

(6) The grievance made in some of these cases regarding the violation of the terms of contracts or regarding failure of the State to reimburse the money already collected on account of Octroi cannot be decided in these proceedings as there is some dispute on facts. For the settlement of these claims, the concerned petitioners are permitted to make representations to the State Government within one month. The Government shall consider and decide the matter within 3 months from the date of receipt of the respective representations by passing speaking orders.

(7) It does not appear to be proper to add to the problems of the respondents by initiating proceedings for Contempt at this stage. The CMP is dismissed.

(64) The writ petitions are allowed in the above terms. No costs.

R.N.R.

Before Jawahar Lal Gupta & N.K. Sud, JJ.

PUNJAB PANCHAYATI UNION AND OTHERS,—*Petitioners*

versus

STATE OF PUNJAB,—*Respondent*

C.W.Ps. NO. 7093 & 7427 of 2002

July 9, 2002

Punjab Panchayati Raj Act, 1994—Ss. 29-A & 209—Constitution of India, 1950—Arts. 226, 243-E & Part IX—Elections to the Gram Panchayats—Government deciding to hold election before the expiry of the term of five years—Art. 243-E permits dissolution of a panchayat before the expiry of five years under the law—Provisions of the Constitution require that a fresh election has to be completed within a period of six months from the date of dissolution—Tenure of the newly elected panchayat restricted to the remaining part of the term—No fresh election if the unexpired term is less than six months—S. 29-A empowers the State Government to dissolve a Gram Panchayat

if it considers it to be in public interest and S. 209 empowers the Government to hold elections at any time—Whether the State Government has power to curtail the tenure of five years as guaranteed under the Constitution—Held, no—Provisions of Ss. 29-A & 209 provide that elections to the Gram Panchayat can be announced at any time within six months preceding the date of completion of the term—A general election more than a year before the expiry of the term not in conformity with the provisions of the Constitution—Petitions allowed.

Held, that :—

- (1) A majority of our people live in villages. They constitute the strength of our nation. The panchayats are the symbol of democracy at the grassroots level. These are to democracy what primary schools are to education. A weak baby seldom grows into a healthy youth. A child who makes a bad beginning shall never grow up into a good and responsible adult. The tradition that we establish at the level of village Panchayats shall be the index for the elections to the State Legislative Assemblies and the Parliament. We cannot pollute the Panchayats by acting on considerations of party politics. Strengthening the institution of Panchayats by observance of the letter and spirit of law alone can ensure lasting gains and give firm roots to a Government by and for the people. This principle has to be kept in view while considering the impugned provisions.
- (2) The provisions of S. 29, 29-A and 209 have to be interpreted in the light of Art. 243-E of the Constitution. When so considered, we find that :—
 - (a) An elected Panchayat is entitled to hold office for a period of five years from the date of its first meeting.
 - (b) The Panchayat can be dissolved before the expiry of five years only in accordance with the law, if any, promulgated by the State.

- (c) In case of dissolution of a Panchayat, a fresh election has to be completed within a period of six months from the date of dissolution. The newly elected persons shall hold office only for the remaining part of the term and not for the full term of five years.
- (d) In case, the unexpired term is less than six months, a fresh election may not be held. However, if an election is held, the elected persons can hold office only for the remainder of the term.
- (3) On a combined reading of the provisions in Sections 29, 29-A and 209 along with Part IX of the Constitution, it appears that the State Government can initiate the process of election prior to the date on which the term of the existing Panchayats is due to expire. How much prior? It would depend upon the situation at a particular point of time. The Constitution and the Act do not prescribe any period. Thus, no hard and fast rule can be laid down. Normally, the period shall only be such as may, of necessity, be needed by the Authority to complete the process of election.
- (4) It is true that a Panchayat can be dissolved at any time in cases covered by Section 29. In such a case, the election has to be completed within a period of six months from the date of dissolution. However, when a case does not fall within the mischief of S. 29, the order for election can be passed only a short while before the term is due to expire. Whenever dissolution takes place, the process of fresh election has to be completed within six months. On election, the elected representatives hold office only for the remaining part of the term. In case, the remainder is less than six months, no election may be held. It follows that if elections are held a year or more prior to the expiry of the term, as was proposed in the present case, the elected members, according to the Constitutional mandate, could hold office only for the remaining term. The provisions of Section 29-A and 209 have to be so construed. These have to be necessarily

read down. If so construed, the provisions contained in Ss. 29-A and 209 of the 1994 Act are not violative of the constitutional mandate in Part IX.

