

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8698 of 2017

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1. Bihar Pradesh Mukhiya Mahasangh, Ist Floor Bhagwati Vila, behind Bishweshwaraiya Bhawan, Punai chak, Patna through the President Sri Ashok Kumar Siongh Son of late Ramakant Singh Resident of Village and P.O. Nawada, P.S. Jalalpur, District- Saran at Chapra.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna
3. The Law Secretary, Government of Bihar, Patna.
4. The Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 9382 of 2017

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1. Darbhanga Zila Mukhiya Sangh Through The Co Ordinator Surendra Yadav Son of Late Muneshwar Yadav, Resident of Village and P.O. Dhanauli, P.S. Baheri, District-Darbhangha, Presently Mukhiya of Gram Panchayat Raj, Dhanau, Block-Baheri, District-Darbhangha.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Law Secretary, Government of Bihar, Patna.
4. The Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 9299 of 2017

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1. Bihar Pradesh Mukhiya Mahasangh, Ist Floor Bhagwati Vila, behind Bishweshwaraiya Bhawan, Punai chak, Patna through the President Sri Ashok Kumar Siongh Son of late Ramakant Singh Resident of Village and P.O. Nawada, P.S. Jalalpur, District- Saran at Chapra.

.... Petitioner

Versus

1. The State of Bihar Through The Chief Secretary, Government of Bihar, Patna



2. The Chief Secretary, Government of Bihar, Patna.
3. The Law Secretary, Government of Bihar, Patna.
4. The Secretary, Panchayati Raj Department, Government of Bihar, Patna.

.... Respondents

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Appearance :

(In CWJC No.8698 of 2017)

For the Petitioner/s : Mr. Binod Kanth, Sr. Advocate
Mr. S.B.K. Manglam, Advocate
Ms. Anita Kumari, Advocate

For the Respondent/s : Mr. Lalit Kishore, Advocate General

(In CWJC No.9382 of 2017)

For the Petitioner/s : Mr. Binod Kanth, Sr. Advocate
Mr. S.B.K. Manglam, Advocate
Ms. Anita Kumari, Advocate

For the Respondent/s : Mr. Pushkar Narain Shahi- AAG6

(In CWJC No.9299 of 2017)

For the Petitioner/s : Mr. Binod Kanth, Sr. Advocate
Mr. S.B.K. Manglam, Advocate
Ms. Anita Kumari, Advocate

For the Respondent/s : Mr. Lalit Kishore, Advocate General

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date: 21-11-2017

All the three writ applications involve common question of fact and law and as such with the consent of the parties they are heard together and are being disposed of by this common judgment.

2. The petitioners have challenged the constitutional validity of the Bihar Panchayati Raj (Amendment) Act, 2017. Since common question of fact and law are involved in all the three writ applications, the pleading in C.W.J.C. No.8698 of 2017 has been



taken as representative case for the purpose of deciding the present batch of writ applications. The Bihar Pradesh Mukhiya Mahasangh has filed the writ application challenging the validity of the Bihar Panchayati Raj (Amendment) Ordinance, 2017. However, during the pendency of the writ petition the amendment ordinance was replaced by Amendment Act, 2017 and by way of I.A. No.6601 of 2017 the petitioner has placed on record the Bihar Panchayati Raj (Amendment) Act, 2017 as Annexure-P/6 and prayed for the amendment in the writ application to challenge the legality and constitutional validity of the amendment in the Bihar Panchayati Raj Act, 2006 on the ground that it is in teeth of Article 243(d), 243(e), 243B and 243G of the Constitution of India.

3. Mr. Binod Kanth, Sr. Counsel appearing on behalf of the petitioner has submitted with reference to the preamble of the Constitution of India that the constitutional ethos and philosophy as reflects from the preamble of Constitution of India indicates that sovereignty lies with the people of India and Constitution is sacrosanct and every institution is obliged to act within the four corners of the Constitution and its limitations. He submitted with reference to Article 40 of the Constitution of India that the framers of the Constitution have engrafted the scheme of Panchayati Raj



under Article 40 of the Constitution of India as a guideline for the State to direct its policy under Directive Principle of State policy.

Article 40 of the Constitution of India reads as follows:-

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

4. Referring to Article 40 of the Constitution of India, Mr. Kanth submitted that the Constitution heralded a new era of governance and under the provisions of the Directive Principles of the State policy, the framers of the Constitution ordained the State to take steps to organise village panchayat and after four decades of adoption of the Constitution the grass-root democracy in the nature of Panchayati Raj became reality by way of Seventy-third Amendment and Part-IX was inserted in the Constitution. It provides for the Panchayati Raj Institution at grass-root level. Mr. Kanth referring to the Constitutional scheme with Part-IX submitted that the constitutional scheme contained in Article 243 is very candid on the point of constitution of Panchayati Raj Institution at village level, intermediate level and at district level. He submitted that the Constitution in most unambiguous term has defined the Gram Sabha, Panchayat and prescribed modality of composition of the



Gram Sabha and Panchayat. He referred to the various provisions of the Constitution to substantiate that the Constitution has already provided a detailed mechanism of constitution of Panchayati Raj Institution and its working, power and function. He referred to the scheme contained in Article 243G to contend that the Legislature of the State was only authorized to endow the panchayat with such power and authority as may be necessary to enable them to function as institution of self-government. He submitted that power of the legislature to enact law is subject to the provisions of the Constitution which limits the power of legislature. He submitted that the law is required to be made in furtherance of Eleventh Schedule for devolution of power and responsibility of Gram Panchayat at appropriate level that means at panchayat level, at intermediate level and at district level.

