SUPREME COURT OF INDIA

Bhanumati

Vs.

State of Uttar Pradesh through its Principal Secretary and Ors.

(G. S. Singhvi and Asok Kumar Ganguly JJ.)

04.05.2010

JUDGMENT

ASOK KUMAR GANGULY, J.

1. These appeals have been filed assailing the judgment elated 6th February, 2009 by the Lucknow Bench of Allahabad High Court whereby the High Court upheld the Constitutional validity of U.P. Panchayat Laws (Amendment) Ordinance, 2007 (U.P. Ordinance 26 of 2007) which later on became U.P. Panchayat Laws (Amendment) Act, 2007 (U.P. Act 44 of 2007). As the validity of the said amendment was in issue in all the appeals, they were heard together and are decided by this judgment.

2. In the course of argument before this Court factual controversies were not very much raised. The appeals were mostly argued on the legality of the amendment from various angles which will be considered hereinabelow.

3. The administration of Kshetra Samities and Zila Parishads in Uttar Pradesh (hereinafter, UP) is governed by Uttar Pradesh Kshetra Panchayats and Zila Panchayats Adhiniyam, 1961 (hereinafter, '1961 Act'). Prior to that there was United Provinces Panchayat Raj Act, 1947. The 1961 Act suffered several amendments in 1965, 1976, 1990, 1994, 1998 & 2007 by U.P. Act 16 of 1965, U.P. Act 37 of 1976, U.P. Act 20 of 1990, U.P. Act 9 of 1994 and U.P. Act 44 of 2007 respectively. The 1994 amendment by U.P. Act 9 of 1994 was in respect of both the 1947 and 1961 Acts. That amendment was made in keeping with the objectives incorporated in the Constitution (73rd Amendment) Act, 1992.

4. Several aspects of the amendment act were challenged. Firstly, it was challenged that the offices of "Up-Pramukh", "Senior Up-Pramukh", "Junior Up-pramukh" and "Upadhyaksha" have been omitted by Section 9 of the Amendment Act, being U.P. Act 44 of 2007 (hereinafter, the Amendment Act).

5. Similarly amendment was made to United Provinces Panchayat Raj Act, 1947 by Section 2 of the Amendment Act.

6. For a proper appreciation of the effect of amendment, Section 2 of the amendment Act is set out:

In the United Provinces Panchayat Raj Act, 1947, hereinafter in this chapter referred to as the principal Act, the word

"Up-Pradhan" wherever occurring including the marginal headings, shall be omitted.

7. There has been a general amendment to 1961 Act by Section 9 of the amendment Act. Section 9 is therefore set out:

In the Uttar Pradesh Kshettra Panchayats and Zila Panchayats. Adhiniyam, 1961 hereinafter in this chapter referred to as the principal Act, the words "Up-Pramukh", "Senior Up Pramukh", "Junior Up Pramukh" and "Upadhyaksha" wherever occurring including the marginal headings and Schedules, shall be omitted.

8. Challenging the said amendment, it was urged by the learned Counsel that by bringing about such amendment, the essence of the Panchayati principles has been eroded and provisions have been made for executive interference.

9. The learned Counsel further urged that such amendment has been made in total contravention of the principle enshrined in Part IX of the Constitution. It was urged that Part IX of the Constitution provides for a three tire structure of Panchayat administration and the reasons for such a three tire is to minimize the scope of executive interference. It was urged if the Pradhan or Pramukh of the unit of governance in Panchayat is, for any reason, removed or disqualified, from running the administration, the up-pradhan or the up-pramukh, prior to such amendment could have taken over, whereas the abolition of those offices will pave the way of executive interference.

10. Challenging the amendment it was further urged that there is no concept of no-confidence motion in the detailed constitutional provision under Chapter IX of the Constitution. Therefore, the incorporation of the said provision in the statute militates against the principles of Panchayti Raj Institution. Apart from that the substitution of the provision 'more than half' in place of 'not less than two thirds' and the words 'one year' in place of 'two years' in Sections 15 and 28 of the amendment Act further dilutes the principle of stability and continuity which are main purposes behind the object and reasons of the Constitutional amendments in Part IX of the Constitution.

11. The exact provisions of the aforesaid amendments by the impugned amendment Act are as follows:

In Section 15 of the principal Act,-

(a) in Sub-section (11) for the words "not less than two thirds" the words "more than half" shall be substituted.

(b) In Sub-section (12) and Sub-section (13) for the words "two years" the words "one year" shall be substituted.

In Section 28 of the principal Act-

(a) in Sub-section (11) for the words "not less than two thirds" the words "more than half" shall be substituted.

(b) in Sub-section (12) and Sub-section (13) for the words "two years" the words "one year" shall be substituted.

12. In order to appreciate these submissions this Court may examine the genesis of the Constitutional provisions about Panchayat prior to 73rd Amendment of the Constitution.

13. Prior to the Constitution (73rd Amendment) Act, 1992, the Constitutional provisions relating to Panchayat was confined to Article 40. Article 40, one of our Directive Principles, runs as under:

40. Organization of village Panchayats - The State takes steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self government.

14. The Constitution's quest for an inclusive governance voiced in the Preamble is not consistent with Panchayat being treated merely as a unit of self-Government and only as part of Directive Principle.