- (5) There is no general power with the Government for the dissolution of the Panchayat prior to the expiry of the prescribed term of 5 years.

(Para 44)

H.S. Mattewal, Senior Advocate with H.S. Sidhu, Advocate,
for the Petitioners.

Salil Sagar, Additional Advocate General, Punjab, *for the respondent.*

JUDGMENT

(1) Is the decision of the State of Punjab to hold elections to the Gram Panchayats more than a year before the expiry of the term of five years illegal and unconstitutional? Are the provisions of Ss. 29-A and 209 of the Punjab Panchayati Raj Act, 1994, which empower the State to dissolve of the Panchayats in public interest and hold elections at 'any time', ultra vires the Constitution? These are the basic issues that arise for consideration in these two cases.

(2) The facts as averred in CWP No. 7093/2002 may be noticed.

(3) The elections to the Gram Panchayats in Punjab were held on June 21, 1998. The "Five Year term will expire only in June 2003." However, "the Punjab Cabinet has decided that elections to the Gram Panchayats be (held) in June, 2002 alongwith the elections to the Panchayat Samitis and Zila Parishads....." The petitioners allege that this decision is illegal and unconstitutional. The Panchayats are instruments of local-self Government. Under the Constitution, as amended by the 73rd amendment, the Panchayats have a fixed tenure of five years. Part IX of the Constitution embodies Articles 243 of 243O. Despite an express provision that the Panchayats shall continue for a term of five years, the State is proceeding to hold the elections. It is purporting to act under the provisions of Sections 29A and 209 of the Punjab Panchayati Raj Act, 1994. The provisions permitteing dissolution of Panchayats before the expiry of the term

are ultra vires the Constitution. The decision to hold elections has been "initiated with a mala fide intention by the present Government in Punjab to cash in on the prevailing mood..." The petitioner pray that Section 29A in so far as it provides for dissolution of the Gram Panchayat merely on the issue of a notification announcing the elections and Section 209 in so far as it enables the State Government to hold elections at 'any time' be declared ultra vires the Constitution. They further pray that the Government be restrained from conducting the elections to the Panchayat as per the decision of the Cabinet and that they may be permitted to complete their term of five years.

(4) A written statement has been filed on behalf of the respondents. It has been *inter alia* averred that "the State Government has taken a conscious decision to conduct simultaneous elections to the three Panchayati Raj Institutions of Panchayats, Panchayat Samitis and Zila Parishads..." These institutions are supposed to work in complete cohesion and coordination. Conceptually "the term of these institutions is supposed to be co-terminus to provide them uninterrupted opportunity of making a solid contribution to rural development for a period of five years." After the 73rd amendment to the Constitution, the State has enacted a comprehensive Act called the "Punjab Panchayati Raj Act, 1994." The elections to the Panchayats were held in June, 1998. However, the elections to the Panchayat Samitis and Zila Parishads were not held. As a result, "the higher level Panchayati Raj Institutions have remained without elected representatives for over a period of almost four years. The present Government has taken immediate steps to correct this aberration and hold these elections simultaneously, as a one-time exercise. After these elections, the Panchayati Raj Institutions would be able to work consistently and uninterruptedly for five years and thereafter the elections would be held in this pattern." Apart from "making the terms of the three Panchayati Raj Institutions co-terminus, the State Government has also kept in view the aspect of economy by minimizing the expenses required to be incurred on the election and in addition to minimizing the period for which the state machinery remains busy in the process of conducting the elections." The "anticipated direct cost of holding the elections of Panchayat Samitis, Zila Parishads and Panchayats would be approximately Rs. 6 Crores. In addition, the monthly salary bill of the State Government is Rs. 400 Crores approximately per month and in one election process, the entire State machinery remains busy

for almost three months in making preparations during which (period) virtually very little attention could be paid to the other aspects of the State Administration and particularly the development works are the first casualty in this exercise. Even otherwise, the State has to conduct elections to the Parliament, Legislative Assembly, Urban Local Bodies also." The respondents maintain that the action is in conformity with the provisions of the Constitution and the Act. Even under Article 243E, an election to the Panchayats could be held before the expiry of five years. The provisions of Sections 29A and 209 of the Act do not violate the constitutional mandate. The previous Government did not conduct the Panchayat Samiti elections. To minimize the financial burden, the State Government has decided to conduct the elections simultaneously, to all the three institutions in June 2002. On these premises, the respondent prays that the writ petition be dismissed.