5. Mr. Kanth submitted that the State Legislature has no unbridled and unguided power to enact law. The scheme under Article 243G is indicative of the fact that the State Legislature had to enact law to endow the panchayat with powers and authority necessary to enable them to function as institution of self-government which means law to foster autonomy to the institution of Panchayati Raj and not keep control or cripple the institution of



Panchayati Raj by putting fetters. He referred to the constitutional scheme contained in Article 246, 247 and 248 of the Constitution to submit that under the scheme of distribution of power contained in Seventh Schedule of the Constitution respective legislatures have competence to enact law to the subject enumerated in the Seventh Schedule. The Parliament has exclusive domain with regard to Union List whereas the State Legislature has exclusive domain with regard to the subject enumerated in the State List. In the event of subject under the Concurrent List, the Parliament as well as the State Legislature have competence to enact law. He submitted that in the light of constitutional scheme with regard to power and function of the Union and State, the Panchayati Raj Institution also enjoy autonomy and they are free to act within the sphere of Eleventh Schedule in the matter of constitution of different bodies in furtherance of the local self-government and also in planning and framing policy. He has submitted that Panchayati Raj Institution being the grass-root level of the government under constitutional scheme should be allowed to act as a real institution of self-government but the respondent-State is encroaching upon the area exclusively meant for the Panchayati Raj Institution and eroding the autonomy of the Panchayat Raj Institution. Mr. Kanth submitted that



earlier by way of executive instructions the State tried to interfere with the autonomy of the Panchayati Raj Institution in purported exercise of power under Section 156 of the Bihar Gram Panahcyat Raj Act, 2006. The attempt to encroach upon the power of the Panchayati Raj by way of notification issued by the Panchayati Raj Department, Government of Bihar dated 23.09.2016 and 25.10.2016 was assailed by different Mukhiya in C.W.J.C. No.19591 of 2016 and analogous cases. The Division Bench of this Court vide judgment dated 17.05.2017 has declared the notification issued by the Panchayati Raj Department in purported exercise of power under Section 156 of the Act, 2006 as unconstitutional and after declaring the said decision as unconstitutional, the State came out with the Bihar Panchayati Raj (Amendment) Ordinance, 2017 and when the ordinance was challenged, the respondent enacted the Bihar Panchayati Raj (Amendment) Act, 2017 which was published in the official Bihar Gazette on 04.09.2017.

6. Mr. Kanth in the backdrop of the fact submitted that the respondent has acted in mala fide manner to encroach upon the autonomy of the Panchayati Raj Institution so that the institution may become a puppet institution and may dance on the tune of the State Government constituted in the constitutional scheme of



autonomous institution of self-government at grass-root level. Mr. Kanth has challenged the constitutional validity of the Bihar Panchayati Raj (Amendment) Act, 2017 as ultra vires to the constitutional scheme contained in Article 243G, Article 243(d) and 243(e) of the Constitution read with Eleventh Schedule of the Constitution.

7. Mr. Kanth has drawn attention of the Court that by way of Amendment Act, 2017 the respondent-State of Bihar has substituted sub-sections (1), (2), (3) and (5) of Section 25 of the Bihar Act 6, 2006, which is as follows:-

2. Amendment of section 25 of the Bihar Act, 6 of 2006-

(1) The sub-section(1) shall be substituted as follows :-

"(1) Subject to the rules made in this behalf by the Government, a Gram Panchayat shall constitute the following committees for effective discharge of its following functions:-

- (i) Planning, Co-ordination and Finance Committee – for performing general functions relating to Gram Panchayat including subjects mentioned in section 22, co-ordination of the work of other committees and all residuary functions not under the charge of other committees.
- (ii) Production Committee - for monitoring and supervision of functions relating to agriculture, animal husbandry, dairy, poultry and fisheries, forestry-related areas, khadi, village and cottage industries and poverty alleviation programmes.
- (iii) Social Justice Committee: for monitoring and supervision of functions relating to :
 - (a) Promotion of educational, economic,



- social, cultural and other interests of Scheduled Castes, Scheduled Tribes and other weaker sections.
- (b) Protection of such castes and classes from social injustice and all forms of exploitation.
- (c) Welfare of women and children.
- (iv) Education Committee - for monitoring and supervision of functions relating to education, including primary, secondary and mass education, libraries and cultural activities.
- (v) Committee on Public Health, Family Welfare and Rural Sanitation - for monitoring and supervision of functions relating to public health, family welfare and rural sanitation.
- (vi) Public Works Committee - for monitoring and supervision of functions relating to all kinds of constructions and maintenance including rural housing, sources of water supply, roads and other means of communication, rural electrification and related works.”
- (2) Sub-sections (2) shall be substituted as follows:-
- “(2)(i) The standing committees mentioned in clause (i) to (v) under sub-section (1) of section 25 shall be constituted by election from among the elected members of the Gram Panchayat. Each such committee shall consist of not less than three and not more than five members including the chairman.
- (ii) The Public Works Committee shall consist of all the Gram Panchayat Members (Ward Members) elected from the different wards of the Gram Panchayat as members.
- (iii) Each committee can co-opt not more than two members from among experts or public spirited persons for effective discharge of its responsibilities.”
- (3) Sub-section (3) shall be substituted as follows:-
- “(3) The Mukhiya shall be the ex-officio member and chairman of the Planning, Co-ordination and Finance Committee and the Public Works



Committee. The Up-Mukhiya shall be the ex-officio member and chairman of the Social Justice Committee. The Mukhiya shall nominate a chairman of each other committee from among its elected members.

