

Before Amit Rawal, J.

**GRAM PANCHAYAT VILLAGE DINGAR MAJRA AND
OTHERS—Petitioners**

versus

STATE OF HARYANA AND OTHERS —Respondents

CWP No.20417 of 2016

May 10, 2017

Constitution of India, 1950 – Arts. 243, 243-G and 243-H – Haryana Panchayati Raj Act, 1994, Ss.20(1)(c), 39 and 40(a) – Haryana Panchayati Raj Finance Budget, Accounts, Audit Taxation And Works Rules, 1996 – Execution of Development works – Gram Panchayat – A body corporate and institution of Self government after the induction in Part IX, then, of course all the funds of the Gram Panchayat for purposes mentioned in Sections 39 and 40 (a) of 1994 Act, can only be utilized by the Panchayat and not by the officers of the Government – Gram Panchayats, thus, cannot be directed to utilize its funds through Executive Engineer or Block Development and Panchayat Officer – The State Government has no jurisdiction to issue rules directing that Panchayat funds (in the shape of government aid) to be used by Government officers/officials.

Held that, on cumulative reading of the provisions, I am of the view that the Gram Panchayat is the body corporate and is an institution of Self government after the induction in Part IX, then, of course all the funds of the Gram Panchayat for the purposes mentioned in Section 39 and 40 (a) of 1994 Act, can only be utilized by the Panchayat and not by the officers of the Government. Gram Panchayat, thus, cannot be directed to utilize its funds through Executive Engineer or Block Development and Panchayat Officer. The State Government has no jurisdiction to issue rules directing that the Panchayat funds (in the shape of government aid) to be used by the Government officers/officials. However, if the Government finds that the grants are not being utilized for the purposes the grants were sanctioned or are being embezzled, government can take suitable action against the Sarpanch / Panches in accordance with law, i.e. as per Section 20(1) (e) of 1994 Act.

(Para 21)

Further held that, as an upshot of my observations, the instructions (Annexure P-2) and the rules are inconsistent with the provisions of the Articles of the Constitution and Sections 39 and 40 of 1994 Act and 1996 Rules. Resultantly, instructions (Annexure P-2) are set aside. It is held that the aforementioned rules shall not be made applicable. Though the aforementioned rules are not challenged, but once the State has relied upon the same in “any other appropriate writ, order or direction which this Court may deem fit and view of the *ratio decidendi* culled out in *Calcutta Gas Company (Proprietary) Ltd. v. State of W.B. and others*, 1962 AIR (SC) 1044. Resultantly, the writ petitions are allowed. Consequently, COCP No. 1817 of 2016 is rendered infructuous.

(Para 22)

Vikram Singh, Advocate.
Manoj Kumar Palwal, Advocate.
Amardeep Hooda, Advocate.
Sarfraaz Hussain, Advocate.
Parminder Singh, Advocate.
V.D.Sharma, Advocate.
Rakesh Dhiman, Advocate.
B.S.Saroha, Advocate.
Sanjeev Kumar Panwar, Advocate.
Sanjay Verma, Advocate.
Ivan Singh, Advocate
for Shiv Kumar, Advocate.
Rajesh Lamba, Advocate.
Sukhdeep Parmar, Advocate.
Vivek Goyal, Advocate.
V.B.Aggarwal, Advocate.
Nonish Kumar, Advocate
and Arun Kumar, Advocate
and Vijay Partap Singh, Advocate.
Vishal Sharma, Advocate.
D.P.S.Bajwa, Advocate.
Robin Singh Hooda, Advocate.
Minderjeet Yadav, Advocate.
Amit Choudhary, Advocate,
for the petitioners.

Parvinder Chauhan, Addl.A.G.Haryana.

Gunjan Gera, Advocate
for Arvind Rajotia, Advocate,
for respondent No.8.

AMIT RAWAL, J.

(1) This order of mine shall dispose of 80 Civil Writ Petitions and one COCP bearing No.CWP-12217-2015 titled as “Gram Panchayat Village Landora and others V/S State of Haryana and others”, CWP-13338-2016 titled as “Gram Panchayat M.P. Majra and others V/S State of Haryana and others”, CWP-14723-2016 titled as “Gram Panchayat Sangoha and others V/S State of Haryana and others”, CWP-19828-2016 titled as “Gram Panchayat Village Phaggu and others V/S State of Haryana and others”, CWP-16449-2016 titled as “Gram Panchayat Village Dahar V/S State of Haryana and others”, CWP-19804-2016 (O&M) titled as “Gram Panchayat Village Bharolianwali and others V/S State of Haryana and others”, CWP-19823-2016 titled as “Gram Panchayat Village Rupawas and others V/S State of Haryana and others”, CWP-19836-2016 (O&M) titled as “Gram Panchayat Village Handikhera and others V/S State of Haryana and others”, CWP-19914-2016 (O&M) titled as “Gram Panchayat Village Nuhiyanwali and others V/S State of Haryana and others”, CWP-20287-2016 titled as “Gram Panchayat Village Kariwala and others V/S State of Haryana and others”, CWP-20417-2016 titled as “Gram Panchayat Dingar Majra and others V/S State of Haryana and others”, CWP-22757-2016 titled as “Gram Panchayat Village Kami V/S State of Haryana and others”, CWP-22875- 2016 titled as “Gram Panchayat Chandpur V/S State of Haryana and others”, CWP-22932-2016 titled as “Gram Panchayat Dayalpur V/S State of Haryana and others”, CWP-23003-2016 titled as “Gram Panchayat, Pahwata V/S State of Haryana and others”, CWP-23088-2016 titled as “Gram Panchayat Abla Jagir and others V/S State of Haryana and others”, CWP- 23593-2016 titled as “Gram Panchayat Village Chirao and others V/S State of Haryana and others”, CWP-23654-2016 titled as “Gram Panchayat Village Dhansoli V/S State of Haryana and others”, CWP-24098-2016 titled as “Gram Panchayat Village Sirohi V/S State of Haryana and others”, CWP-24127-2016 titled as “Gram Panchayat Village Gothda Mohatabad V/S State of Haryana and others”, CWP-24130-2016 titled as “Gram Panchayat Village Bahadurpur V/S State