15. If the relevant Constituent Assembly Debates are perused one finds even that Constitutional provision about Panchayat was inducted after strenuous efforts by some of the members. From the Debates we do not fail to discern a substantial difference of opinion between one set of members who wanted to finalize the Constitution solely on the Parliamentary model by totally ignoring the importance of Panchayat principles and another group of members who wanted to mould our Constitution on Gandhian principles of village Panchayat.

16. The word 'Panchayat' did not even once appear in the draft Constitution. Graneville Austin in his treaties 'Indian Constitution: Corner Stone of a Nation' (Oxford) noted that the drafting Committee did not even discuss in its meetings the alternative principles of Gandhian view of panchayat. The draft Constitution was published on 26th February, 1948. (See page 34 in Austin)

17. One of the strongest critics of the draft Constitution was Dr. Rajendra Prasad and he opined that "the village has been and will even continue to be our unit in this country."

18. Subsequently other members like M.A. Ayangar and N.G. Ranga also suggested some amendments to the draft Constitution and both harped on the introduction of Panchayati Raj principles. Their arguments quoted by Graneville Austin, were on the following lines:

The State shall establish self-governing Panchayats for every village or a group of villages with adequate powers and funds to give training to rural people in democracy and to pave the way for effective decentralization of political and economic power. (Page 36)

19. Mr. Ayangar expressed his views very strongly by saying "Democracy is not worth anything, if once in blue moon individuals are brought together for one common purpose, merely electing X, Y

and Z to the assembly and then disperse."

20. Somewhat similar opinion was expressed by S.C. Mazumdar and his views were, "the main sources of its (India's) strength lies in 'revitalized' villages but he accepted that for real purpose a strong unifying central authority is a necessity."

21. The opinion expressed by S.C. Mazumdar thus struck a balance between Gandhian principles and the parliamentary model of the Constitution.

22. However, under the strong pressure of criticism from various members, the Assembly rather grudgingly accepted that an article concerning the Panchayat should be included in the Directive Principles. On 22nd November, 1948, K. Santhanam moved the official amendment and that is how Article 40, in its present form, came into existence. The amendment was accepted by Dr. Ambedkar.

23. About this article, Garneville Austin commented:

The incorporation of Article 40 in the Constitution has proved to have been less a gesture to romantic sentiment than a bow to realistic insight. And the aim of the article has long been generally accepted: if India is to progess, it must do so through reawakened village life.(Page 38 Supra)

24. Participating in the -debates and supporting the amendments, some of the members made comments which are still very pertinent in appreciating the roots of our democratic policy on which is based the edifice of our Constitutional democracy.

Sir in my opinion the meaning of this Constitution would have been nothing so far as crores and crores of Indian people are concerned unless there was some provision like this in our Constitution. There is another point also viz., for thousands and thousands of years the meaning of our life in India as it has been expressed in various activities, was this that complete freedom for every individual was granted. It was accepted that every individual had got full and unfettered freedom; but as to what the individual should do with that freedom there was some direction. Individuals had freedom only to work for unity. With that freedom they are to search for unity of our people. There was no freedom to an individual if he works for disruption of our unity. The same principle was also accepted in our Indian constitution from time immemorial. Every village like organic cells of our body was given full freedom to express itself but at the same time with that freedom they were to work only to maintain and preserve the unity of India.

Sir our village people are so much familiar with this system that if today there is our Constitution no provision like this they would not have considered this as their own Constitution or as something known to them, as something which they could call their own Constitution or as something known to them, as something which they could call their own country's Constitution.

Therefore, Sir, I am glad and I congratulate both my friend the Hon'ble Mr. Santanam and the Hon'ble Dr. Ambedkar on moving this amendment as well as for acceptance of the same. Sir, I commend this.

(Shri Surendra Mohan Ghosh: West Bengal: General)

25. The opinion of Seth Govind Das from Central Provices and Berar is equally relevant:

Ours is an ancient, a very ancient country and the village has had always an important position here. This has not been so with every ancient country. In Greece, for instance, towns had greater importance than villages. The Republics of Athens and Sparta occupy a very important place in the world history today. But no importance was attached by them to the villages. But in our country the village occupied such an important position that even in the legends contained in most ancient books - the Upanishads - if there are descriptions of forest retreats, of the sages, there are also descriptions of villages. Even in Kautilya's Arthashastra there are to be found references to our ancient villages. Modern historians have also admitted this fact. We find the description of our ancient village organization in 'Ancient Law' by Mr. Henry Man, 'Indian Village Community' by Baden Powell and in 'Fundamental Unity of India' by Sri. B.C. Pal. I would request the members of this House to go through these books. They will come to know from these books the great importance, the village have had in India since the remotest times. Even during the Muslim rule villages were considered of primary importance. It was during the British regime that the villages fell into neglect and lost their importance. There was a reason for this. The British Raj in India was based on the support of a handful of people. During the British regime provinces, districts, tehsils and such other units were formed and so were formed the Taluqdaris, Zamindaris and Malguzaris. The British Rule lasted here for so many years only on account of the support of these few people.

Just as Mahatma Gandhi brought about revolution in every other aspect of this country's life so also he brought about a revolution in village life. He started living in a village. He caused even the annual Congress Sessions to be held in villages. Now that we are about to accept this motion I would like to recall to the memory of the members of this House a speech he had delivered here in Delhi, to the Asiatic Conferences. He had then advised the delegates of the various nations to go to Indian villages if they wanted to have the glimpse of the real India. He had told them that they would not get, a picture of real India from the towns. Even today 80% of our population lives in villages and it would be a great pity if we make no mention of our villages in the Constitution.

