debates mentioned in the celebrated work of B. Shiva Rao in his book 'Framing of the India's Constitution - A Study' at pages 569 to 577. A reading of the relevant pages of the book shows that even in British India Simon Commission had found it necessary that to certain areas inhabited by tribals living in Hills and Jungles away from the Urban population, all laws for urban population need not be applied and they deserve a special and favourable treatment for up-liftment of their conditions and to protect them from exploitation. The object of the Government policy right from British period in India throughout has been mentioned in the Book of B. Shiva Rao :--

'To give the primitive inhabitants of these areas security of land tenure, freedom in the pursuit of their traditional means of livelihood, and a reasonable exercise of their ancestral customs : not self-determination or rapid political advance, but experienced and sympathetic handling and protection from economic subjugation by their neighbours. The Commission realized that perpetual isolation from the main currents of progress would not be a satisfactory long term solution : and that it would be necessary to educate these people ultimately to become self-reliant. In this direction practically nothing had been achieved. The Commission observed :

The responsibility of Parliament for the backward tracts will not be discharged merely by securing to them protection from exploitation and by preventing those outbreaks which have from time to time occurred within their borders. The principal duty of the administration is to educate these peoples to stand on their own feet, and this a process which has scarcely begun.'

(underlining by the Court for supplying emphasis)

43. Even after 50 years of independence the aim set up in the report of the Simon Commission in British India to make the people of Scheduled Areas to stand on their own legs, could not be realised. Neither they could be made literate nor their economic condition has been improved to the entire satisfaction of the Government. They are found still incapable competitively to take part effectively in the democratic processes and self Government institutions. This is evident from the fact that the Parliament has felt it necessary to introduce Part-IX and IXA in the Constitution to encourage and to certain extent ensure their participation in the Local Self Government like Panchayats and Municipal bodies by providing for them partial reservation of seats in non-Scheduled Areas and almost complete reservation in Scheduled Areas.

44. On behalf of the petitioners it was urged that in Scheduled Areas the principle of proportionate representation based on population of reserved categories has been given a complete go by. Regardless of the population figures large scale reservations in favour of categories for election as members and for Chairpersons in Panchayats at all levels has been provided which is not only a serious inroad but almost a

complete deprivation of the democratic rights of the majority communities living in the Scheduled Areas. The criticism levelled is that in Scheduled Areas virtually minority is allowed to rule in the local institutions over the majority. Such reservation, it is argued, is totally violative of concept of equality guaranteed by Article 14 of the Constitution.

45. So far as the high percentage of reservation exceeding 50% for members and 100% reservation for Chairpersons in Scheduled Areas is concerned, it is supportable even on the touch stone of Article 14 of the Constitution. It is a protective discrimination permissible on a reasonable classification of different sections of the society into more oppressed-backwards and the forwards. The peculiar situation of the inhabitants of the Scheduled Areas whose conditions have to be improved to educate them in the local Government, a step towards an effort to achieve their assimilation in the normal stream of democratic life at par with the advanced and the forward sections of the society justifies such classification. In the Scheduled Areas in reality if an aboriginal has to contest an election against a member of the forward section of the society, the contest would be totally unequal as of a weak and ignorant against wealthy and powerful. In a contest of this nature the weak and ignorant hardly can get a chance to become a member and in any case it would be impossible for him to reach to the helm of the institution as Chairperson. If he by chance becomes a Chairperson in the Panchayat consisting of elected members from advanced sections of the society and the members are in majority, it would be well high impossible for the Chairperson of the reserved category to effectively function and to save his elected status. The necessity, therefore, is that the Chairperson should be from the reserved category so that he is in a position to effectively function without inhibition and threat of no confidence motion against him to remove him from his office. The constitutional history as traced in the Book of B. Shiva Rao at page 175 of his celebrated work, supports the present reservation policy on the basis of up to date survey of the socio-economic condition of people inhabiting those areas. At the time of framing of the Constitution the sub-committee observed :