of Haryana and others”, CWP-24570-2016 titled as “Gram Panchayat Village Manjhawali V/S State of Haryana and others”, CWP-24640-2016 titled as “Gram Panchayat Tigaon V/S State of Haryana and others”, CWP-26701-2016 titled as “Gram Panchayat Village Bhatola V/S State of Haryana and others”, CWP-26928-2016 titled as “Gram Panchayat Village Balachaur V/S State of Haryana and others”, CWP-27079-2016 titled as “Gram Panchayat Village Bhattu Kalan and others V/S State of Haryana and others”, CWP-16950-2016 titled as “Gram Panchayat Village Nabipur and another V/S State of Haryana and others”, CWP-19459-2016 titled as “Afsana Sarpanch and others V/S State of Haryana and others”, CWP-20705-2016 titled as “Sabbir Ahmad and others V/S State of Haryana and others”, CWP-22512-2016 titled as “Gram Panchayat Village Gadhi Jattan and others V/S State of Haryana and others”, CWP-22610-2016 titled as “Gram Panchayat Village Dayalgarh V/S State of Haryana and others”, CWP-25658-2016 titled as “Gram Panchayat Village Jai Jai Wanti and others V/S State of Haryana and others”, CWP-26608-2016 titled as “Gram Panchayat Village Adhon and others V/S State of Haryana and others”, CWP-26646-2016 titled as “Gram Panchayat Village Banoi, Khudabaksh and others V/S State of Haryana and others”, CWP-26686-2016 titled as “Gram Panchayat Village Dilluwala and others V/S State of Haryana and others”, CWP-64-2017 titled as “Gram Panchayat Village Badrola V/S State of Haryana and others”, CWP-77-2017 titled as “Gram Panchayat Village Shahabad V/S State of Haryana and others”, CWP-78-2017 titled as “Gram Panchayat Village Prehladpur Majra Badrola V/S State of Haryana and others”, CWP-100-2017 titled as “Gram Panchayat Village Barona and others V/S State of Haryana and others”, CWP-196-2017 titled as “Gram Panchayat Village Sunper and others V/S State of Haryana and others”, CWP-157-2017 titled as “Gram Panchayat Village Kulana and others V/S State of Haryana and others”, CWP-269-2017 titled as “Gram Panchayat Village Thol V/S State of Haryana and others”, CWP-386-2017 titled as “Sarpanch Association, Block Farukh Nagar (Gurugram) V/S State of Haryana and others”, CWP-754-2017 titled as “Gram Panchayat Village Singhwa Khas and others V/S State of Haryana and others”, CWP-846-2017 titled as “Gram Panchayat Village Dharamgarh and others V/S State of Haryana and others”, CWP-861-2017 titled as “Gram Panchayat Village Khotpura V/S State of Haryana and others”, CWP-890-2017 titled as “Gram Panchayat Village Begampur and others V/S State of Haryana and