(5) The petitioners have filed a replication reiterating their stand. It has been stated that the elections have been fixed for June 6 and 8, 2002.

(6) Counsel for the parties have been heard. Mr. Mattewal contended that Sections 29-A and 209 authorize the Government to order elections at any time and dissolve the existing Panchayats. This is contrary to Article 243-E. Thus, the provisions are unconstitutional to the extent these provide for the holding of elections and dissolution of Panchayats at any time.

(7) On the other hand, Mr. Salil Sagar contended that by virtue of the provisions of Section 29-A of the Act, the State Government was competent to order the dissolution of the Panchayats on announcement of the elections. Under the law, the State Government is competent to direct that a general election of the members of the Panchayats shall be held at any time even though the term of five years has not yet expired. Learned counsel placed reliance on the provisions of Sections 29-A and 209 in support of the submission. He further pointed out that under the law, the State Government was competent to act in public interest. In the present case, elections were being held prior to the expiry of the term of Panchayats for reasons of economy and to ensure that the three institutions of Local Government function in unison.

(8) While interpreting the provisions of a Statute, the court has to proceed on an assumption that the legislature is aware of the needs of the people. It enacts an Act to provide a solution to the problem. There is a presumption that the provision is within the constitutional parameters. If a person challenges the provision, he has to prove that the prescribed parameters have been violated. It is on this premise that the contentions of the counsel have to be considered.

(9) Part IV of the Constitution embodies the "Directive Principles." These are "the aims and objects of the State." Article 40 is one of the provisions in Part IV. It requires the State to 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 furtherance of this objective, the Government introduced a Bill in the Parliament on September 16, 1991. It was referred to a joint committee of both Houses of Parliament. The Committee considered the matter. Finally, the Constitution (73rd Amendment) Act, 1992 was passed by the Parliament. The President had given the assent on April 20, 1993. The declared objectives of the bill give an idea about the basic purpose of the enactment. Some of these, which are relevant for the present case, were :—

- (a) To make it obligatory for all States to establish a three tier system of Panchayats at the village, intermediate and district levels.
- (b) To provide for all seats in Panchayats...to be filled by direct election.
- (c) To provide for reservations to ensure due representation in the Panchayats of the Scheduled Castes, Scheduled Tribes and women.
- (d) To ensure a fixed tenure of five years for the Panchayats.

(10) The amendment forms Part IX of the Constitution. Article 243 gives the definitions. Article 243A provides that "a Gram Sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may, by law, provide." In Article

243B, provision has been made in respect of the Constitution of the Panchayats. Article 243C deals with the composition of Panchayats. In Article 243D, provision for reservation of seats has been made. Various matters have been dealt with in other Articles. However, in the context of the controversy arising in the present case, Article 243E is relevant. It provides as under :—

“243-E. Duration of Panchayats etc.—(1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Panchayat shall be completed—

(a) before the expiry of its duration specified in clause (1)

;

(b) before the expiration of a period of six months from the date of its dissolution :

Provided that where the remainder of the period for which the dissolved Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat.

(4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under clause (1) had it not been so dissolved.”

(11) The provision deals with the tenure of Panchayats. In Clause (1), the mandate is that every Panchayat “shall continue for five years from the date appointed for its first meeting and no longer.” However, it is not absolute. There can be dissolution

of a Panchayat before the expiry of five years. This has to be under "law for the time being in force." Thus, the legislature can make a law to provide for the dissolution of a Panchayat prior to the expiry of the term of five years. The election for the constitution of a Panchayat is required to be completed before the expiry of the term of five years. In case, a panchayat has been dissolved under a law, the election has to be held within a period of six months from the date of dissolution. The tenure of the Panchayat constituted after dissolution is restricted to the remainder of the period for which the dissolved Panchayat would have continued. In case, such period is less than six months, the Authority has an option. It is not bound to conduct an election and to constitute a Panchayat for a period of less than six months. The purpose is obvious. The Constitution envisages that an election for a term of less than six months may not be worth the effort.

(12) It is on the touchstone of Article 243E that the contentions of the learned counsel have to be considered.