26. In other representative democracies of the world committed to a written Constitution and rule of law, the principles of self Government are also part of the Constitutional doctrine. It has been accepted in the American Constitution that the right to local self-Government is treated as inherent in cities and towns. Such rights cannot be taken away even by legislature. The following excerpts from American Jurisprudence are very instructive:

Stated differently, it has been laid down as a binding principle of law in these jurisdictions that a statute which attempts to take away from a municipal corporation its power of self-Government, except as to matters which are of concern to the State as a whole, is in excess of the power of the legislature and is consequently void. Under this theory, the principle of home rule, or the right of self-Government as to local affairs, is deemed to have existed before the constitution.

(Volume 56, American Jurisprudence, Article 125.)

27. Under 73rd Amendment of the Constitution, Panchayat became an 'institution of self governance' which was previously a mere unit, under Article 40.

28. 73rd Amendment heralded a new era but it took nearly more than four decades for our

Parliament to pass this epoch making 73rd Constitution Amendment - a turning point in the history of local self-governance with sweeping consequences in view of decentralization, grass root democracy, people's participation, gender equality and social justice.

29. Decentralization is perceived as a precondition for preservation of the basic values of a free society. Republicanism which is the 'sine qua non' of this amendment is compatible both with democratic socialism and radical liberalism. Republicanism presupposes that laws should be made by active citizens working in concert. Price of freedom is not merely eternal vigilance but perpetual and creative citizen's activity.

30. This 73rd Amendment is a very powerful 'tool of social engineering' and has unleashed, tremendous potential of social transformation to bring about a sea-change in the age-old, oppressive, anti human and status quoist traditions of Indian society. It may be true that this amendment will not see a quantum jump but it will certainly initiate a thaw and pioneer a major change, may be in a painfully slow process.

31. In order to understand the purport of the 73rd Constitutional amendment in Part IX of the Constitution, it is important to keep in view the Statements of Objects and Reasons behind the amendment. Excerpts from the same are set out:

THE CONSTITUTION (SEVENTY-THIRD AMENDMENT) ACT, 1992

Statement of Objects and Reasons appended to the Constitution (Seventy-second Amendment) Bill., 1991 which was enacted as the Constitution (Seventy-third Amendment) Act, 1992-

Though the Panchayati Raj Institutions have been in existence for a long time, it has been observed that these institutions have not been able to acquire the status and dignity of viable and responsive people's bodies due to a number of reasons including absence of regular elections, prolonged suppressions, insufficient representation of weaker sections like Scheduled Castes, Scheduled Tribes and women, inadequate devolution of powers and lack of financial resources.

Article 40 of the Constitution which enshrines one of the Directive Principles of State Policy lays down that the State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-Government. In the light of the experience in the last forty years and in view of the short-comings which have been observed, it is considered that there is an imperative need to enshrine the Constitution certain basic and essential features of Panchayati Raj Institutions to impart certainty, continuity and strength to them.

32. What was in a nebulous state as one of Directive Principles under Article 40, through 73rd Constitutional Amendment metamorphosed to a distinct part of Constitutional dispensation with detailed, provision for functioning of Panchayat. The main purpose behind this is to ensure democratic decentralization on the Gandhian principle of participatory democracy so that the Panchayat may become viable and responsive people's bodies as an institution of governance and thus it may acquire the necessary status and function with dignity by inspiring respect of common man.

33. In our judgment, this 73rd Amendment of the Constitution was introduced for strengthening the

perambular vision of democratic republicanism which is inherent in the constitutional framework.

34. On a close perusal of the 73rd Constitutional Amendment, one would be tempted to say that the vision of Surendra Nath Banerjee, expressed almost a century ago, about our local self-Government has been revived.

35. From the proceeding of the Council of Governor General of India (April 1913 to March 1914) we find, Surendra Nath articulated:

...the village is the fundamental, the indestructible unit of the Indian Social system, which has survived the over-throw of dynasties and the fall of empires. Sir, our village organizations carry the mind back to the dawn of human civilization and the early beginning of local self-government. They are dead now, but the instinct is there, deep down in the national consciousness, and under the fostering care of a wise and beneficent government, such as we now have it may be revivified into a living flame. Our system of local self-government has been built up from the top. That, perhaps, was inevitable under the circumstances. But the time has now come when it should be strengthened from below and the foundations laid well and deep....

36. Unfortunately that time came very late and as late as 1993 when 73rd Amendment of the Constitution was brought about.

37. India has been and continues to be a predominantly rural country. There are 5 lakh 78 thousand 430 villages in which 74% of her people, which is about 750 million, live. Out of this village population 48% live below poverty line. Though our Constitution professes to be a democratic republic but our rural set up is largely feudal. The agrarian relationship of the majority of the people is very weak and helpless compared with few land holding families which control economic interest of larger sections of village society. Unfortunately our independence has not been able to change our political priorities and dynastic democratic pattern is the order of the day.

38. The vast majority of the rural masses still have to obey decisions taken by few people living in metropolitan centers representing an alien culture and ethos.