others”, CWP-311-2017 titled as “Gram Panchayat Village Chhachharauli, Yamuna Nagar V/S State of Haryana and others”, CWP-3656-2017 titled as “Gram Panchayat Tilpat V/S State of Haryana and others”, CWP-1331-2017 titled as “Gram Panchayat, Tigaon, Adhana Patti V/S State of Haryana and others”, CWP-1900-2017 titled as “Gram Panchayat Village Dadoli and others V/S State of Haryana and others”, CWP-1596-2017 titled as “Gram Panchayat Village Kirori and others V/S State of Haryana and others”, CWP-1607-2017 titled as “Gram Panchayat Village Dhakala and others V/S State of Haryana and others”, CWP-1661-2017 titled as “Gram Panchayat Village Kasithal and others V/S State of Haryana and others”, CWP-2443-2017 titled as “Gram Panchayat Village Asadpur and others V/S State of Haryana and others”, CWP-2527- 2017 titled as “Gram Panchayat Village Bagru and others V/S State of Haryana and others”, CWP-3704-2017 titled as “Gram Panchayat Village Chuharpur Kalan and others V/S State of Haryana and others”, CWP-4236-2017 titled as “Gram Panchayat Village Ahmadpur Majra and others V/S State of Haryana and others”, CWP-1217-2017 titled as “Gram Panchayat Kot V/S State of Haryana and others”, CWP-2308-2017 titled as “Gram Panchayat Village Dhyngla and others V/S State of Haryana and others”, CWP-2999-2017 titled as “Gram Panchayat Village Thal and others V/S State of Haryana and others”, CWP-3579-2017 titled as “Gram Panchayat Village Didwari V/S State of Haryana and others”, CWP-3627-2017 titled as “Gram Panchayat Village Pughthala and others V/S State of Haryana and others”, CWP-3664-2017 titled as “Gram Panchayat Village Bhainswal Kalan Mithan and others V/S State of Haryana and others”, CWP-620-2017 titled as “Gram Panchayat Village Mahawati and others V/S State of Haryana and others”, CWP-4453-2017 titled as “Gram Panchayat Village Banoi Khudabaksh and others V/S State of Haryana and others”, CWP- 4575-2017 titled as “Gram Panchayat Village Bir and others V/S State of Haryana and others”, CWP-27281-2015 titled as “Subhash Chand V/S State of Haryana and others”, CWP-5243-2017 titled as “Sarpanch Association / Block Rohtak V/S State of Haryana and others”, CWP-5247-2017 titled as “Gram Panchayat Village Pinjori V/S State of Haryana and others”, CWP- 5164-2017 titled as “Gram Panchayat Bhaskola V/S State of Haryana and others”, CWP-5961-2017 titled as “Gram Panchayat Village Bhulkheri V/S State of Haryana and others”, CWP-6362-2017 titled as “Gram Panchayat Sultanpur & another V/S State of Haryana and others”, CWP-6514-2017 titled as “Gram

Panchayat Village Surakhpur & others V/S State of Haryana and others”, CWP-5566-2017 titled as “Gram Panchayat Village Sainthly & others V/S State of Haryana and others”, CWP-9948-2017 titled as “Gram Panchayat Mustfabad through its Sarpanch V/S State of Haryana and others”, CWP-9980-2017 titled as “Gram Panchayat Durgapur V/S State of Haryana and others”, CWP-10011-2017 titled as “Gram Panchayat Village Jaidhri V/S State of Haryana and others”, CWP-7267-2017 titled as “Gram Panchayat Jyotisar V/S State of Haryana and others”, CWP-8839-2017 titled as “Gram Panchayat Village Jhal & others V/S State of Haryana and others” and COCP No.1817-2016 “Puja Rani Versus Ramphal” as the common questions of law and fact are involved. The facts are being taken from 20417 of 2016.

(2) The following questions are involved in the present writ petitions:-

- a) Can the State of Haryana, by virtue of instructions dated 5.2.2015 (Annexure P-2) on the subject of “Execution of Development works” directing the Gram Panchayats to transfer the grants received in the account of the Gram Panchayats in the account of concerned Executive Engineer for execution of the works and in defiance to that;
- b) Can Deputy Commissioner immediately take action against the Sarpanch and the Gram Panchayat under the provisions of the Haryana Panchayati Raj Act, 1994 (for short “1994 Act”) enabling him to transfer the funds to the concerned Executive Engineer?
- c) Can such instructions override the provisions of Articles 243B, 243G and 243H of the Constitution of India and Sections 39 and 40 of 1994 Act?
- d) Whether the notification dated 2.7.2012, as relied upon in the written statement, whereby the Haryana Panchayati Raj Finance, Budget, Accounts, Audit, Taxation and Works Rules, 1996 (for short “1996 Rules”) amended without causing any amendment in the Principal Act and made applicable for the purpose of execution of the instructions, *ibid*?

(3) The Gram Panchayats of various Villages in the State of

Haryana have approached this Court challenging the aforementioned instructions and the letter issued calling upon them to transfer the grants of more than Rs.10.00 lacs in the office of Executive Engineer Panchayat Raj.

(4) In order to decide the aforementioned questions, I would be failing in my duty if I do not reproduce the provisions of Articles 243B, 243G and 243H, which have been caused/amended by Seventy-third Amendment of the Constitution w.e.f. 24.4.1993. The same read thus:-

“243-B. Constitution of Panchayats – There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.

(2) Notwithstanding anything in clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs.

243-G. Powers, authority and responsibilities of Panchayats – Subject to the provisions of the Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as 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. **243H. Powers to impose taxes by, and Funds of, the Panchayats**-The Legislature of a State may, by law,-

(a) authorise a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;

(a) authorise a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;

(b) assign to a Panchayat such taxes, duties, tolls and fees

levied and collected by the State Government for such purposes and subject to such conditions and limits;

(c) provide for making such grants-in-aid to the Panchayats from the Consolidated Fund of the State; and

(d) provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Panchayats and also for the withdrawal of such moneys therefrom, as may be specified in the law.”

(5) On perusal of the aforementioned provisions of the Article, it leads to an irresistible conclusion that the aforementioned provisions of the Constitution have endowed the Panchayats with such power and authority enabling them to function as institutions of self-government with respect to the preparation of plans and implementation of schemes for economic development and social justice.