'The exclusion and partial exclusion of areas kept in view the possibility of 'obtaining convenient blocks of territory with readily recognizable boundaries susceptible of special administrative measures'. But these areas did not by any means cover the entire population of tribal origin and in many cases represented only a comparatively small proportion of the aboriginal population, the rest of them being scattered over 'non-excluded' areas. In these areas, although small concentrations of the aboriginal population could be distinguished in some of them, this population was for the most part interspersed with the rest of the population. The sub-committee felt that its recommendations should not leave out of consideration such a large population which in many respects was in a very backward condition. The sub-committee's proposals therefore had a double objective. In the first place, they formulated recommendations for the delimitation of areas, containing a preponderance of aborigines or very backward people which were of sufficient size to make possible the applicable to them of special legislation and which were susceptible without inconvenience to special administrative treatment. In addition the sub-committee recommended that the members of the aboriginal and other backward tribes, whether they lived in these areas or outside, should be treated 'as one whole' as a minority and given special representation in the Legislatures in proportion to their number.'

46. The object behind creation of Scheduled areas for application of laws to the same by the President or Parliament or the Governor, as the case may be, with 'such exceptions and modifications' was not based purely on their number or population in the Scheduled Areas. The Scheduled areas could have been declared on the basis of their presence in certain tracts or certain pockets which are remote and unapproachable. Their way of life is primitive and much different from the lives of the other sections of the Society. In identification of Scheduled Areas and declaring them as such for application of laws with 'modifications and exceptions' and in making a policy of reservation for them, the principle of proportionate representation cannot strictly be applied. The decision of the Supreme Court in *R.C. Poudyal v. Union of India and Ors.* (shortly referred to as the Sikkim case) [(1994) Supp. (1) S.C.C. 324] to the great extent supports the view that we wish to take in upholding the large scale reservations of seats of members and Chairpersons in Panchayat for reserved categories and Tribes in Scheduled Areas. In the Sikkim case of the Supreme Court reservation of 12 seats for

Sikkimis of Bhutia and Lepcha origin in State Legislative Assembly, regardless of their percentage of population, was up-held on the ground that it is justified due to historical considerations and policies as the Sikkimis of Bhutia and Lepcha origin deserve special treatment. It was held that departure from applying the doctrine of proportionate representation was necessary to admit such section of population of the strategies border State into the Union. The following observations of Venkatachaliah, J., in Sikkims case expressing the majority opinion are pertinent :

'The departures are not such as to negate fundamental principles of democracy.....If reservation is made by Parliament for only one section it must, by implication, be construed to have exercised the power respecting the other sections in a negational sense. The provision really enables reservation confined only to a particular section.'

47. We respectfully follows the above observations in up-holding more than 50% reservation in categories including Scheduled Tribes in Scheduled Areas and 100% reservations for Chairpersons in those areas. In our view we are also fortified by an earlier decision of a Division Bench of this Court in W.P. No. 4432/94 decided on 2-9-95 that if the reservation was considered in the context of reservation in the entire State, it was much less.

48. On behalf of the petitioners the following observations of the Sikkim case have been heavily relied to distinguish the said case :--

'It is true that the reservation of seats of the kind and the extent brought about by the impugned provisions may not, if applied to the existing States of the Union, pass the constitutional muster. But in relation to a new territory admitted to the Union, the terms and conditions are not such as to fall outside the, permissible constitutional limits. Historical considerations and compulsions do justify inequality and special treatment.'

(underlining by Court for supplying emphasis)

49. In our considered opinion the above quoted observations instead of supporting the case of the petitioners reinforce the conclusion reached by us that inhabitants in Scheduled Areas 'on historical considerations and compulsions do justify inequality and special treatment' compared to the advanced sections of the society. The Union Government thought it necessary to set up a Bhuria Committee to go into the question of laying down policy for Scheduled Areas and the State of M.P. found it necessary to set up Mahajan Commission to identify Other Backward Classes. This clearly goes to show that Government both at the centre and State still fell it necessary that special treatment deserves to be extended to the backward sections of the Society including Scheduled Castes, Tribes and Women giving them reservations to bring them as active participants in the democratic institutions.