(13) The enactment of the Punjab Panchayati Raj Act, 1994, is a sequel to the promulgation of Part IX of the Constitution. Section 10 of the Act provides for the constitution of Gram Panchayats. It *inter alia* lays down that there shall be a Sarpanch of every Panchayat. The number of Panches is dependent upon the population of the Gram Sabha area. Section 15 provides for the term of office of Gram Panchayat.

(14) The next relevant provision is contained in Section 29. It provides for the dissolution of Gram Panchayat in a case where the State Government is of the opinion that "a Gram Panchayat abuses its powers or is not competent to perform or makes persistent default in the performance of its duties under this Act or wilfully disregards the instructions given or directions issued by the Panchayat Samiti or Zila Parishad or any instructions issued by the State Government arising out of the audit of accounts of the Gram Panchayat or inspection of work...." The provision authorizes the State Government to pass an order of dissolution "after giving the Gram Panchayat an opportunity to render explanation." This can be done "by an order published along with the reasons thereof, in the Official Gazette...."

(15) The provision embodies a salutary rule. It embodies a check on the elected representatives. They are made amenable to discipline of the office. In case of default, action can be taken. However, an opportunity to explain has to be given. The authority has to follow the principles of natural justice. The order is required to be notified. Clause 2 deals with the consequences of dissolution. Clauses 3 and 4 are in conformity with the corresponding provisions in Article 243-E. Thus, Section 29 embodies the principle of dissolution of Panchayats as contemplated under Article 243-E(1). Even the counsel for the petitioners did not suggest that there is any infirmity in this provision.

(16) This brings us to the consideration of S. 29-A. Under this provision, the State Government has been empowered to order the dissolution of Panchayats not only on the completion of the term but also after the announcement of elections. It is further clear that under Section 209, the State Government is competent to direct "by notification" that "a general election of the members of the Panchayats shall be held." However, the question is—Can the Government announce general elections before the expiry of the prescribed period of five years ?

(17) Mr. Sagar submitted that the State Government can order the dissolution of Panchayats at any time. It has an absolute discretion. Is it so ?

(18) The answer can be found in Clauses 3 and 4 of Art. 243E. Clause 3(a) contemplates that elections shall be held before the expiry of the term of five years. The obvious purpose is to complete the process of election before the expiry of the term of the existing incumbents. The object is to maintain continuity. The clear intention is to ensure that the State Government does not delay elections. The elected representatives of the people should be continuously able to manage the affairs of the Panchayats. In other words, an elected panchayat should not function for more than five years. Immediately on expiry, the newly elected representatives should be installed. The process of election must be completed beforehand.

(19) By clause 3(b), the competent authority is required to complete the process of election within a period of six months from the date of dissolution of the Panchayats. The purpose again is to ensure that after a Panchayat has been dissolved, the authority should not

be able to sleep over the matter. It must complete the process of election within a maximum period of six months. In case, the remaining term of a Panchayat from the date of dissolution is less than six months, the requirement of holding a fresh election can be dispensed with. By the Proviso, a specific provision has been made to this effect.

(20) Clause 4 provides that when a Panchayat has been dissolved, the newly elected persons shall hold office only for the remaining term. Not for a full term of five years.

(21) On a combined reading of the four clauses of Art. 243E, the following position emerges :—

- (a) An elected Panchayat shall hold office for a period of five years from the date of its first meeting.
- (b) The Panchayat can be dissolved before the expiry of five years only in accordance with the law, if any, promulgated by the State.
- (c) In case of dissolution of Panchayat, a fresh election shall be completed within a period of six months from the date of dissolution. The newly elected persons shall hold office only for the remaining part of the term and not for the full term of five years.
- (d) In case, the unexpired term is less than six months, a fresh election may not be held. The State has been given an option.
- (e) Clause 2 embodies a provision of transitory nature. The elected representatives of the people, who were in office at the time of the enforcement of the 73rd amendment, were to continue till the expiration of their term and the amendment of the existing law did not imply an automatic dissolution. They were entitled to continue and complete their term.

(22) It is in the background of this position that the contentions as raised by the counsel have to be considered.

(23) Mr. Salil Sagar contended that Section 29-A permits the State Government to order dissolution of Gram Panchayats at any time 'in public interest.' Is it so ?