(6) In pursuance to the aforementioned amendment in the Constitution, the State Legislature in its wisdom has in 1994 Act under Chapter V, defined the expression “Gram Fund” and the “Source of Gram Fund”. The provisions of Sections 39 and 40 of 1994 Act are reproduced here-in-below:-

“Section 39 Gram Fund

There shall be a Gram Fund for each Gram Panchayat and the same shall be utilized for carrying out the duties and obligations imposed on the Gram Panchayat or any committee thereof by this or any other Act and for such other purposes of the Gram Panchayat as the Government may prescribe.”

Section 40

Source of Gram Fund:- The following moneys shall be credited to the Gram Fund:-

(i) all grants from the Government or other local Authorities as may be specified;

(ii) the balances, if any, standing at the credit of the Gram Panchayat at the commencement of this Act;

(iii) the balances and proceeds of all funds which, in the opinion of the Block Development and Panchayat Officer,

were or are being collected for common, secular purposes of the village or the villages comprised in the sabha area;

(iv) all donations;

(v) all taxes, duties, cesses and fees imposed and realized under this Act;

(vi) the sale proceeds of all dust, dirt, dung or refuse collected by the servants of the Gram Panchayats and dead bodies of animals not claimed by any person in accordance with any custom or usage and the trees and other produce of the land vested in the Gram Panchayat.

(vii) income derived from the fisheries which are under the management of Gram Panchayats; and

(viii) income derived from common lands vested in the Gram Panchayat under any law for the time being in force.”

(7) On conjoint reading of the aforementioned provisions of Sections 39 and 40 of 1994 Act, it is evident that the Gram Fund for each Gram Panchayat shall be utilised for carrying out the duties and obligations imposed on the Gram Panchayat or any committee thereof under the aforementioned Act, which shall also include the grants from the Government or other local Authorities.

(8) Learned counsel representing the petitioners in the writ petitions, in support of their contentions, have relied upon the following three judgments to lend support from the aforementioned argument that the impugned action of the State is not sustainable in the eyes of law, much less without jurisdiction:-

(i) Decision dated 26.8.2011 rendered in **CWP No.15833 of 2011** (Gram Panchayat Village Mann Versus The State of **Punjab and others**), in respect of the matters of various Gram Panchayats situated in Punjab, where identical question had arisen and by pondering upon the aforementioned provisions of the Act being *para materia*, Constitution of India, held the action of the State to be illegal, much less without jurisdiction;

(ii) Decision dated 29.2.2012 rendered in **CWP No.20977 of 2011** (Gram Panchayat Village Barona, Block **Kharkhoda, District Sonapat Versus State of**

Haryana & others), whereby action of the State Government ordering the Gram Panchayat for handing over the grant received in the account of the State, i.e., for the development of Adarsh (Model) Village Barona has also been held to be unconstitutional and without jurisdiction;

(iii) Decision dated 16.8.2016 rendered in CWP No.4265 of 2016 (Gram Panchayat Khippannwali Versus State of Punjab and others), wherein the Gram Panchayat was aggrieved of having non-deposit of the amount of grant-in-aid in the Gram Panchayat fund; and

(iv) Judgment dated 9.7.2009 passed in PIL bearing CWP No.8510 of 2009 (Gram Panchayat Village Ghamur Kheri Versus State of Haryana and others).

(9) It has also been submitted that the amendment has been caused by notification dated 2.7.2012 in the Haryana Panchayati Raj Finance, Budget, Accounts, Audit, Taxation and Works (Amendment) Rules, 2012 by amending Rule 11 and 134, whereby the Gram Panchayat or Panchayat Samiti or Zila Parishad, have been held to be competent to accord administrative approval of work(s) from Gram Panchayat Fund etc. except HRDFB Funds, without any capping as per Schedule 'A', in essence they can execute the works themselves or get it done through a contractor or entrust the work to the Panchayati Raj engineering Wing upto the estimated cost of Rs.10.00 lacs, but the Zila Parishad may execute the work itself or get it done through a contractor in respect of the work upto the estimated cost of Rs.15.00 lacs, whereas the works beyond these limits, the power to get the same executed has been given to the Engineering Wing As per Schedules "A" and "B".

(10) They further submitted that the amendment has been caused without causing amendment in the Principal Act, therefore, the aforementioned Rules are totally in defiance to the object of Seventy-third amendment caused in the Constitution of India, in essence independent right of the Gram Panchayats has been impeded and, thus, the action of the State is fallacious and subterfuge and also repugnant.

(11) It has been further argued that in all the aforementioned judgments rendered by the coordinate benches of this Court, the

action of the State in imposing a condition upon the Gram Panchayats for transferring the funds or having the domain or control over the funds of the Gram Panchayats received as grants-in-aid, has been held to be fallacious, deplorable and nonest and, thus, urged this Court for setting-aside the aforementioned instructions dated 5.2.2015 (Annexure P-2).