50. There is also a fallacy in the argument that because the office of Chairpersons in all Panchayats in Scheduled Areas is reserved, for the reserved category, there is 100% reservation. Justification of reservation is shown not on the basis of a particular Panchayat or Panchayats but on over all reservations of Chairpersons in the whole of State. In the return jointly submitted by State and Union of India (respondents 2 & 3). In paragraph 19 of the return it is stated as under :--

'That apart from this, the answering recruitments submit that even as per Mahajan Commission's report and the Survey conducted by the respondents, it is found that the population of OBCs is evenly spread out in the entire State of M.P. that is to say they are present everywhere in the Urban and rural population. As broadly speaking they belong to such category of persons as Hawkers, farm labourers, washerman, blacksmith etc., and are an essential ingredient of the social set-up at the village level, therefore the State Legislature in its wisdom has decided to provide a flat rate of 25% reservation for OBCs all over the State. As far as reservation for OBCs in Scheduled Area is concerned, it is respectfully submitted that as per the provisions of Section 29 (e) after reserving 50% of the seats for Scheduled Tribe and reserving seats for Scheduled Caste in proportion to their population and if combined reservation of both these categories does not exceed 50% then

reservation for OBC has been provided for to the extent and limit that the combined reservation of all three categories does not exceed 75%. It is respectfully submitted that looking to the fact that the over all spread out population of OBC in the State of M.P. as nearly 50% and the constitutional mandate that reservation have to be made in proportion to the population of the reserved community the provision for reservation for the OBC is within reasonable limit and in accordance with the constitutional Scheme and therefore, deserves to be upheld. The answering respondents submit that in view of the above mentioned facts and circumstances, it is abundantly clear that the reservation made by the answering respondent is not in excess and is infact as per the constitutional scheme and the parliamentary enactment and therefore deserves to be upheld and does not deserve to be interfered with.'

51. It would thus show that on the State level the total reservation in favour of reserved categories including OBC no where exceeds 50%. In Paragraph 21, for Scheduled Areas specifically the averment made is as under :-

'The answering respondents submit that though reservation in favour of S.C. and S.T. in Scheduled Area is in excess of 50% as per the constitutional and Parliamentary mandate however when this reservation is judged at State level, in fact combined reservation for S.C. and S.T. is also well within 50% when taken at State level, i.e., 44%.'

52. We, therefore, do not find that the policy of reservation which allows the Scheduled Caste, Tribes, OBC and Women total percentage of 44% in the whole of State is so high as to deserve it being described as arbitrary and excessive. The attempt of the State and the Union of India is to encourage participation in the Local Self Government of hither-to oppressed classes i.e., Scheduled Castes, Scheduled Tribes, and weaker class i.e., OBCs and Women who are incompetent to contest election with the educated and wealthy sections of the society called the advanced or forward classes.

53. We, therefore, reject the second ground of challenge with regard to alleged excess reservations of seats for members and Chairpersons in Scheduled Areas.

On unworkability of method of reservation indicated in Section 4 (g) 1st and 2nd Proviso

54. The grounds subsidiary to the ground of challenge to policy of reservation for members and Chairpersons in Scheduled Areas is based on the interpretation of the provisions of Section 4 (g) First and Second Proviso of the Central Act. The Section needs reproduction in full for appreciating the arguments advanced on behalf of the petitioner :

'4. Exceptions and modifications to Part IX of the Constitution :--Notwithstanding anything contained under Part IX of the Constitution, the Legislature of a State shall not make any law under that part which is inconsistent with any of the following features, namely :--

(a) (b) (c) (d) (e) (f)

(g) The reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in that Panchayat for whom reservation is sought to be given under Part IX of the Constitution :

Provided that the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats :

Provided further that all seats of Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes.'