Provided that each committee shall have at least one woman member and further, social justice committee shall have a member belonging to the Scheduled Castes or Scheduled Tribes, subject to availability."

(4) Sub-section (5) shall be substituted as follows:-

"(5) Panchayat Secretary shall be the secretary of the Planning, Co-ordination and Finance Committee and Public Works Committee. For other Standing Committees the District Magistrate or any other officer authorised by him in this behalf shall nominate a Government servant to function as secretary."

8. Mr. Kanth submitted that by way of amendment, Section 26 of the Bihar Act, 6 of 2006 has been amended and in clause (a) of sub-section(5) of Section 26 has been made in the following manner:-

3. Amendment of Section 26 of the Bihar Act 6 of 2006 .-

(1) Clause (a) of sub-section (5) of section 26 of the Act shall be substituted as follows:-

"(a) Contributions and grants, if any, made by the Central or State Government including grants received on the basis of recommendations of the Central Finance Commission or State Finance Commission."

(2) A new sub-section (7) shall be inserted after sub-section (6) of section-26 of the Act:-

"(7) For equitable development of the Gram Panchayat area, the Government shall be competent to issue necessary instructions to the Gram Panchayat from time to time with respect to utilization and expenditure of money from the Gram Panchayat Fund and such



direction shall be binding on the Gram Panchayat."

9. He submitted that by adding new sub-section (7) of Section 26 the autonomy of Gram Panchayat has been taken away as Gram Panchayats are now obliged to act on the dictate of the State Government in the matter of expenditure of money from Gram Panchayat Fund. Mr. Kanth thereafter referred to the amendment introduced by Amendment Act vide Clause (4) whereby new Sections 170B and 170C have been inserted after Section 170A, which is as follows:-

4. Insertion of new Section 170B and Section 170C in the Bihar Act 6 of 2006 .— The following new Section 170B and Section 170C shall be inserted after Section 170A of the Act, respectively:-

"170B Ward Implementation and Management Committee-

(1) A Ward Implementation and Management Committee shall be constituted by Ward Sabha for discharge of its functions/ responsibilities. The Gram Panchayat Member elected from the concerned Ward shall be the ex-officio chairman of the Ward Implementation and Management Committee. The composition, tenure etc. of Ward Implementation and Management Committee will be such as may be prescribed by the Government.

(2) Ward Implementation and Management Committee shall mainly discharge the following functions:-

(a) To generate proposals and determine the priority of schemes and development programmes for consideration of the Ward Sabha.

(b) To assist the Ward Sabha in generating awareness on issues like literacy, public



- sanitation, health, environment, pollution control etc.
- (c) To select appropriate locations on behalf of Ward Sabha for water supply, public sanitation units and other public amenity schemes.
 - (d) To work under general control of Ward Sabha/Gram Panchayat for prevention of epidemics and natural calamities.
 - (e) Execution of schemes/programmes/ responsibilities given from time to time by Ward Sabha/Gram Panchayat.
- (3) For execution of public works schemes, the Ward Implementation and Management Committee shall function under the Public Works Committee constituted under section 25 (1)(vi) of the Act." "170C Power of the Government to issue directions for implementation of schemes by Ward Implementation and Management Committee:- Notwithstanding anything contained in the Act, the Government may issue directions to Gram Panchayat to implement schemes approved for the Ward through Ward Implementation and Management Committee from the Gram Panchayat Fund. The schemes shall be executed by the Ward Implementation and Management Committee in accordance with the directions issued from time to time by the Government."

10. Mr. Kanth has submitted that by introducing amendment and substitution under the old scheme of the Act, the respondent has made institution of Panchayati Raj a complete hoax. He submitted that earlier Gram Panchayat Institution was free to constitute a committee for its effective discharge of responsibility but now Gram Panchayat Institution has to dance on the tune of the State Government as such power is subject to the Rules made in this



behalf by the Government. He submitted that now public works committee in terms of the amended Act is vested with the power of monitoring and supervision of all kinds of constructions and maintenance including rural housing, sources of water supply, road and other means of communication, rural electrification and related works. Now with the amendment, the State is vested with the power to run the institution of Panchayati Raj as its department and keeps total control over the affairs of the Panchayati Raj Institution, which indicates that the Institution of Panchayati Raj has been reduced to a farce in teeth of the constitutional scheme contained in Article 40 and Part-IX of the Constitution of India.