(12) Per contra, Mr. Parvinder Chauhan, learned Additional Advocate General, Haryana, representing the State, has relied upon the amendment and as well as the instructions, much less following findings of the Division Bench in the aforementioned Public Interest Litigation to submit that the Division Bench of this Court had not only accepted the Act and Rules, but also the procedure and the guidelines issued from time to time by referring to certain situations:-

“Mr. Singh, Addl. Advocate General, Haryana, however, contended that even, when the amount may be deposited in the Gram Fund, the Panchayat will not be able to spend the same beyond what is stipulated as its financial limit in terms of the guidelines issued by the State Government. He drew our attention to the guidelines which have been produced by Mr. Singh alongwith the affidavit as Annexure R-2 in support of that submission. A reading of the said guidelines no doubt shows that works upto Rs. 3 lacs can be executed by the Gram Panchayat on “wage muster roll” basis whereas those beyond Rs. 3 lacs and upto Rs. 50 lacs have to be got executed through tender system. These guidelines, however, are in no way in conflict with the provisions of Sections 39 and 40 of the Act or Rule 11 referred to earlier. While the amount sanctioned in favour of the Panchayat may be deposited in the Gram Fund, its actual utilisation may be regulated by the rules framed under the Act and procedure and guidelines issued by the Government. We are not in the instant case dealing with a situation where the Gram Panchayat proposes to spend the amount sanctioned in its favour in violation of the instructions issued by the Government. The question before us is not whether the Gram Panchayat should have the liberty to spend the entire amount of Rs. 10 lacs on wage muster roll basis. The question is whether the amount which is sanctioned ought to be deposited in the Gram Fund and be utilised in the manner

stipulated under the guidelines and the procedure otherwise prescribed by the Government in terms of its instructions. The answer to both these questions is in affirmative. The amount has to be deposited in Gram Fund and once deposited, the same ought to be utilised in accordance with the provisions of the Act and the Rules as well as of the guidelines issued by the State Government. This would mean that while the actual execution of the work may be regulated by the guidelines, the withdrawal of the amount from the Gram Fund must necessarily go through the rigours of Rule 11 quoted earlier.

In the result, we allow this petition and direct the respondents to ensure deposit of the amount of grant-in-aid sanctioned in the Gram Fund and its utilisation in accordance with the purpose for which the said amount has been sanctioned keeping in view the guidelines and instructions issued by the State Government. Needless to say that once the amounts are found to be due and payable to those who have executed the works, the Gram Panchayat would examine and take an appropriate decision regarding payment of the dues of the bills raised by the agency engaged for executing the works. No costs.”

(13) He further submitted that the grant-in-aid received under the Central Finance Commission-cum-State Finance Commission and funds under the other schemes executed by the Development & Panchayat Department is being transferred directly to the Gram Fund through electronic mode, i.e., RTGS. The administrative approval for the works to be undertaken is to be given by the Gram Panchayats as per the existing procedure, i.e., the resolution passed by the majority of the members of the concerned Gram Panchayat. In the absence of any financial capping, the State had to frame the aforementioned Rules as the Panchayats are bound to execute the works as per the procedure laid down in 1994 Act and the instructions issued from time to time. Thus, on perusal of provisions of 1994 Act and Rules, the amount sanctioned by the Government is to be credited/deposited in the Gram fund and its actual utilisation is to be regulated by the rules framed under the Act and procedure and guidelines issued by the Government as mandated by the Division Bench of this Court in the judgment, *ibid*, particularly for the last 2-3 years, it is found that some of the Gram

Panchayats are not following the rules, procedures and the guidelines issued by the State government as instead of getting the works, estimated beyond Rs.10.00 lacs executed through the Engineering Wing of the Panchayati Raj, are themselves executing the works in violation of the provisions of 1994 Act and 1996 Rules, much less the guidelines. It is in this backdrop of the matter, the occasion arose to cause the amendment, thus, the instructions are neither contrary nor violative to the provisions of Articles 243B, 243G and 243H of the Constitution and Sections 39 and 40 of 1994 Act. The objective of the impugned instructions is that the grants-in-aid credited to the accounts of the Gram Panchayats be utilised for such purpose/schemes for which these have been granted as per the resolutions passed by the Gram Panchayats strictly in accordance with the provisions of 1994 Act and the Rules framed thereunder. The aforementioned guidelines are based upon the notification dated 2.7.2012. He referred un-amended and amended provisions of clause (a) in Rule 134 in sub-rule (1), which read thus:-

“Un-amended Provisions

"134. (1) (a) Before undertaking the execution of any work, a Gram Panchayat or Panchayat Samiti or a Zila Parishad, as the case may be, will first decide whether it would itself execute the work or get it done as deposit work through a contractor up to power of administrative approval vested in them as per Schedule "A". Beyond this power the work will be got executed through Engineering Wing Panchayati Raj of Development Department. All the account shall be maintained by the respective authorities as per departmental register in Form LVIII and tender register Forms LIX and LX".

Amended Provisions

"(a) The Gram Panchayat or Panchayat Samiti or Zila Parishad, as the case may be shall be competent to accord administrative approval of work (s) from Gram Panchayat Fund, Panchayat Samiti Fund, Zila Parishad Fund respectively, except HRDFB Funds, without any capping as per Schedule 'A'. A Gram Panchayat or Panchayat Samiti may execute the work itself or get it done through a contractor or entrust the works to the Panchayati Raj

Engineering Wing upto the estimate cost of Rs.10.00 lac. The Zila Parishad may execute the work itself or get it done through a contractor or entrust the work to the Panchayati Raj Engineering Wing up to the estimated cost of Rs.15.00 lac. The works beyond these limits shall be got executed through the Engineering Wing. All the accounts shall be maintained by the respective authorities as per departmental register in Form I/II and tender register Forms LIX and LX” Provided that where earth work is required to be done, it shall be got executed by the concerned Gram Panchayat under MGNREGA.