(24) The provision provides as under :—

“29-A. Dissolution of Gram Panchayat in exceptional circumstances—

- (1) Notwithstanding anything contained in Section 29, where a Gram Panchayat has completed its terms as specified in Section 15 of this Act or election thereto has been announced and the State Government considers it necessary in public interest so to do, it may dissolve a Gram Panchayat by an order published in the Official Gazette.
- (2) When a Gram Panchayat is dissolved under sub-section (1)—
 - (i) Sarpanch and all Panches shall vacate their offices forthwith ;
 - (ii) all powers and duties of the Gram Panchayat during its dissolution shall be exercised and performed by such person or persons, as the State Government may appoint in this behalf; and
 - (iii) all property in the possession of the Gram Panchayat shall be held by the State Government.”

(25) The provision begins with a non-obstante clause. The obvious intention is to give it an overriding effect. The situation contemplated under the provision is in addition to the provision contained in Section 29. The first part of clause (1) contemplates the dissolution of a Gram Panchayat when it has completed its full term of five years. It poses no problem. The second part deals with the situation after the State Government has announced its decision to hold election. Even in such cases, a power has been given to the Government to order dissolution of the Panchayat. It is, however, subject to the condition that the State Government considers “it necessary in public interest so to do.” The power of the State is not

absolute or unbridled. It can be invoked only in public interest. Not otherwise. In any case, it has to be read and interpreted in the context of Article 243-E.

(26) Mr. Salil Sagar contended that Section 209 empowers the State Government to hold elections to the Panchayats "at any time." Thus, if Sections 29-A and 209 are read together, it shall be open to the State Government to order general elections to the Panchayats at any time before the expiry of five years. Still further, if the Government considers it to be in public interest, it can pass an order for the dissolution of the Panchayats before the election is held. This can be at any time. Even after six months. Is it so ?

(27) It is undoubtedly true that Art. 243E permits dissolution of a Panchayat under the law. It is also clear that under this provision, the State Government must complete the process of election to the Panchayats before the expiry of the term of 5 years. How much before ? Can it be two years or even three years before the expiry of the term ? On a combined reading of the provisions on Sections 29, 29-A and 209 alongwith Part IX of the Constitution, it appears that the State Government can initiate the process of election prior to the date on which the term of the existing Panchayats is due to expire. How much prior ? It would depend upon the situation at a particular point of time. The Constitution and the Act do not prescribe any period. Thus, no hard and fast rule can be laid down. Normally, the period shall only be such as may of necessity be needed by the authority to complete the process of election.

(28) It is true that a Panchayat can be dissolved at any time in cases covered by Section 29. In such a case, the election has to be completed within a period of six months from the date of dissolution. However, when a case does not fall within the mischief of Section 29, the order for election can be passed only a short while before the term is due to expire. In this context, Article 243-E itself gives a clue. It *inter alia* provides that when an election is held before the expiry of the term, the newly elected Panchayat shall be in office for only the remaining term. The elections have to be completed within six months of the dissolution. In case, the period is less than six months, the authority can decide not to hold any election. Thus, it appears that under the Constitution, whenever dissolution takes place, the process

of fresh election has to be completed within six months. On election, the elected representatives hold office only for the remaining part of the term. In case, the remainder is less than six months, no election may be held. It follows that if elections are held a year or more prior to the expiry of the term, the elected members, according to the Constitutional mandate, can hold office only for the remaining term. The provisions of Section 29-A and 209 have to be so construed. These have to be read down. Otherwise, the provisions may fall foul of the Constitution.

(29) It is not difficult to visualize that the need for dissolving the Panchayat/s on the declaration of election can arise in a variety of circumstances. It may happen that soon after the declaration of elections, the existing members of the Panchayats who may even be contesting for office may start doling out favours to the voters. They may start squandering funds or resort to certain other populist activities. The action of the Panchayat, in a given case, may not fall within the mischief of Section 29. Yet, the continuance of the elected members may not be in public interest. It is to meet such a situation that the Legislature has empowered the Authority to examine the matter. If satisfied that it is in "public interest" to do so, the State can order dissolution of the Panchayat/s. The power is reasonable. It is vested in the State. It is not unbridled or unguided. It cannot be exercised arbitrarily. The test of 'public interest' has to be satisfied. If the power is abused, the check of judicial review is available. The wrong can be undone. However, the possibility of misuse cannot mean that the provision is unconstitutional.