11. Mr. Kanth has laid much stress on the insertion of new Sections 170B and 170C. He submitted that the constitutional scheme contained in Part-IX of the Constitution of India contemplates three-tier government; at village level, intermediate level and district level which do not recognize any institution like Ward Sabha and referring to Article 243G of the Constitution, he submitted that the legislature of the State was required to act in a manner to promote the constitutional scheme relating to Panchayati Raj Institution in Part-IX and not to use legislative power in the manner to create institution of Ward Sabha and confer them



jurisdiction to implement and manage the scheme of development, public works scheme. With reference to Section 170C of the amended provision, he submitted that by inserting the provision the State Government has introduced a scheme of direct control of working of the Ward Sabha and keeps control on the utilization of Gram Panchayat Fund. He submitted that the scheme of unguided and unbridled power of control over the institution of Panchayati Raj namely Ward Sabha by the State Government frustrates the very object of the self-government at grass-root level. Mr. Kanth has referred to the judgment of the Apex Court in **R.M.D. Chamarbaugwalla and another Vs. Union of India and another reported in A.I.R. 1957 Supreme Court 628 para 5** to contend that the Court has to ascertain the intent of the framers by gathering from the words actually used in the statute, which is quote below:-

“5.The separability of the valid and invalid provisions of a statute does not depend on whether the law is enacted in the same section or different sections; (Vide Cooley's Constitutional Limitations, Vol. 1, pp.361-362); it is not the form, but the substance of the matter that is material, and that has to be ascertained on an examination of the Act as a whole and of the setting of the relevant provisions therein.”

12. Mr. Kanth then submitted that in the earlier law there was no defect which warranted amendment and referring to the



mischief rule/Hyden rule of interpretation submitted that the State has not come out with a case that what was the mischief in the amended law which necessitated amendment in the Act by way of Amendment Act, 2017. Mr. Kanth has referred to the judgment of the Apex Court in the case of **Shailesh Dhairyawan Vs. Mohan Balkrishna Lulla: (2016) 3 SCC, 619 para 31 to 33**, which reads as follows:-

“31. The aforesaid two reasons given by me, in addition to the reasons already indicated in the judgment of my learned Brother, would clearly demonstrate that provisions of Section 15(2) of the Act require purposive interpretation so that the aforesaid objective/ purpose of such a provision is achieved thereby. The principle of 'purposive interpretation' or 'purposive construction' is based on the understanding that the Court is supposed to attach that meaning to the provisions which serve the 'purpose' behind such a provision. The basic approach is to ascertain what is it designed to accomplish? To put it otherwise, by interpretative process the Court is supposed to realise the goal that the legal text is designed to realise. As Aharon Barak puts it: “Purposive interpretation is based on three components: language, purpose, and discretion. Language shapes the range of semantic possibilities within which the interpreter acts as a linguist. Once the interpreter defines the range, he or she chooses the legal meaning of the text from among the (express or implied) semantic possibilities. The semantic component thus sets the limits of interpretation by restricting the interpreter to a legal meaning that the text can bear in its (public or private) language.”

32. Of the aforesaid three components, namely,



language, purpose and discretion 'of the Court', insofar as purposive component is concerned, this is the ratio juris, the purpose at the core of the text. This purpose is the values, goals, interests, policies and aims that the text is designed to actualize. It is the function that the text is designed to fulfil.

33. We may also emphasize that the statutory interpretation of a provision is never static but is always dynamic. Though literal rule of interpretation, till some time ago, was treated as the 'golden rule', it is now the doctrine of purposive interpretation which is predominant, particularly in those cases where literal interpretation may not serve the purpose or may lead to absurdity. If it brings about an end which is at variance with the purpose of statute, that cannot be countenanced. Not only legal process thinkers such as Hart and Sacks rejected intentionalism as a grand strategy for statutory interpretation, and in its place they offered purposivism, this principle is now widely applied by the Courts not only in this country but in many other legal systems as well.”

13. On the other hand, Mr. Lalit Kishore, learned Advocate General appearing on behalf of the State, at the very outset, questions the locus of the petitioner. He submitted that the writ application at the instance of unregistered Mukhiya Association is not maintainable and in order to substantiate his argument he has placed reliance on a decision of this Court in C.W.J.C. No.13326 of 2010 dated 29.09.2010. The said decision was rendered by the Division Bench in a writ application filed by Bihar Audhyogik Kshetra Vikas Pradhikar Karamchari Sangh for certain service



benefits. The Court held out that the writ petition at the instance of unregistered association is not maintainable.

14. The legal position in the instant case stands on a different footing. The writ application on which the learned Advocate General has placed reliance was pertaining to a relief connected with the service matter and not the issue of validity of the Ordinance or the Act. In fact the Apex Court has the occasion to consider the maintainability of the writ application at the instance of unregistered association. Justice Krishna Iyer speaking for the Court on the issue of locus standi has answered the issue of maintainability in the case of *Akhil Bharatiya Soshit Karamchari Sangh (Railway) Vs. Union of India and others* reported in 1981 (1) Supreme Court Cases 246 paragraph 62, which reads as follows:-

“62. A technical point is taken in the counter affidavit that the 1st petitioner is an unrecognised association and that, therefore, the petitioner to that extent, is not sustainable. It has to be overruled. Whether the petitioners belong to a recognised union or not, the fact remains that a large body of persons with a common grievance exists and they have approached this Court under Article 32. Our current processual jurisprudence is not of individualistic Anglo- Indian mould. It is broad-based and people-oriented, and envisions access to justice through 'class actions', 'public interest litigation', and 'representative proceedings'. Indeed, little Indians in large numbers seeking remedies in courts through collective proceedings, instead of being driven to an expensive plurality of litigations, is an affirmation of



participative justice in our democracy. We have no hesitation in holding that the narrow concept of 'cause of action' and 'person aggrieved' and individual litigation is becoming obsolescent in some jurisdictions. It must fairly be stated that the learned Attorney General has taken no objection to a non-recognised association maintaining the writ petitions.