39. Here it may not be out of context to remember what was said by Bhagat Singh and Batukeshwar Dutta on 6th June, 1929 in their joint statement in connection with the criminal trial they faced in Crown v. Bhagat Singh. In paragraphs 7 and 8 of their joint statement, the great martyr Bhagat Singh said:

7. I, Bhagat Singh was asked in the lower Court as to what we meant by the word 'Revolution'. In answer to that question, I would say that Revolution does not necessarily involve a sanguinery strife, nor is there any place in it for individual vendetta. It is not the cult of the bomb and the pistol. By Revolution we mean that the present order of things which is based on manifest injustice must change. The producers or the labourers, inspite of being the most necessary element of society are robbed by their exploiters of the fruits of their labour and deprived of their elementary right. On the one hand the peasant who grows corn for all starves with his family, the weaver who supplies world markets with textile fabrics cannot find enough to cover his own and his children's bodies; the masons, the smith and the carpenters who rear magnificent palaces live and perish in slums; and on

the other the capitalists exploiters, the parasites of society squander millions on their whims. These terrible inequalities and forced disparity of chances are heading towards chaos. This state of affairs cannot last; and it, is obvious that the present order of Society is merry-making on the brink of a volcano and the innocent children of the Exploiters no less than millions of the exploited are walking on the edge of a dangerous precipice. The whole edifice of this civilization, if not saved in time, shall crumble. A radical change, therefore is necessary; and it is the duty of those who realize this to reorganize society on the socialistic basis. Unless this is done and the exploitation of man by man and of nations by nations, which goes marquerading as Imperialism, is brought to end, the sufferings and carnage with which humanity is threatened today cannot be prevented and all talks of ending wars and ushering in an era of universal peace is undisguised hypocricy. By revolution we mean the ultimate establishment of an order of society which may not be threatened by such a breakdown; and in which the sovereignty of the Proletariat should be recognized; and as the result of which a world-federation should redeem humanity from the bondage of capitalism and the misery of imperial wars.

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Revolution is the inalienable right of mankind. Freedom is, the imprescriptable birth right of all. The labourer is the real sustainers of society. The Soverignty of the people is the ultimate destiny of the workers.

For these ideals, and for these faith, we shall welcome any suffering to which we may be condemned. To the altar of this revolution we have brought our youth as incense; for no sacrifice is too great for so magnificent a cause.

We are content; we await the advent of the Revolution "Long live the Revolution'.

40. The ideas of Bhagat Singh, even if not wholly but substantially have been incorporated in the preambular vision of our Constitution. But the dream for which he sacrifised his life has not been fulfilled and the relevance of what he said can hardly be ignored. The ground realities, if at all, changed only marginally.

41. Let these momentous words of a convict in British India form part of the judicial record in the last Court of our Democratic Republic, the largest democracy in the world.

42. The 73rd Amendment of the Constitution, this Court thinks, is a forward step to bring about the radical changes in our social structure which inspired the struggle of Bhagat Singh, the great martyr.

43. When faced with a challenge to interpret such laws, Courts have to discharge a duty. The Judge cannot act like a phonographic recorder but he must act as an interpreter of the social context articulated in the legal text. The Judge must be, in the words of Justice Krishna Iyer, "animated by a goal oriented approach" because the judiciary is not a "mere umpire, as some assume, but an active catalyst in the Constitutional scheme" See Authorized Officer, Thanjavur and Anr. v. S. Naganatha Ayyar and Ors.: (1979) 3 SCC 466.

44. The Panchayati Raj Institutions structured under the said amendment are meant to initiate changes so that the rural feudal oligarchy lose their ascendancy in village affairs and the voiceless masses, who have been rather amorphous, may realize their " growing strength. Unfortunately,

effect of these changes by way of Constitutional Amendment has not been fully realized in the semi-feudal set up of Indian politics in which still voice of reason is drowned in an uneven conflict with the mythology of individual infallibility and omniscience. Despite high ideals of Constitutional philosophy, rationality in our polity is still subordinated to political exhibitionism, intellectual timidity and petty manipulation. The 73rd Amendment of the Constitution is addressed to remedy these evils.

45. The changes introduced by the 73rd Amendment of the Constitution have given Panchayati Raj Institutions a Constitutional status as a result of which it has become permanent in the Indian Political system as a third Government.

46. On a careful reading of this amendment, it appears that under Article 243B of the Constitution, it has been mandated that there shall be Panchayat at the village, intermediate and district levels in accordance with the provisions of Part IX of the Constitution.

47. Article 243C provides for composition of Panchayat which contemplated the post of Chairperson.

48. Article 243D provides for reservation of seats and 243E provides for duration of Panchayat. Article 243F enumerates the grounds of disqualification of membership of the Panchayat and 243G prescribes the powers, authority and responsibilities of Panchayat. There are several other provisions relating to powers of the Panchayat to impose taxes and for constitution of Finance Commission in order to review financial position of the Panchayat. The accounts of the Panchayat are also to be audited as per Constitutional mandate under Article 243J. There are detailed provisions for elections of Panchayat under Article 243K. Article 243O imposes the bar to interference by Courts in electoral matters of the Panchayat.

49. In this connection particular reference may be made to the provision of Article 243G of the Constitution which is set out below:

243G. Powers, authority and responsibilities of Panchayat.- Subject to the provisions of this Constitution the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to-

(a) the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

50. The said article is to be read in conjunction with 11th Schedule of the Constitution which came with the said 73rd Amendment.