55. On the contents of the above Sub-clause (g) of Section 4, the arguments advanced is that the main provision indicates reservation of seats for communities in proportion to their respective population and the said principle of proportionate representation in the main provision of Sub-clause (g) is nullified by the first

and second proviso where the reservation for Scheduled Tribes is provided to be not less than 50% and 100% reservations for Chairpersons. It is submitted that there is inter se conflict between the main proviso under Clause (g) and the two provisos thereunder and, therefore, the whole provision is absurd and unworkable.

56. The above argument appears no doubt attractive but on careful scrutiny is found to have little substance. The main provision under Clause (g) uses expression 'communities' but the work community has to be understood as meaning as Scheduled Castes and Scheduled Tribes only as the whole Central law is in the nature of 'the exceptions and modifications' with which Part IX and IXA of the Constitution has to be made applicable to the Scheduled Areas. Reading thus the principle of proportionate representation for working out the reservation based on population of tribes has to be done in a manner so that in any case 50% of total seats shall be reserved for them and the remaining seats would only be open and all seats of Chairpersons has also to be reserved for them. We do not consider it necessary to read and apply the proviso first before applying the main provision for working out the reservation as is sought to be done in reply on behalf of Union of India. On reading of the provision in the manner indicated by us above, as a provision laying down exceptions and modifications for application of Part IX to Scheduled Areas, we find no inherent or inner conflict between the main provision and the two provisos in Clause (g) of Section 4.

Validity of Scheduled Areas (States of Bihar, Gujarat, M.P. and Orissa), 1997 on the grounds that it has become stale and obsolete in the absence of up to date survey of the population in the bifurcated territory of the districts in State of M.P.

57. In challenging the Presidential Order of 1977 declaring the Scheduled Areas in the State of M.P., on behalf of the petitioners it is contended that in M.P. new districts have been constituted and several Scheduled Areas no longer form part of said districts. After lapse of 22 years the areas which were Scheduled Areas do not justify to be classified as such because of the migration of Tribal population from those areas and assimilation of other population in those areas. It is submitted that even after 22 years no sociological survey has been made to find out the existing social conditions to continue treating such area's as Scheduled Areas for extending them special treatment and protection in the matter of reservation of more than 50% seats for members and 100% seats for Chairpersons. It is submitted that the presidential order of 1977 which once reflected the factual reality deserve to be quashed on the ground that it has become stale and old and does not reflect the real sociological conditions. Reliance is placed on Motor General Traders and Anr. v. State of Andhra Pradesh (A.I.R. 1984 S.C. 121) and Malpe Vishwanath Acharya and Ors. v. State of Maharashtra and Anr. [(1998) 2 SCC 1]. In the case of Motor General Traders (supra) Andhra Pradesh Rent Legislation was struck down on Article 14 on the ground that there was no valid justification to apply the Andhra Pradesh Act to a building which is 27 years old and not to apply it in the case of a building which is 26 years old. This anomaly was created because under Section 32 (b) of the Act all buildings constructed on or after 26-8-57 were exempted from the application of the Act where other buildings were being governed by the Act, creating a discriminatory situation for the owners of the building. That case is totally distinguishable on the fact-situation mentioned above. In the case of Malpe Vishwanath Acharya (supra) Bombay Rent Legislation was similarly struck down on the ground that standard rent fixed under the Rent Act of 1947 does not do away with the principle of pegging down of the rent at a rate when the premises are first let out. The Legislation was not made up to date despite extra ordinary increase in the cost of maintenance and fall of the value of money. It is in that context that the Supreme Court said that the Rent Legislation had become obsolete and hence discriminatory. The following observations of the Supreme Court have to be read in that light on which heavy reliance was placed on behalf of the petitioner :