8. That accordingly, Schedule A', B' and D' to the “Rules of 1996” have also been amended by making the following substitutions:-

SCHEDULE 'A'

[(See clause (a) of Sub-rule (1) of rule 131 rule 132 and rule 134 (2) (a)]

Authorities Competent to give				(a)Administrative Approval			
				(b)Technical sanction			
Sr. No.	Nature and Value of Work	Gram Panchayat Works		Panchayat Samiti Work		Zila Parishad Works	
1	2	3	4	5	6	7	8
		Administrative approval by	Technical sanction by	Administrative approval by	Technical sanction by	Administrative approved by	Technical sanction by
A. Original Works :-							

1	Without any capping for administrative approval from their own fund as well as allotted funds	Gram Panchayat	<p>1.Sub Divisional Officer upto Rs.10.00 lac</p> <p>1. Executive Engineer above Rs.10.00 lac to Rs.25.00 lac</p> <p>3. Superintending Engineer above Rs.25 lac to Rs.50 lac</p> <p>4.Chief Engineer exceeding Rs.50 lac</p>	Panchayat Samiti	<p>1.Sub Divisional Officer upto Rs.10.00 lac</p> <p>2. Executive Engineer above Rs.10.00 Lac to Rs.25.00 lac</p> <p>3.Superintending Engineer above Rs.25 lac to Rs.50 lac</p> <p>4.Chief Engineer exceeding Rs.50 lac</p>	Zila Parishad	<p>1. Sub Divisional Officer upto Rs.10.00 lac</p> <p>2.Executive Engineer above Rs.10.00 lac to Rs.25.00 lac</p> <p>3.Superintending Engineer above Rs.25 lac to Rs.50 lac</p> <p>4.Chief Engineer exceeding Rs.50 lac</p>
B	Repairs and Maintenance :-						

1	Without any capping for administrative approval from their own funds as well as allotted funds	Gram Panchayat	<p>1. Sub Divisional Officer upto Rs.25000</p> <p>2. Executive Engineer above Rs.25000 to Rs.50000</p> <p>3. Superintending Engineer above Rs.50000 to Rs.1.00 lac</p> <p>4. Chief Engineer exceeding Rs.1.00 lac</p>	Panchayat Samiti	<p>1. Sub Divisional Officer upto Rs.25000</p> <p>2. Executive Engineer above Rs.25000 to Rs.50000</p> <p>3. Superintending Engineer above Rs.50000 to Rs.1.00 lac</p> <p>4. Chief Engineer exceeding Rs.1.00 lac</p>	Zila Parishad	<p>1. Sub Divisional Officer</p> <p>1. Executive Engineer above Rs.25000 to Rs.50000</p> <p>3. Superintending Engineer above Rs.50000 to Rs.1.00 lac</p> <p>4. Engineer exceeding Rs.1.00 lac</p>
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SCHEDULE 'B'**Calling and Acceptance of Quotations/Tenders**

[See Clause (b) of sub-rule (1) of rule 134 and see sub-rule (1) of rule 135]

Sr. No.	Costing of original works/ repair works	Authority to prepare NIQ/ NIT	Authority to approve NIQ/ NIT	Authority to call Tenders/ quotation	Authority to accept quotation/ tenders	Conditions of acceptance, if any	Authority to execute works orders/ agreement	Remarks
1	2	3	4	5	6	7	8	9
1	Upto Rs.10 lac (Rs.25,000 For repair works)	Junior Engineer	Sub Divisional Officer	Panchayat/ Panchayat Samiti/Zila Parishad	Panchayat/ Panchayat Samiti/Zila Parishad	Rates tendered do not exceed the rates in common schedule or in the sanctioned estimate In case rates exceed upto 5% then sub – Divisional Office will approve the rates. If the excess is between 5% to 10% Executive Engineer will approve the rates.	Sarpanch/ Chairman/ President	Estimate Should be technically sanctioned
2	Above Rs.10 lac to 25 lac (Rs. 50,000 for repair works)	Sub Divisional Officer	Executive Engineer	Panchayat & Executive Engineer Panchayat Samiti & Executive Engineer Zila Parishad & Executive Engineer (Jointly)	Sarpanch & Executive Engineer Chairman & Executive Engineer President & Executive Engineer (Jointly)	Rates tendered do not exceed the rates in common schedule or in the sanctioned estimate In case rates exceed upto 5% then sub– Divisional Office will approve the rates. If the excess is between 5% to 10% Executive Engineer will approve the rates.	Sarpanch/ Chairman/ President	Estimate should be technically sanctioned

3	Above Rs.25 lac to 50 lac (Rs. 1,00,000 for repair works) Above Rs. 50 lac	Executive-Engineer Executive Engineer	S.E. (PR) Chief Engineer	Panchayat & Executive Engineer, Panchayat Samiti & Executive Engineer, Zila Parishad & Executive Engineer (Jointly) Panchayat & Executive Engineer, Panchayat Samiti & Executive Engineer, Zila Parishad & Executive Engineer (Jointly)	Panchayat & SE Panchayat Samiti & Superintending Engineer, Zila Parishad & Superintending Engineer (Jointly) Chief Engineer	Rates tendered do not exceed the rates in common schedule or in the sanctioned estimate In case rate exceed upto 5% then Superintending Engineer will approve the rates. Beyond 5% Chief Engineer will approve the rates. Rates tendered do not exceed the rates, in common schedule or in the sanctioned estimate. In case rate exceed upto 5% then sub – Superintending Engineer will approve the rates. Beyond 5% Chief Engineer will approve the rates.	Sarpanch/ Chairman/ President Sarpanch / Chairman/ President	Estimate should be technically sanctioned Estimate should
4								