15. The issue as to the locus of the writ petitioner, who challenged re-promulgation of the ordinance, was raised before the Constitution Bench of the Supreme Court in Dr. D.C. Wadhwa and others Vs. State of Bihar and others reported in (1987) 1 Supreme Court Cases 378. The Apex Court entertained the writ application filed by Dr. D.C. Wadhwa under Article 32 of the Constitution wherein he has challenged re-promulgation of ordinance by the Governor of Bihar under Article 213 of the Constitution of India. Paragraph 3 of the judgment is clinching on the point of locus standi challenging the validity of the ordinance and the Act. Paragraph 3 is as follows:-

“3. It was contended on behalf of the respondents that the petitioners had no locus standi to maintain this writ petition since out of the three ordinances challenged on behalf of the petitioners, two of them, namely, Bihar Forest Produce (Regulations of Trade) Third Ordinance, 1983 and the Bihar Bricks Supply (Control) Third Ordinance, 1983 had already lapsed and their provisions were enacted in Acts of the Legislature and so far as the third ordinance, namely, The Bihar Intermediate Education Council Third Ordinance was concerned, a legislative proposal was already introduced for enacting its provisions into an Act. The respondents also



contended that the petitioners are not entitled to challenge the practice prevalent in the State of Bihar of repromulgating ordinances from time to time since they were merely outsiders who had no legal interest to challenge the validity of this practice. We do not think this preliminary objection raised on behalf of the respondents is well-founded. It is undoubtedly true that the provisions of two out of the three ordinances challenged in these writ petitions were enacted into Acts of the Legislature but that happened only during the pendency of these writ petitions and at the date when these writ petitions were filed, these two ordinances were very much in operation and affected the interest of petitioners Nos. 2 and 4 respectively. Moreover, the third ordinance, namely. The Bihar Intermediate Education Council Third Ordinance is still in operation though a bill incorporating the provisions of this ordinance is pending consideration before the State Legislature and it has been referred to a Select Committee and the right of petitioner No. 3 to pursue a particular course of study is vitally affected by the provisions contained in that ordinance. Besides petitioner No. 1 is a Professor of Political Science and is deeply interested in ensuring proper implementation of the constitutional provisions. He has sufficient interest to maintain a petition under Article 32 even as a member of the public because it is a right of every citizen to insist that he should be governed by laws made in accordance with the Constitution and not laws made by the executive in violation of the constitutional provisions. Of course, if any particular ordinance was being challenged by petitioner No. 1 he may not have the locus standi to challenge it simply as a member of the public unless some legal right or interest of his is violated or threatened by such ordinance, but here what petitioner No. 1 has a member of the public is complaining of is a practice which is being followed by the State of Bihar of re-promulgating the ordinances 805 from time to time without their provisions being enacted into Acts of the Legislature. It is clearly for vindication of public



interest that petitioner No. 1 has filed these writ petitions and he must therefore be held to be entitled to maintain his writ petitions.”

16. In view of the judgment of the Apex Court, we asked Mr. Lalit Kishore, learned Advocate General, to address on the merit of the case instead of raising the issue of maintainability on the ground of locus standi. Mr. Lalit Kishore has submitted that Seventh Schedule, List II-State List, Item 5, relates to local government. Entry 5 of State List is as follows:-

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

17. He submitted that the State Legislature is competent to enact law on the subject “local government” and as such there is no impediment on the State Legislature to enact law with regard to Panchayati Raj Institution, Mr. Lalit Kishore next submitted that earlier writ petition where validity of the notification of the Pannchayati Raj Department was challenged, the Division Bench held out that the notification has the effect of amending the law and by way of executive instruction such amendment cannot be introduced in the garb of issuing guideline in purported exercise of power and jurisdiction under Section 156. From the judgment of the



Division Bench in C.W.J.C. No.19591 of 2016 dated 17.05.2017 it is evidently clear that the Division Bench in so many words indicated that the action of the State by way of executive instruction was impermissible, it is only permissible by way of legislative enactment. He has drawn the attention of the Court to the judgment of the Division Bench dated 17.05.2017 and in particular paragraph 17 wherein this Court in most unambiguous term held out that the constitution of the Committee like “Ward Vikas Samiti” in exercise of executive instruction without amending the Act is impermissible as it could amount to tinkering with the provision of the Act of 2006 and creating a Samiti to carry out the constitutional statutory mandate of the Act of 2006 without sanction of law.