'In so far as social legislation, like the Rent Control Act is concerned, the law must strike a balance between rival interest and it should try to be just to all. The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society. When there is shortage of accommodation it is desirable, nay, necessary that some protection should be given to the tenants in order to ensure that they are not exploited. At the same time such a law has to be revised periodically so as to ensure that disproportionately larger benefit than the one which was intended is not given to the tenants. It is not as

if the Government does not take remedial measures to try and offset the effects of inflation.....The legislature is not shackled by the same constraints as the Courts of law. But its power is coupled with a responsibility. It is also the responsibility of the Courts to look at legislation from the altar of Article 14 of the Constitution. This article is intended, as is obvious from its words, to check this tendency of giving undue preference to some over others.'

58. So far as any necessity of change of Scheduled Areas is concerned, the Union of India has already in its return referred to the recommendations of the Bhuria Committee which resulted in the constitutional amendment and introduction of Chapter IX and IXA in the Constitution in the year 1997. It cannot, therefore, be said that Government was totally oblivious of the present days socio-economic conditions of the inhabitants in the Scheduled Areas declared in 1977. Such criticism has no foundation on facts. So far as territorial bifurcation because of creation of new districts in State of M.P. is concerned, Clause 3 of the Presidential Order, 1977 takes care of it by providing thus :--

'Any reference in preceding paragraph to a territorial division by whatever name indicated shall be considered as a reference to the territorial division of that name as existing at the commencement of this order.'

59. In this respect, it is relevant to mention contents of Paragraph 5.13, 5.15 and 8 (iii) of the return of respondent No. 1 which factually and legally meet the attack to the Presidential Order and successfully repel it. They read as under :--

'5.13. The territorial bifurcation resulted in creation of new revenue district, tahsil, etc., does not change the status of Scheduled Area not the percentage of Tribal people in an area is the only factor to decide whether the area is included in Scheduled Area or not. The Tribal people have been facing a lot of problems like, indebtedness, land alienation, deforestation, ecological degradation, displacement on account of industrialisation and modernisation excise policy, alcohol and drug addiction. In view of this the Parliament in its wisdom envisaged that access to natural resources in tribal areas shall remain with the tribal people and they shall be suitably empowered to utilise and to exercise control over them for sustainable development. Such empowerment has been contemplated in Act 40 of 1996 by providing for reservation for Scheduled Tribes not less than 50% of seats at all levels of Panchayats and 100% of the posts of Chairpersons at all the three levels in the Schedule-V Areas.

5.15. Clause 3 of the Presidential Order of 1997 provides that when a new territorial division is created after territorial bifurcation or division in the Scheduled Areas shall continue to be known as Scheduled Area. A new territorial division in Scheduled Area created after bifurcation or division can not be treated as non-Scheduled Area until and unless such newly created area is declassified by a Presidential Order. It is denied that concentration of tribal people in an area is the only criteria for classification that area as Scheduled Area. Special provisions for Scheduled Areas have been made because of the peculiar features of these areas, the foremost of which are the traditions of the people and their vulnerability vis-a-vis non-tribes within Scheduled Areas as well as the inhabitants of non-Scheduled Areas. As such Clause 3 of the Presidential Order 1997 is not ultra-vires.

8 (iii). As per Scheduled Areas (States of Bihar, Gujarat, M.P. and Orissa) Order, 1977, Pushparajgarh and Sohagpur Tahsils and Jaisingh Nagar Community Development Block of Beohari Tahsil in Shahdol district come under the Scheduled Areas. The block Anooppur was initially included in Tahsil Sohagpur but it was curved out in a new tahsil and block Anooppur. As such this new block of Anooppur will continue to be included in the Scheduled Area in the State. The provision of reservation under Section 129-E of M.P. Panchayat Raj Adhiniyam, 1993 will be applicable in the Block Anooppur.'