51. To alter the planning process of the country a statutory planning body like District Planning Committee has been created. To ensure regular election to these bodies Election Commission has been created. In order to ensure people's participation Gram Sabha, a body at the grass root level, has been constitutionally planned. A perusal of the Constitution provision in the 73rd Amendment

would show that the success of the system does not depend merely on the power which has been conferred but on the responsibility which has been bestowed on the people.

52. Under the Constitutional scheme introduced by the 73rd Amendment Government State is no longer a service provider but is a felicitator for the people to initiate development on the basis of equity and social justice and for the success of the system people has to be sensitized about their role and responsibility in the system.

53. Thus the composition of the Panchayat, its function, its election and various other aspects of its administration are now provided in great detail under the Constitution with provisions enabling the State Legislature to enact laws to implement the Constitutional mandate. Thus formation of Panchayat and its functioning is now a vital part of the Constitutional scheme under Part IX of the Constitution.

54. Obviously such a system can only thrive on the confidence of the people on those who comprise the system.

55. In the background of these provisions, learned Counsel for the appellants argued that the provision of no-confidence, being not in Part IX of the Constitution is contrary to the Constitutional scheme of things and would run contrary to the avowed purpose of Constitutional amendment which is meant to lend stability and dignity to Panchayati Institutions. It was further argued that reducing the period from 'two years' to 'one year' before a no-confidence motion can be brought further unsettles the running of the Panchayat. It was further urged that under the impugned amendment that such a no-confidence motion can be carried on the basis of a simple majority instead of two thirds majority dilutes the concept of stability.

56. This Court is not at all persuaded to accept this argument on various grounds discussed below.

57. A Constitution is not to give all details of the provisions contemplated under the scheme of amendment. In the said amendment, under various articles, like Articles 243A, 243C(1), (5), 243D(4), 243X(6), 243F(1) (6), 243G, 243H, 243I(2), 243J, 243(K)(2), (4) of the Constitution, the legislature of the State has been empowered to make law to implement the Constitutional provisions.

58. Particularly Article 243C(5), which provides for election of Chairperson, specially provides:

243C Composition of Panchayats -

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(5) The Chairperson of-

(a) a Panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide; and

(b) a Panchayat at the intermediate level or district level, shall be elected by, and from amongst, the elected members thereof.

59. Therefore, the argument that the provision of no-confidence motion against the Chairman, being not in the Constitution, cannot be provided in the statute, is wholly unacceptable when the Constitution specifically enables the State Legislature to provide the details of election of the Chairperson.

60. It may be mentioned that the statutory provision of no-confidence motion against the Chairperson is a pre-Constitutional provision and was there in Section 15 of the 1961 Act. -

61. In this context, Article 243N of the Constitution in Part IX is relevant and set out below:

243N. Continuance of existing laws and Panchayats. - Notwithstanding anything in this Part, any provision of any law relating to Panchayats in force in a Stale immediately before commencement of the Constitution (Seventy-third Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement whichever is earlier:

Provided that all the Panchayats existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State.

62. It is clear that the provision for no-confidence motion against the Chairperson was never repealed by any competent legislature as being inconsistent with any" of the provisions of Part IX. On the other hand by subsequent statutory provisions the said provision of no-Confidence has been confirmed with some ancillary changes but the essence of the no-confidence provision was continued. This Court is clearly of the opinion that the provision of no-confidence is not inconsistent with Part IX of the Constitution.

63. The provision of Article 243N of the Constitution makes it clear if the Panchayat Laws, in force in a State prior to Constitutional Amendment, contain provisions which are inconsistent with Part IX, two consequences will follow:

(1) Those provisions will continue until amended or repealed by competent legislature or authority, and

(2) Those provisions will continue until one year from commencement of the Constitution amendment, if not repealed earlier.

64. Immediately after the Constitution amendment by way of Part IX, came Uttar Pradesh Panchayat Laws (Amendment) Act, 1994. This was enacted on 22.4.1994 to give effect to the provisions of Part IX of the Constitution. But the pre-existing provision of the no-confidence was not repealed. Rather it was confirmed with minor changes in subsequent amendment Acts of 1998 being U.P. Act 20 of 1998 and which was further amended in the impugned amendment Act of 2007 being U.P. Act 44 of 2007.

65. The appellants have not challenged U.P. Act 20 of 1998 by which Section 15 of 1961 Act was continued in amended version.

66. Therefore, the continuance of no-confidence provision has not been challenged - what has been challenged is the reduction of the period from 'two years' to 'one year' and the requirement majority from "not less than two-thirds" to "more than half". It is thus clear that the statutory provision of no-confidence is not contrary to Part IX of the Constitution.

67. Apart from the aforesaid reasons, the arguments by appellants cannot be accepted in view of a very well known Constitutional Doctrine, namely, the Constitutional doctrine of silence. Michael Folley in his treaties on 'The Silence of Constitutions' (Routledge, London and New York) has argued that in a constitution "abeyances are valuable, therefore, not in spite of their obscurity but because of it. They are significant for the attitudes and approaches to the Constitution that they evoke, rather than the content and substance of their structures." (Page 10) The learned author elaborated this concept further by saying "Despite the absence of any documentary or material form, these abeyances are real and are an integral part of any Constitution. What remains unwritten and intermediate can be just as much responsible for the operational character and restraining quality of a Constitution as its more tangible and codified components". (Page 82)

68. Many issues in our constitutional jurisprudence evolved out of this doctrine of silence. The basic structure doctrine vis--vis Article 368 of the Constitution emerged out of this concept of silence in the Constitution.