18. Mr. Lalit Kishore, learned Advocate General thus submitted that in view of the finding of the Division Bench that such creation of Samiti is only permissible by way of amendment in the Act and under the constitutional scheme the State has the legislative competence and as such it has exercised that power and amended the Act. He submitted that the object behind the amendment is to focus over all development of the entire panchayat instead of development in a partisan manner. The object behind constitution of Ward Sabha is to focus and address the problem at the Ward level



and the amendment is in furtherance of decentralization of the power and cannot be construed as abrogating the constitutional scheme under Part-IX of the Constitution. Mr. Lalit Kishore referring to the constitutional scheme under Article 243G submitted that the Constitution authorizes the legislature to enact law in order to endow the Panchayat with such power and authority as may be necessary to enable them to function as institution of self-government. It is indicative of the idea of decentralization so that the constitutional scheme as well as the development programme and benefits reaches the remotest one. Mr. Lalit Kishore submitted that Article 243G authorizes the State Legislature to frame such law for devolution of power and responsibility upon the Panchayat at appropriate level which does not mean that the legislature cannot provide for devolution of power and responsibility at Ward Sabha within the parameters of appropriate levels. He next contended that Article 243G further enables the State Legislature to make law with respect to preparation of plan for economic development and social justice and implementation of scheme for economic development and social change in relation to matters in Eleventh Schedule and thus he submitted that the entire scheme by way of amendment was introduced with a view to promote the objectives of implementation



of scheme for economic development and social justice and change.

19. Adverting to the submission made by Mr. Kanth as to the constitutional limitation under Article 243(d)(e), 243B and 243G, Mr. Lalit Kishore submitted that the definition Clause under Article 243 in no way create impediment in the State Legislature providing for setting up Committee for the effective administration and implementation of the scheme of economic development and social change. Mr. Lalit Kishore has drawn the attention of the Court to the judgment of the Apex Court in the case of **Government of Andhra Pradesh and others Vs. P. Laxmi Devi(Smt) reported in (2008) 4 Supreme Court Cases 720 paragraph 40, 43 and 46** to contend that the Court should consider the amendment Act with a view to uphold its constitutional validity, which reads as follows:-

“40. The Court must always remember that invalidating a statute is a grave step, and must therefore be taken in very rare and exceptional circumstances.

43. Thus, according to Prof. Thayer, a Court can declare a statute to be unconstitutional not merely because it is possible to hold this view, but only when that is the only possible view not open to rational question. In other words, the Court can declare a statute to be unconstitutional only when there can be no manner of doubt that it is flagrantly unconstitutional, and there is no way of avoiding such decision. The philosophy behind this view is that there is broad separation of powers under the Constitution, and the three organs of the State — the legislature, the executive and the judiciary, must respect each other and must not



ordinarily encroach into each other's domain. Also the judiciary must realize that the legislature is a democratically elected body which expresses the will of the people, and in a democracy this will is not to be lightly frustrated or obstructed.

46. In our opinion, there is one and only one ground for declaring an Act of the legislature (or a provision in the Act) to be invalid, and that is if it clearly violates some provision of the Constitution in so evident a manner as to leave no manner of doubt. This violation can, of course, be in different ways, e.g. if a State legislature makes a law which only the Parliament can make under List I to the Seventh Schedule, in which case it will violate [Article 246\(1\)](#) of the Constitution, or the law violates some specific provision of the Constitution (other than the directive principles). But before declaring the statute to be unconstitutional, the Court must be absolutely sure that there can be no manner of doubt that it violates a provision of the Constitution. If two views are possible, one making the statute constitutional and the other making it unconstitutional, the former view must always be preferred. Also, the Court must make every effort to uphold the constitutional validity of a statute, even if that requires giving a strained construction or narrowing down its scope vide [Mark Netto vs. Government of Kerala and others](#) AIR 1979 SC 83 (para 6). Also, it is none of the concern of the Court whether the legislation in its opinion is wise or unwise.”

20. The submission of Lalit Kishore with reference to the aforesaid judgment is that the Court has to examine the validity of the Act with a view that the Act is constitutionally valid. In fact the Apex Court has the occasion to examine the approach of the Court in the matter related to examination of constitutional validity of enactment, in the case of **State of Bihar and others Vs. Bihar**



Distillery Ltd. And others reported in (1997) 2 Supreme Court Cases 453, para 18 to 20 of the judgment is the illustrative of the principles to be followed by Court considering the challenge as to constitutional validity of enactment, which is as follows:-

“18. Though the above propositions are well settled, it may not be out of place to refer to a few decisions. In Charanjit Lal Chowdhary v. Union of India [A.I.R. 1951 S.C. 41], Fazal Ali, J. stated:

“.....it is the accepted doctrine of the American Courts, which I consider to be well-founded on principle, that the presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles.”

In Burrakur Coal Company v. Union of India (A.I.R. 1961 S.C. 654 AT 963], Mudholkar, J., speaking for the Constitution Bench, observed - :

“Where the validity of a law made by a competent legislature is challenged in a court of law, that Court is bound to presume in favour of its validity. Further, while considering the validity of the law the court will not consider itself restricted to the pleadings of the State and would be free to satisfy itself whether under any provision of the Constitution the law can be sustained.”

19. We may quote the pertinent propositions enunciated in Ram Krishna Dalmia, Etc. v. Justice S.R. Tendolkar amp; Others Etc. [A.I.R. 1958 S.C. 538] to the following effect -

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(e) that in order to sustain the presumption



of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and....