(30) It may be mentioned that the power to announce election at 'any time' and to dissolve the Panchayats cannot mean that the tenure as laid down by the Constitution can be curtailed at the whim and caprice of the Authority. The Constitution guarantees a term of five years beginning with the date of the first meeting. This provision is sacrosanct. The provisions of the Act have to be interpreted in a manner that these conform to the requirements of the Constitution. When so construed, the provisions of Sections 29-A and 209 would only mean that elections to the Gram Panchayats can be announced at any time within six months preceding the date of the completion of the term. During this interval, if the authority finds that it is in

'public interest' so to do, it can order the dissolution of the existing Panchayat/s. Not otherwise.

(31) It deserves notice that in Section 29-A, the legislature has not provided for the grant of any opportunity to the elected members before an order of dissolution is passed. It is so despite the fact that in Section 29, a specific provision for the grant of opportunity has been made. The omission could not be wholly without reason. It cannot be imagined that the legislature intended to authorize the authority to dissolve a Panchayat on the ground of 'Public Interest' at any time. And that too without the grant of any of hearing or opportunity to the elected persons whose interests are bound to be affected. The clear limitation implicit in the provision is that the dissolution shall be normally at a time when the remaining term is six months or less. In case, the dissolution is ordered more than six months before the expiry of the term, the election shall be only for the remaining part of the term. The elected persons shall hold office only for the remainder of the term.

(32) Mr. Sagar submitted that Section 209 authorises the State to announce election at 'any time.' It is undoubtedly so. It appears that even 'any time' shall be subject to the restriction contained in Art. 243E. The provision has to be read down. Otherwise, it may suffer from the criticism of being contrary to the clear mandate of the Constitution.

(33) Mr. Sagar contended that the subjective satisfaction of the Government in the case of election could not be a matter for judicial review. The counsel referred to the decision of the Constitution Bench of the Supreme Court in *State of Rajasthan and others versus Union of India (1)*, Mr. Mattewal, however, controverted the claim. He pointed out that in view of the observations of their lordships in *S.R. Bommai versus Union of India (2)*, the ratio of the decision in the aforementioned case does not embody the correct statement of law.

(34) The obvious implication of Mr. Sagar's contention is that the change of the party in election to the Legislative Assembly justifies

(1) AIR 1977 SC 1361

(2) AIR 1994 SC 1998

a fresh election to the Panchayats. These are primarily issues of political expediency. Normally the court does not enter the area of expediency. But in the present case, we find no provision in the Constitution or the Act to support the submission made on behalf of the State. So far as the above-noted cases are concerned, the Court was basically dealing with the issue of the exercise of power under Art. 356 of the Constitution. Such an issue does not arise in the present case. In any event, their Lordships have clearly observed in Para 30 of **S.R. Bommai's** case that the earlier decision does not embody the correct statement of law. Thus, this Court cannot but feel bound by the observation. Resultantly, the mere fact that the Congress Party has won the election to the Assembly cannot mean that the elections to the Panchayats have to be held afresh.

(35) It is in the background of the above-noted position of law that the factual position in the present cases has to be considered.

(36) It is the admitted position that the elections were held in June, 1998. The first meeting was held in August, 1998. Thus, the existing members have a right to continue till August, 2003. If the State Government holds the elections in June, 2002 as it proposes to, the newly elected members can hold office only till August 2003. Not longer than that.

(37) Mr. Salil Sagar submitted that the State Government has announced general elections. These are being held to ensure that all the three organs of Local Government in Rural areas viz the Panchayats, Panchayat Samitis and Zila Parishads start functioning together. These would have a uniform term of five years. Still further, a combined election shall also result in saving of expense.

(38) The Constitution is the primary law of the land. Acts of Legislature have to be read down, if possible, so as to conform to the Constitutional mandate. Otherwise, these are liable to be struck down as being unconstitutional. The Constitutional requirements cannot be departed from. If the Panchayats are dissolved and the remaining period is less or more than six months, the newly elected persons can hold office only for the remainder of the term. That being the position, the elections if held more than six months before the expiry of the term, the elected members shall hold office only for the remaining period. Not for five years.

(39) Mr. Salil Sagar submits that the State would save Crores of rupees. That would promote public interest. Mr. Mattewal contended that the plea of economy is wholly puerile. It has been trotted out as an afterthought. Is it so ?