69. A Constitution which professes to be democratic and republican in character and which brings about a revolutionary change by 73rd Constitutional amendment by making detailed provision for democratic decentralization and self Government on the principle of grass root democracy cannot be interpreted to exclude the provision of no-confidence motion in the respect of the office of the Chairperson of the Panchayat just because of its silence on that aspect.

70. As noted above the provision of no-confidence was a pre-73rd Amendment statutory provision and that was continued even after the 73rd Amendment in keeping with mandate of Article 243N. This continuance of the no-confidence provision, as noted above was not challenged by the appellants. This aspect has been noted by the High Court in the impugned judgment. The High Court noted:

The original Act of the 1961 provides block period of 12 months for initiation of no-confidence motion in reference to Kshettra Samiti/Panchayat, which was amended in the year 1965 by U.P. Act No. 16 of 1965 and the block period was enhanced to 'two years' from '12 months'. Again in the year 1990 the block period was reduced as the words 'two years' was substituted by words 'one year' by U.P. Act No. 20 of 1990. In the year 1998 U.P. Act No. 20 of 1998 again amended Section 15 and the block period was again enhanced to 'two years'. In the year 2007 again by U.P. Act No. 44 of 2007 the term 'two years' was substituted by 'one year' by virtue of which the block period of 'two years' was reduced to 'one year'.

71. The amended provision for the required majority for no-confidence motion also has been noted in impugned judgment of the High Court.

The majority as provided in Section 15(11) of the Original Act of 1961 for passing of no-confidence motion was 'more than half of the total number of members of Kshettra Samiti'.

In the year 1994 by U.P. Act No. 1994 the term 'member' in Section 15(11) was substituted by 'elected members' hence in 1994 also, the motion was to be carried through with the support of more than half of the total number of elected members of Kshettra Panchayat.

In the year 1998 the required majority was enhanced to 'two-third' from more than half as the word 'more than half in Section 15(11) was substituted by the word 'not less than two-third' by U.P. Act No. 20 of 1998.

Lastly, in the year 2007 again the provision relating to the majority for moving no-confidence motion was amended by U.P. Act No. 44 of 2007 and the words 'not less than two-third' was substituted by the words 'more than half' in Section 15(11).

72. The argument that as a result of the impugned amendment stability and dignity of the Panchayati Raj Institution has been undermined is also not well founded. As a result of no-confidence motion the Chairperson of a Panchayat loses his position as a Chairperson but he remains a member, and the continuance of Panchayat as an institution is not affected in the least.

73. Going by the aforesaid tests, as we must, this Court does not find any lack of legislative competence on the part of the State Legislature in enacting the impugned amendment Act.

74. The learned Counsel for the appellant cited several judgments in support of the contention that the impugned amendment in relation to the provisions for no-confidence are unreasonable and ultra vires the provisions of Part IX.

75. It has already been pointed out that the object and the reasons of Part IX are to lend status and dignity to Panchayati Raj Institutions and to impart certainty, continuity and strength to them.

76. The learned Counsel for the appellant unfortunately, in his argument, missed the distinction between an individual and an institution. If a no-confidence motion is passed against the chairperson of a Panchayat, he/she ceases to be a Chairperson, but continues to be a member of the Panchayat and the Panchayat continues with a newly elected Chairperson. Therefore, there is no institutional set back or impediment to the continuity or stability of the Panchayati Raj Institution.

77. These institutions must run on democratic principles. In democracy all persons heading public bodies can continue provided they enjoy the confidence of the persons who comprise such bodies. This is the essence of democratic republicanism. This explains why this provision of no-confidence motion was there in the Act of 1961 even prior to the 73rd Constitution amendment and has been continued even thereafter. Similar provisions are there in different States in India.

78. Section 211 of the Tamil Nadu Panchayats Act, 1994 contains a provision for motion of no-confidence in respect of Vice-President of panchayat and Section 212 contains a provision for motion of non confidence in respect of chairman or vice-chairman of panchayat union council.

79. In the Bombay Village Panchayats Act, 1958 under Section 35 similar provision for motion of

no-confidence is to be found.

80. In West Bengal Panchayat Act, 1973 under Section 12 there is a provision for the removal of Pradhan and Up-Pradhan if he has lost the confidence of the members of the Gram Panchayat.

81. In M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993, Section 21 provides for No-confidence motion against Sarpanch and Up-Sarpanch.

82. There is a similar provision of No-confidence motion against Sarpanch under Section 19 of the Punjab Panchayati Raj Act, 1994 as also under Section 157 the Kerala Panchayat Raj Act, 1994.

83. The Karnataka Panchayat Raj Act, 1993 Section 49 has similar provision of a motion of no-confidence against Adhyaksha or Upadhyaksha of Gram Panchayat.

84. Such a provision is wholly compatible and consistent with the rejuvenated Panchayat contemplated in Part IX of the Constitution and is not at all inconsistent with the same.

85. Democracy demands accountability and transparency in the activities of the Chairperson especially in view of the important functions entrusted with the Chairperson in the running of Panchayati Raj Institutions. Such duties can be discharged by the Chairperson only if he/she enjoys the continuous confidence of the majority members in the Panchayat. So any statutory provision to demonstrate that the Chairperson has lost the confidence of the majority is conducive to public interest and adds strength to such bodies of self Governance. Such a statutory provision cannot be called either unreasonable or ultra vires Part IX of the Constitution.