20. We may also refer to the following perceptive observations in the decision of Lord Denning in *Seaford Court Estates Ltd. v. Asher* [1949 (2) K.B. 481] –

Whenever a statute comes up for consideration it must be remembered that it is not within human power to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticized. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsman have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature. That was clearly laid down by the resolution of the judges in *Heydon's case*, and it is the safest guide today. Good practical advice on the subject was given about the same time by Plowden. Put into homely metaphor it is this - A judge should ask himself the question - If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would have



done. A judge must not alter the material of which it is woven, but he can and should iron out the creases.”

21. In reply, learned counsel for the petitioner submitted that the respondent-State has enacted law not in exercise of law making power under Entry 5 of the State List but in purported exercise of power under Article 243G, therefore, the validity of the Act has to be judged at the touchstone of the Article 243G and not at the touchstone of legislative competence under Entry 5 of the State List of Seventh Schedule.

22. We have heard the submissions of learned counsel Mr. Kanth, Senior Advocate, appearing on behalf of the petitioner as well as Mr. Lalit Kishore, learned Advocate General appearing on behalf of the State, on the issue of constitutional validity of the amended Act.

23. The scheme of the Panchayati Raj was introduced by way of 73rd Amendment. Initially in 1993. The Bihar Panchayati Raj Act was enacted in the light of the constitutional amendment and insertion of Part-IX of the Constitution. Earlier Bihar Panchayati Raj Act, 1947 was in operation. The said Act was repealed by way of amendment in 1993 and 1993 Act was repealed by way of Bihar Panchayati Raj Act, 2006. The issue so far amendment under the



Bihar Panchayati Raj is concerned, is within the competence of the State Legislature. The Apex Court has the occasion to examine the principle of local self-government by way of 73rd Amendment of the Constitution of India, in various judgments Justice A.K. Ganguli in the case of Bhanumati & Ors. Vs. State of Uttar Pradesh has succinctly enumerated the constitutional scheme of local self-government at grass-root level in the light of Constituent Assembly Debates and other contemporaneous material including the Article of Granville Austin in his treatise in the Indian Constitution: Cornerstone of a Nation. The objective of the Panchayati Raj Institution and background of 73rd Amendment as a tool of social engineering has been elaborately discussed in the said judgment of **Bhanumati and others Vs. State of Uttar Pradesh and other reported in (2010) 12 Supreme Court Cases 1** in paragraph 13 to 27, which is as follows:-

13. 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. 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.

14. The word 'Panchayat' did not even once appear in the draft Constitution. Graneville Austin in his treatise '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 p. 34 in Austin)

15. 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." 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." (P. 36)

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

17. 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.

18. 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 progress, it must do so through reawakened village life." (P. 38 Supra)

19. 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: (CAD Vol. VII, p.523)

"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)

20. The opinion of Seth Govind Das from Central Provinces and Berar is equally relevant: (CAD Vol. VII, Pp.523-24)

"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."

21. 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.)

22. Under Seventy-third Amendment of the Constitution, Panchayat became an 'institution of self governance' which was previously a mere unit, under [Article 40](#). The Seventy-third 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.

23. Decentralization is perceived as a pre- condition 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.

24. This Seventy-third 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.

25. 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.

2. [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."

26. What was in a nebulous state as one of Directive Principles under [Article 40](#), through Seventy-third 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. In our judgment, this Seventy-third Amendment of the Constitution was introduced for strengthening the Preambular vision of democratic republicanism which is inherent in the constitutional framework.



27. 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. 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 revived 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....."

Unfortunately that time came very late and as late as in 1993 when the Seventy-third Amendment of the Constitution was brought about.

24. In the said judgment the Apex Court also discussed the role of the Court while considering the challenge to the constitutional validity. Para 82 to 86 of the said judgment is as follows:-

"82. In State of Bihar & Ors. vs. Bihar Distillery Ltd., this Court in SCC para 17 at p.466: JT para 18 at pp 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.

83.In State of Bihar this Court also considered the observations of Lord Denning in Seaford Court Estates Ltd. vs. 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. 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 Bihar Distillery Ltd. Case, SCC para 20 at p.468:JT para 21 at p.867 of the Report.).

84.Reliance was also placed on another decision of this Court in [Dharam Dutt v. Union of India](#) - (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.

85.In Dharam Dutt 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 SCC p.730, para 16 of the report).

86.Reliance was also placed on the Constitution Bench judgment of this Court in State of Gujarat vs. Mirzapur Moti Kureshi Kassab Jamat - (2005) 8 SCC 534. Lahoti, C.J. speaking for the Bench laid down in SCC p. 562, para 39 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.”