5. In the said rules for existing schedule 'D', the following schedule shall be substituted, namely:-

SCHEDULE 'D'

(Rule 139)

Competency of Assessment of Works

Sr. No.	Competency of office/official	Works upto	Remarks
1	Sub Divisional Officer, Panchayati Raj	Rs.10,00,000	Provided estimate is technically sanctioned

2	Executive Engineer, Panchayati Raj	Above Rs.10,00,000	Provided estimate is technically sanctioned
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(14) He further submitted that number of contempt petitions were filed for non-compliance of the decision dated 9.7.2009 and the same were disposed of on the statement of the Advocate General, Haryana that the State Government had decided to amend the relevant rules and instructions by specifying that the grants-in-aid released by the Government on the recommendations of the Central and State Finance Commission will be credited in the Gram Panchayats Fund without any monetary ceiling, but the Gram Panchayats will have to get its works, which are estimated at over Rs.5.00 lacs, executed only through the Panchayati Raj Engineering Wing by referring to Schedules “A” and “B”, which prescribe the utilisation of the funds of the Gram Panchayats through various offices of the Panchayat Development and, thus, prays for dismissal of the writ petitions.

(15) I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of the learned counsel for the petitioners.

(16) Article 226 of the Constitution confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. On reading of the aforementioned provisions of the seventy- third amendment caused in the Constitution, it leaves no manner of doubt that the Gram Panchayat is a body corporate and is an institution of self- government, therefore, action on the part of the Government directing the utilisation of the funds of the Panchayats through Government officers is totally unconstitutional, illegal, much less nullity.

(17) No doubt, Section 209 of 1994 Act empowers the Government to make rules, but the rules cannot be inconsistent with the purposes of the Act. They cannot run counter to the principal object of the Act. Sections 39 and 40 of 1994 Act, particularly sub-clause (a) of Section 40 provide that all the grants from the Government or other local Authorities shall be credited to the Gram Fund. It cannot be supplemented by causing the amendment in the Act. The impugned instructions (Annexure P-2) issued, according to

the stand taken in the written statement, in pursuance to the notification aforementioned, in my view do not, at any point of time, refer to amended rules, emphatically, relied upon by the learned State counsel. The instructions dated 5.2.2015 read thus:-

“From

The Additional Chief Secretary to Govt. Haryana
Development and Panchayat Department

To

State All the Divisional Commissioners in Haryana State
All the Deputy Commissioners in Haryana State

All the Additional Deputy Commissioners in Haryana

All the District Development and Panchayat Officers in
Haryana State

All the Executive Engineer (PR) in Haryana State Memo
No.DFA3/2015/4162-4252 Dated:05.02.2015

**Subject: Execution of Development works-instructions
thereof.**

Kindly refer to this Department Memo No.DFA-3-2011/36392 dated 18.7.2011 and subsequent instructions letter No.DFA-3-2012/48328-415 dated 24.8.2012 and letter no.DFA3-2013/32549-594 dated 26.6.2013 in continuation thereof on the subject noted above.

As you are aware that funds under all the schemes are being transferred directly into the bank accounts of concerned Gram Panchayats. The GPs are according administrative approvals for all developmental works, except works under HRDF Schemes.

In order to further streamline the system and to ensure equal development of all areas, as per felt need of people, the DC shall prioritize the work in consultation with the elected representatives of PRIs as well as elected representatives of people of the area. The DC or the ADC while recommending the works to the Department for the sanction of funds shall also ensure that:-

(i) the GP, by majority has passed resolution for the selection of works;

(ii) the resolution of GP shall also mention that in case the estimated cost with a majority of a particular work is above Rs.10 lac, the funds would be transferred to the concerned Executive Engineer for execution of works within 10 days of the receipt of funds in their bank account as directed vide above referred letter;

(iii) the competent authority has framed the proper estimates of the works and granted technical approval thereof for the prioritized works; and

(iv) no splitting of works.

In case, the GP fails to transfer the funds to the Executive Engineer for the works having estimated cost above Rs.10 lac, DC shall immediately take action against the Sarpanch and the GP as per provisions of the Haryana Panchayati Raj Act, 1994 and transfer the funds to the concerned Executive Engineer. Besides, further grant to that particular village/Gram Panchayat shall be withheld.

The time limit prescribed by for a work in the estimate should be adhered to and in case the executing agency finds it difficult to complete the work within prescribed period, the permission be sought for extension of period from the DC before the expiry of prescribed period, giving reasons for non-completion of work within prescribed period.