86. Any head of a democratic institution must be prepared to face the test of confidence. Neither the democratically elected Prime Minister of the Country nor the Chief Minister of a State is immune from such a test of confidence under the Rules of Procedure framed under Articles 118 and 208 of the Constitution. Both the Prime Minister of India and Chief Ministers of several States heading the Council of Ministers at the Centre and in several States respectively have to adhere to the principles of collective responsibilities to their respective houses in accordance with Articles 75(3) and 164(2) of the Constitution.

87. The learned Counsel for the appellant therefore compared the position of the Chairperson of a Panchayat with that of the President of India and argued that both are elected for five years and President's continuance in office is not subject to any vote of no-confidence. The post of Chairperson should have the same immunity.

88. This is an argument of desperation and has been advanced, with respect, without any regard to the vast difference in Constitutional status and position between the two posts. The two posts are not comparable at all by any standards. Even the President of India is subject to impeachment proceedings under Article 61 of the Constitution. No one is an 'imperium in imperio' in our Constitutional set up.

89. In this matter various judgments have been cited by the learned Counsel for the appellant. Of those judgments only the judgment in Mohan Lal Tripathi v. District Magistrate, Rai Bareilly and Ors. 1992 (4) SCC 80 is on the question of the no-confidence motion against President of the municipality elected directly by the electorate. No-confidence motion was passed by the board

against the said President and not by the electorate. That was challenged. This Court repelled the challenge and upheld the no-confidence motion holding that the recall by the Board amounts to recall by the electorate itself.

90. Upholding the aforesaid provision of no-confidence which is virtually a power of recall, this Court in Mohan Lal Tripathi (supra) held that the recall of the elected representative, so long it is in accordance with law, cannot be assailed on abstract laws of democracy. (Para 2, page 86 of the report)

91. Upholding the concept of vote of no-confidence in Mohan Lal Tripathi (supra) this Court further elaborated the concept as follows:

...Vote of no-confidence against elected representative is direct check flowing from accountability. Today democracy is not a rule of 'Poor' as said by Aristotle or of 'Masses' as opposed to 'Classes' but by the majority elected from out of the people on basis of broad franchise. Recall of elected representative is advancement of political democracy ensuring true, fair, honest and just representation of the electorate. Therefore, a provision in a statute for recall of an elected representative has to be tested not on general or vague notions but on practical possibility and electoral feasibility of entrusting the power of recall to a body which is representive in character and is capable of projecting views of the electorate. Even though there was no provision in the Act initially for recall of a President it came to be introduced in 1926 and since then it has continued and the power always vested in the Board irrespective of whether the President was elected by the electorate or Board. Rationale for it is apparent from the provisions of the Act....

92. In Ram Beti v. District Panchayat Raj Adhikari and Ors. : 1998 (1) SCC 680 this Court has upheld the provisions of Section 14 of U.P. Panchayat Raj Act, 1947 as amended by U.P. Act No. 9 of 1994 which empowers members of the Gram Panchayat to remove the Pradhan of Gram Sabha by vote of no-confidence. This Court held that such a provision is not unconstitutional nor does it infringe the principle of democracy or provisions of Article 14. This decision was rendered in 1997, which is after the incorporation of Part IX of the Constitution.

93. In fact, in Ram Beti (supra), this Court considered the impact of 73rd Amendment and also took into consideration the provisions of Article 243N introduced by 73rd Amendment. The ratio in Mohan Lal Tripathi (supra) was also affirmed in Ram Beti (supra).

94. In the background of this admitted position, the argument that 2007 Amendment Act lacks legislative competence has no merit. The relevant legislative entry in respect of Panchayat is in Entry 5, list II of the 7th Schedule. The said entry is:

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

95. It is well known that legislative entry is generic in nature and virtually constitutes the legislative field and has to be very broadly construed. These entries demarcate 'areas', 'fields' of legislation within which the respective laws are to operate and do not merely confer legislative power as much. The words in the entry should be held to extend to all ancillary and subsidiary matters which can be reasonably said to be encompassed by it. See Hans Muller of Nurenburg v. Superintendent, Presidency Jail, Calcutta and Ors. : AIR 1955 SC 367; Navinchandra Mafatlal, Bombay v. Commissioner of Income Tax, Bombay City : AIR 1955 SC 58 and also the decision of this Court rendered in Jilubhai Nanbhai Khachar etc. etc. v. State of Gujarat and Anr. reported in: AIR 1995 SC 142 at 148.

96. About interpretation of entries in the 7th Schedule reliance was placed by the learned Counsel for the appellant on the judgment of Constitution Bench of this Court in Diamond Sugar Mills Limited and Anr. v. The State of Uttar Pradesh and Anr. reported in : AIR 1961 SC 652. In that case the Court considered the meaning of the word 'local area' in Entry 52 of the State List in the 7th Schedule. The Constitution Bench of this Court held that in considering the meaning of the words in the 7th Schedule, the Court should bear in mind that the entries of such schedule should be liberally interpreted as they confer rights of legislation. But at the same time the Court should be careful enough not to extend the meaning of the words beyond their reasonable connotation in an anxiety to preserve the power of the legislature. On the basis of the above interpretation this Court held that 'premises of a factory' is not a 'local area'.