25. On closer scrutiny of the amendment introduced by way of Bihar Panchayati Raj (Amendment) Act, 2017, I am of the considered view that the amendment does not suffer from any vice warranting interference. I am of the considered view that apart from Article 243G, which enables the State to enact law in order to endow



Panchayati Raj Institution to function as a unit of self-government, Article 40 of the Constitution also ordain the State to take steps to organize village panchayat. In addition thereto, Entry 5 of the State List also enables the State Legislature to enact law in the matter of local self-government. Therefore, I do not find any lack of competence so far the State Legislature is concerned, to enact law on the subject. The submission of Mr. Kanth, Sr. Advocate, that the amendment is designed to destroy the basic concept of local self-government and autonomy, appears to be unsustainable, the concept of development is sustainable development. Economic Development and Social Change under Article 243G does not militate against the idea of decentralizing the power and creating the institution of Ward Sabha. I am of the view that there is no restriction or limitation on the State Legislature on creation of committees like Ward Sabha for inclusive and over all economic and social change as the benefit of development must reach the remotest one is the constitutional goal and in furtherance of the said goal and in order to ensure balance development of the village panchayat, if the State Legislature has provided for Ward Sabha, there is no illegality or unconstitutionality. The submission of Mr. Kanth that the amendment in the Act that the Gram Panchayat is subject to the



rules made in this regard by the Government does not offend the constitutional scheme. In fact under Section 25 of the Act various standing committees have been envisaged for effective discharge of the power and function of the Gram Panchayat. Thus, I do not find any infirmity in the amendment in Section 25(1) in the Act. The challenge as to the framing of committees subject to the rules made in this behalf by the government in no way create hurdle in exercise of power and function of Panchayati Raj Institution and different committees of the Gram Panchayat. It is to be seen that in any event all the standing committees are of Gram Panchayat and the standing committee of the Gram Panchayat itself has to discharge the power and function in relation to the scheme of development, planning and social change. Earlier public works committee was vested with all kinds of constructions and maintenance under the amended provision, the public works committee is vested with monitoring and supervision of the function relating to all constructions and maintenance which does not in any manner indicate that the Gram Panchayat is divested with power in relation to construction and maintenance of rural housing, sources of water supply, road and other means of communication etc. The Standing Committee has been made now broad based by inserting sub-section (2) in Section



25 which provides for more participation of the members in the development scheme ensuring the members of different Wards of the Gram Panchayat in the public works committee. The objection of Mr. Kanth that by inserting the provisions under Section 26 of the Act to regulate the user of the panchayat fund is designed to interfere with the autonomy is also unsustainable, the scheme has to be read in the light of Sections 153 and 156 of the Act which provides for control by way of inspection and all offices of the Panchayat Record and Accounts thereof and non-obstante clause under Section 156 to issue direction in the matter of State Policy and the matter of public importance, the direction of the State Government is already available in the Act and as such I do not find any vice in the amended scheme.

26. In our constitutional scheme every power is coupled with duty and every power under the constitutional scheme inherently implies/restrains, the exercise of power with utmost circumspection and responsibility. The Panchayati Raj was introduced as institution of grass-root democracy for economic and social justice at the grass-root level to ensure the participation of the people in the matter of development, planning and its execution. The amendment Act, 2017 is designed to ensure more participation



of the people at the grass-root level by incorporating the scheme of Ward Sabha. In totality of the facts and circumstances, I am of the considered view that none of the provisions of the amended Act either offends Article 243G or any other constitutional scheme including Part-IX of the Constitution of India. It is to be noted here that in this case the Senior Counsel appearing on behalf of the petitioners has not submitted that the State has no power to amend the Act, 2006, the objection was that the effect of amendment is destroying the autonomy of self government. On scrutiny of scheme of the Constitution, I am of the view that the amendment in the Act serves dual purpose: (i) it provides for further decentralization of power to focus over all development of the remotest; (ii) it provides the mechanism of check and balance and as such it is not in any manner abrogating the constitutional scheme under Part-IX or in any manner affect the autonomy of the Panchayati Raj.

27. Considering the principle laid down by the Apex Court in the matter of deciding the constitutional validity of enactment in the case of **State of Bihar Vs. Bihar Distillery(supra)**, **P. Laxmi Devi (supra)** and **Bhanumati (supra)**, I do not find justification to declare the amendment in the Panchayati Raj Act, 2006 by way of Bihar Panchayati Raj



(Amendment) Act, 2017 as unconstitutional.

28. So far submission of Mr. Kanth as to the purposive interpretation and the judgment on which Mr. Kanth has relied upon, I am of the considered view that the question of validity and interpretation of amended provision are two different propositions. The question of interpretation and application of mischief rule or purposive interpretation as canvassed by Mr. Kanth, Senior Advocate, is only available to construe or gather the intention of the makers in appropriate case of applicability and not to examine the constitutional validity of the Act. The scope of challenge of the constitutional validity stands on different footing and the issue of mischief rule or purposive interpretation is of no help to the petitioner to find fault with the amended Act and to question the constitutional validity of the amended Act. Accordingly, I do not find any merit in the contention of the petitioner that the amended Act abrogates Article 243G of the Constitution of India or Article 243(d), (e) or Article 243B in any manner.

29. I find substance in the submission of Mr. Lalit Kishore, learned Advocate General that earlier Division Bench interfered with the executive action of the State whereby Panchayati Raj Department tried to amend the scheme of the Act and the Court



has already indicated that a committee other than under the Act or the Constitution can be introduced only by way of enactment by executive instructions and as such amending the Act by way of legislative process the State has constituted the committee which does not warrant any interference in the instant writ applications.

30. Accordingly, all the writ applications fail.

(Anil Kumar Upadhyay, J)

Rajendra Menon, C.J. :- I agree.

(Rajendra Menon, CJ)

Harish/-

AFR/NAFR	
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