The DC/ADC within 15 days after completion of work shall ensure that a proper completion certificate has been recorded and the information has been sent to the concerned quarter.

sd/-

Nodal Officer (Development)

for Additional Chief Secretary to

Govt. Haryana Development and Panchayat Department”

(18) The apprehension of the State has also been taken care of under Article 243 (i), where the Governor of a State had been endowed upon a power, within one year from the commencement of the

Seventy-third Amendment, to constitute a Finance Commission to review the financial position of the Panchayats and to make recommendations to the Governor as to the principle which should govern the distribution between the State and the Panchayats, determination of the taxes, duties, measures needed to improve the financial position of the Panchayat and any other matter referred to the Finance Commission by the Governor, but in no way prescribes stealing of powers of the Gram Panchayat.

(19) Article 243 (j) of Constitution also deals with audit of accounts of Panchayats. Thus, in my view there cannot be any possibility of misuse of the Panchayat funds as the elected body of the Panchayat would always make endeavour for the works of the Panchayat and all the decisions are subject to the approval of the executive, but transfer of the funds in the account and utilisation at the discretion, in my view, is totally unconstitutional and without jurisdiction. For the sake of brevity, Articles 243 (i) and (j) are reproduced here-in-below:-

“243-I. Constitution of Finance Commissioner to review financial position.-(1) The Governor of a State shall, as soon as may be within one year from the commencement of the Constitution (Seventy-third Amendment) Act, 1992, and thereafter at the expiration of every fifth year, constitute a Finance Commission to review the financial position of the Panchayats and to make recommendations to the Governor as to—

(a) the principles which should govern—

(i) the distribution between the State and the Panchayats of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Panchayats at all levels of their respective shares of such proceeds;

(ii) the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Panchayats;

(iii) the grants-in-aid to the Panchayats from the Consolidated Fund of the State;

(b) the measures needed to improve the financial

position of the Panchayats;

(c) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Panchayats.

(2) The Legislature of a State may, by law, provide for the composition of the Commission, the qualifications which shall be requisite for appointment as members thereof and the manner in which they shall be selected.

(3) The Commission shall determine their procedure and shall have such powers in the performance of their functions as the Legislature of the State may, by law, confer on them.

(4) The Governor shall cause every recommendation made by the Commission under this article together with an explanatory memorandum as to the action taken thereon to be laid before the Legislature of the State.

243J. The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Panchayats and the auditing of such accounts.”

(20) This is what has been held in the judgments rendered by the coordinate benches of this Court. Sub-section (xxix) of Section 2 of 1994 Act provides the definition of “Gram Panchayat” means the Panchayat constituted at village level under this Act and Section 8 deals with the establishment and constitution of Gram Panchayat, which provides that the Government may, by notification, establish a Gram Panchayat by name in every sabha area, which shall consist of Sarpanch, who shall be elected by the Gram Sabha from amongst its voters by six to twenty Panches from wards in a Panchayat area and all the above seats shall be filled in by persons chosen by direct election from the wards in the Panchayat area. The same reads thus:-

“8. (1) The Government may, by notification, establish a Gram Panchayat by name in every sabha area.

(2) Every Gram Panchayat shall consist of—

(a) Sarpanch who shall be elected by the Gram Sabha from amongst its voters, by secret ballot ;

(b) six to twenty Panches from wards in a Panchayat area in

the manner prescribed;

[(c) * * * * *]

(3) All the above seats referred to in clause (b) of sub-section (2) shall be filled in by persons chosen by direct election from the wards in the Panchayat area and for this purpose each Panchayat area shall be divided into wards in such manner that the ratio between the population of each ward and the number of the seats of Panches allotted to it shall, so far as possible, be the same throughout the Panchayat area.”

(21) On cumulative reading of the provisions, I am of the view that the Gram Panchayat is the body corporate and is an institution of Self government after the induction in Part IX, then, of course all the funds of the Gram Panchayat for the purposes mentioned in Sections 39 and 40 (a) of 1994 Act, can only be utilised by the Panchayat and not by the officers of the Government. Gram Panchayats, thus, cannot be directed to utilise its funds through Executive Engineer or Block Development and Panchayat Officer. The State Government has no jurisdiction to issue rules directing that the panchayat funds (in the shape of government aid) to be used by the Government officers/officials. However, if the Government finds that the grants are not being utilised for the purposes the grants were sanctioned or are being embezzled, government can take suitable action against the Sarpanch/Panches in accordance with law, i.e., as per Section 20(1)(e) of 1994 Act.

(22) As an upshot of my observations, the instructions (Annexure P-2) and the rules are inconsistent with the provisions of the Articles of the Constitution and Sections 39 and 40 of 1994 Act and 1996 Rules. Resultantly, instructions (Annexure P-2) are set-aside. It is held that the aforementioned rules shall not be made applicable. Though the aforementioned rules are not challenged, but once the State has relied upon the same in the written statement, this Court can always grant the relief under the prayer clause “any other appropriate writ, order or direction which this Court may deem fit and proper”, much less while exercising the powers under Article 226 of the Constitution in view of the ratio decidendi culled out in *Calcutta*

Gas Company (Proprietary) Ltd. versus State of W.B. And other ¹

(23) Resultantly, the writ petitions are allowed.

(24) Consequently, COCP No.1817 of 2016 is rendered infructuous.

Shubreet Kaur

¹ 1962 AIR (SC) 1044