(40) During the course of hearing, Mr. Sagar had produced the original file before us. The memorandum placed before the Council of Ministers was shown to us. There is not a word about the saving of money. A co-terminus term was the basic reason for ordering elections. Assuming that the State is really interested in saving money, it could have held the elections to the three organs at the village, group of villages and the district levels viz. the Panchayats, Samitis and Parishads, in or after February, 2003 viz. 6 months before the expiry of the term. Otherwise, as already observed, the elections to the Panchayats at the present time can only be for the remainder of the term. A general election to the Panchayats for a full term of five years shall not conform to the provisions of the Constitution. It may also be mentioned that the counsel in this case concluded the arguments at the end of the day on May 31, 2002. The Court was closing for vacation from June 1, 2002. Thus, the judgment could not be delivered on the same day. However, according to the reports that have appeared in the Press, the elections to the Panchayat Samitis and Zila Parishads have already been held, Thus, this part of the arguments has really lost relevance.

(41) Mr. Mattewal pointed out that a Panchayat cannot be dissolved without good reason. The State is not competent to pass a general order for the dissolution of all the Panchayats.

(42) Art. 243-E talks of 'every' Panchayat. This should ordinarily imply that the case of each Panchayat has to be individually considered. A general order for the dissolution of all the Panchayats is not normally expected to be passed.

(43) No other point was raised.

The Conclusion

(44) In view of the above, it is held that :—

- (1) A majority of our people live in villages. They constitute the strength of our nation. The Panchayats are the

symbol of democracy at the grassroots level. These are to democracy what primary schools are to education. A weak baby seldom grows into a healthy youth. A child who makes a bad beginning shall never grow up into a good and responsible adult. The tradition that we establish at the level of village Panchayats shall be the index for the elections to the State Legislative Assemblies and the Parliament. We cannot pollute the Panchayats by acting on considerations of party politics. Strengthening the institution of Panchayats by observance of the letter and spirit of law alone can ensure lasting gains and give firm roots to a Government by and for the people. This principle has to be kept in view while considering the impugned provisions.

- (2) The provisions of Sections 29, 29-A and 209 have to be interpreted in the light of Art. 243-E of the Constitution. when so considered, we find that—
 - (a) An elected Panchayat is entitled to hold office for a period of five years from the date of its first meeting.
 - (b) The Panchayat can be dissolved before the expiry of five years only in accordance with the law, if any, promulgated by the State.
 - (c) In case of dissolution of a Panchayat, a fresh election has to be completed within a period of six months from the date of dissolution. The newly elected persons shall hold office only for the remaining part of the term and not for the full term of five years.
 - (d) In case, the unexpired term is less than six months, a fresh election may not be held. However, if an election is held, the elected persons can hold office only for the remainder of the term.

- (3) On a combined reading of the provisions in Sections 29, 29-A and 209 along with Part IX of the Constitution, it appears that the State Government can initiate the process of election prior to the date on which the term of the existing Panchayats is due to expire. How much prior? It would depend upon the situation at a particular point of time. The Constitution and the Act do not prescribe any period. Thus, no hard and fast rule can be laid down. Normally, the period shall only be such as may, of necessity, be needed by the authority to complete the process of election.
- (4) It is true that a Panchayat can be dissolved at any time in cases covered by Section 29. In such a case, the election has to be completed within a period of six months from the date of dissolution. However, when a case does not fall within the mischief of Section 29, the order for election can be passed only a short while before the term is due to expire. Whenever dissolution takes place, the process of fresh election has to be completed within six months. On election, the elected representatives hold office only for the remaining part of the term. In case, the remainder is less than six months, no election may be held. It follows that if elections are held a year or more prior to the expiry of the term, as was proposed in the present case, the elected members according to the Constitutional mandate, could hold office only for the remaining term. The provisions of Sections 29-A and 209 have to be so construed. These have to be necessarily read down. If so construed, the provisions contained in Sections 29-A and 209 of the 1994 Act are not violative of the constitutional mandate in Part IX.
- (5) There is no general power with the government for the dissolution of the Panchayats prior to the expiry of the

prescribed term of 5 years.

(45) In the present case, the elected representatives had met in August, 1998. The petitioners are entitled to continue till August, 2003. In view of this position, the election if held shall only entitle the elected persons to hold office for the remaining period till August, 2003. Thus, if the elections were held, neither of the two objectives viz. the avoidance of expense or making the term of the Panchayats co-terminus with the Panchayat Samitis and the Zila Parishads shall be achieved. Thus, the action cannot be upheld.

(46) The petitions are allowed in the above terms. In the circumstances, the parties are left to bear their own costs.

R.N.R.