97. The said decision has no application in the present case in as much as Entry 5 of List II of the 7th Schedule is wide enough to authorize legislation of no-confidence against the Chairperson of the Panchayat.

98. The next judgment cited on this point was rendered in the case of State of Tamil Nadu v. Payarelal Malhotra and Ors. : 1976 (1) SCC 834.

99. In that decision meaning of the expression 'that is to say' was discussed with reference to Stroud's Judicial Dictionary.

100. Relying on Stroud, this Court held the expression 'that is to say' is resorted to for clarifying and fixing the meaning of what is defined. There is no difficulty about applying those principles to the facts of this case. In Payarelal (supra), this Court was construing the relevant entry in the context of single point Sales Tax subject to special conditions when imposed on separate categories of specified goods. Therefore, there is vast situational difference between the case in Payarelal (supra) and the present one.

101. The last decision cited on this point was rendered in the case of Commissioner of Sales Tax M.P. v. Popular Trading Company, Ujjain: 2000 (5) SCC 511. This was also a case relating to Sales Tax and the expression 'that is to say' has been used. This Court in explaining the purport of 'that is to say' referred to the ratio in Payarelal (supra). Even if we accept the said ratio in construing the ambit of Entry 5 of List II in the 7th Schedule, this Court finds that the impugned provision of no-confidence against the Chairperson of the Panchayat is very much encompassed within Entry 5 if we read the entry liberally and in accordance with well settled principles of reading legislative entries in several lists of the 7th Schedule. The decision on Popular Trading (supra) does not at all advance the case of the appellant.

102. Learned Counsel for the State of U.P. cited some decisions to point out how the Court should consider the challenge to the constitutional validity of a Statute. Some of the decisions cited by the learned Counsel are quite helpful and are considered by this Court.

103. In the case of State of Bihar and Ors. v. Bihar Distillery Limited : JT 1996 (10) S.C. 854 this Court in paragraph 18 at page Nos. 865-866 of the report laid down certain principles on how to judge the constitutionality of an enactment. This Court held that in this exercise the Court should (a) try to sustain validity of the impugned law to the extent possible. It can strike down the enactment only when it is impossible to sustain it; (b) the Court should not approach the enactment with a view to pick holes or to search for defects of drafting or for the language employed; (c) the Court should consider that the Act made by the legislature represents the will of the people and that cannot be lightly interfered with; (d) the Court should strike down the Act only when the unconstitutionality is plainly and clearly established; (e) the Court must recognize the fundamental nature and importance of legislative process and accord due regard and deference to it. This Court abstracted those principles from various judgments of this Court.

104. In State of Bihar (supra), this Court also considered the observations of Lord Denning in Seaford Court Estates Ltd. v. Asher 1949 (2) K.B. 481 and highlighted that the job of a judge in construing a statute must proceed on the constructive task of finding the intention of Parliament and this must be done (a) not only from the language of the statute but also (b) upon consideration of the social conditions which gave rise to it (c) and also of the mischief to remedy which the statute was passed and if necessary (d) the judge must supplement the written word so as to give 'force and life' to the intention of the legislature.

105. According to Lord Denning these are the principles laid down in Heydon's case and is considered one of the safest guides today. This Court also accepted those principles. (See para 21 at page 867 of the report).

106. Reliance was also placed on another decision of this Court in Dharam Dutt and Ors. v. Union of India and Ors.: (2004) 1 SCC 712. This judgment is relevant in order to deal with the argument of the learned Counsel for the appellants that in reducing the period for bringing the no-confidence motion from 'two years' to 'one year' and then in reducing the required majority from 2/3rd to simple majority, the legislature was guided by the sinister motive of some influential Ministers to get rid of a local leader who, as a Pradhan of Panchayat, may have become very powerful and competitor of the Minister in the State.

107. In Dharam Dutt (supra) this Court held *that*if the legislature is competent to pass a particular law, the motive which impelled it to act are really irrelevant. If the legislature has competence, the question of motive does not arise at all and any inquiry into the motive which persuaded Parliament into passing the Act would be of no use at all. (See page 713 of the report).

108. Reliance was also placed on the Constitution Bench judgment of this Court in State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and Ors. : (2005) 8 SCC 534. Chief Justice Lahoti speaking for the Bench laid down in para 37, page 562 of the report that the legislature is in the best position to understand and appreciate the needs of the people as enjoined in the Constitution. The Court will interfere in legislative process only when the statute is clearly violative of the right conferred on a citizen under Part III or when the Act is beyond the legislative competence of the legislature. Of course the Court must always recognize the presumption in favour of the constitutionality of the

statutes and the onus to prove its invalidity lies heavily on the party which assails it.

109. Chief Justice Lahoti also laid down several parameters in considering the constitutional validity of a statute at page No. 562-563 of the report. One of the parameters which is relevant in this case is however important the right of citizen or an individual may be it has to yield to the larger interests of the country or the community.

110. Considering all these aspects, this Court sees no reason to take a view different from the one taken by the Hon'ble High Court.

111. For the reasons aforesaid this Court upholds the Constitutional validity of the U.P. Panchayat Laws (Amendment) Act, 2007 (U.P. Act 44 of 2007) and the appeals are dismissed. The judgment of the Hon'ble High Court is upheld and affirmed. All interim orders are vacated. There shall be no order as to costs.