The petitioners have not come out with all facts and figures to show that because of the bifurcation of the areas or because of the migration of the tribal population, the areas no longer deserve to be continued to be declared as Scheduled Areas.

60. Learned counsel on behalf of the petitioner has pointed out some instances such as Ghoradongri Block of Betul district, Anoopur Block of Sohagpur Tahsil in Shahdol district to point out that a very small percentage of tribal population is living there. In Ghoradongri in certain Panchayats there are no registered voters of Scheduled Tribes to permit more than 50% reservations for members and exclusive reservations for the posts of Sarpanch. Even if the instances quoted are factually correct what is relevant is not the number of registered voters but their population which includes non-voters. For such stray and few cases, the provisions of the Panchayat Act and the Rules provide a safeguard. The matter was required to be brought to the notice of the Authorities when public notice was issued for reservation of wards and seats. The provision of the Act also states that in a Panchayat if there are no Registered voters of the categories, the seat would be declared as open seat for all. See Sub-section (7) of Section 13 which reads as under :--

'13. Constitution of Gram Panchayat.--

(1) (2) (3) (4) (5) (6)
.....(7) The wards which have no population of Scheduled Castes, Scheduled Tribes or Other Backward Classes shall be excluded for allotment of seats reserved for Scheduled Castes or Scheduled Tribes or Other Backward Classes as the case may be.'

61. Similarly provisions correspondingly are to be found in Panchayats in higher levels in Sections 23 and 30 (6) of the Act.

62. There is absolutely no force in the challenge made to the Presidential Order of 1977.

63. With respect, we are unable to subscribe to the views expressed by the Full Bench decision in the Patna High Court (supra). Instead in our considered opinion the decision of the Supreme Court in Sikkim's case (supra) is nearer to the issues raised before us.

64. Before concluding we may make it clear that so far as ground in common urged to challenge the provisions of reservations under the Municipal Corporation Act, the Municipalities Act and of Panchayat Act are concerned, including in relation to the alleged flat rate of reservation at 25% for Other Backward Classes, we have expressed our opinion with detailed discussions of the grounds in Writ Petition No. 4881/1999 (Tulsiram Jatav v. Union of India and Ors.) in which a batch of petitions concerning the Corporation and Municipal Elections has been decided.

65. Consequent to the detailed discussion aforesaid, the petitions fail and are hereby dismissed but in the circumstances without any order as to costs.

S.K. Kulshrestha, J.

1. While I fully agree with my learned Brother D.M. Dharmadhikari, J., that within the scheme of Part IX & XI-A of the Constitution, the State Laws providing for reservation for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women in all categories, including the unreserved seats, are constitutionally not infirm and based on proportionate representation there can be reservation beyond the normally acceptable limit of 50%, yet I find it necessary to observe that it should normally be in exceptional cases that reservation should exceed 50% on grounds strictly justifiable in law. The protection should not be over-extended or over-stretched to transgress the limits as a matter of course as it is necessary to bear in mind that a law which is good in the present context may tend to become discriminatory over the years and render itself unconstitutional.

2. Provision for reservation of twenty-five per cent, as nearly as possible, has been made in favour of the Other Backward Classes in Panchayats and Municipalities, in cases where reservation of seats/wards does not exceed fifty per cent. This reservation has been held by us to be the upper limit in favour of Other Backward Classes and, therefore, the law as interpreted, provides adequate latitude in its implementation to keep the reservation within bounds aforesaid at least in the areas where in keeping with the constitutional imperatives

enshrined in Part IX & IX-A, the reservation for Scheduled Castes and Scheduled Tribes is much less and the area is not a Scheduled Area governed by the special provisions contained in the Fifth Schedule to the Constitution. It is by no means to suggest that adequate steps should not be taken for the uplift of the backward classes who undoubtedly need protection, yet the reservation should not create such an imbalance as to lead to disharmony at any level of self-governance.

3. Agreeing with my learned Brother, these petitions are dismissed with the above observations.

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