Before Adarsh Kumar Goel ACJ & Ajay Kumar Mittal, J.

NIRBHAI SINGH,—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. No. 7392 of 2011

12th May, 2011

Constitution of India, 1950—Art. 14, 40, 226/227, 243B & 243C—Punjab Panchayati Raj (Amendment) Act, 2011—S.1(2),5,13-A, 20,21 & 216-Panchayati Raj Act, 1994—Whether legislature is competent to delete a provision providing for No Confidence Motion—Whether deletion of provision with retrospective effect could be held to be beyond legislature competent or arbitrary.—Petition partly allowed.

Held, that the impugned Act is not unconstitutional. The election of Chair person is left by the Constitution to the State legislature. It is a matter of policy. Right of removing a Sarpanch by passing a No Confidence Motion cannot be recognized as fundamental right under Article 14 of the Constitution.

(Para 12)

Further held, that a plenary legislature is competent to make law prospectively as well as retrospectively. At the same time, retrospective legislation though may not *per se be* beyond legislative competence, can be tested on the anvil of Article 14 and if having regard to the fact situation, it is found that retrospectivity is arbitrary, the same can be struck down.

(Para 14)

Further held, that section 1(2) of the Act to bring into force with retrospective effect is arbitrary. Further held that, smooth functioning the reason justified for retrospectivity is also held to be not valid.

(Para 18)

M. K. Singla, *Advocate for the petitioner.*

M/s P. S. Khurana, V. K. Sandhir, S.S. Sidhu, Sukhjinder Singh, P. S. Sekhon, C. L. Premi, Naiya Gill, Onkar Raj, O. S. Batalwi, Jagmeet Singh, Sandeep Arora, Nandal Jindal, L. S. Sidhu, Vikram Singh, P. S. Mirpur, Umesh Kumar, B. S. Makar and Manjeet Singh, *Advocates for petitioners* in connected cases.

Rupinder Khosla, Addl. A. G. Punjab and Rajesh Bhardwaj, Addl.A.G.Punjab.

R. K. Garg, Advocate for the caveator in CPW No. 8249/ 2011.Balbir Singh, Advocate for respondent No.5 in CWP No. 8351/11.

ADARSH KUMAR GOEL, ACJ.

(1) This petition seeks quashing of the Punjab Panchayati Raj (Amendment) Act, 2011 whereby Section 19 of the Punjab Panchayati Raj Act, 1994 (for short, "theAct") has been deleted which was notified on 21st April, 2011 with retrospective effect from 1st July, 2010.

(2) Case set out in the petition is that the Gram Panchayat Narike, Block Malerkotla, District Sangrur was one of the Panchayats constituted to which elections were held in the year 2008. Panches were elected directly and they elected a Sarpanch. On an application for holding a meeting to consider No Confidence Motion proposed against the Sarpanch, under Section 19 of the Act as applicable, a meeting was convened for the purpose on 14th October, 2010 and after consideration, No Confidence Motion was passed by six out of the nine members of the Panchayat. The Sarpanch, thus, stood removed from his office and alternative mechanism was put in place as per statutory provisions. On 14th December, 2010, Ordinance No. 9 of 2010 was issued by the Governor of Punjab deleting Section 19 of the Act, which was prospective. The Ordinance has now been replaced by the impugned Act notified on 21st April, 2011 which is retrospective from 1st July, 2010. The Act is a short one and is reproduced below:—

"1. (1) This Act may be called the Punjab Panchayati Raj (Amendment) Act, 2011.

(2) It shall come into force with effect from 1st July, 2010.

Omisssion of section 19 of Punjab Act 9 of 1994

2. In the Punjab Panchayati Raj Act, 1994, section 19 shall be omitted.

3. The Punjab Panchayati Raj (Amendment Ordinancae, 2010 Punjab Ordinance No 9 of 2010) is hereby repealed."

(3) Statement of objects and reasons for the impugned Act is as under:—

"1. The Sarpanches of a Gram Panchayat are elected by the Panches of the panchayat and Section 19 of Punjab Panchayati Raj Act, 1994, empowers the Panches to remove them from the office of Sarpanches by passing a resolution of No Confidence against them after a period of two years.

2. The elections of Gram Panchayats were held in the year 2008 and since the statutory period of two years has been passed, a large number of applications from the Panches against their Sarpanches were received by the competent authority and by this the focus of the elected representatives of the people was shifted from development to the removal of their Sarpanches.

3. That due to the village factionalism, the Panches want of remove their Sarpanch to whom they have elected two years earlier.

4. That for the smooth functioning of a Gram Panchayat, the term of the Sarpanch should matched with the term of the Gram Panchayat where as such present legal provision is encouraging the groupism in the village which is not good for the development of the villages.

5. Accordingly, the deletion of Section 19 of Punjab Panchayati Raj Act, 1994, of the present Bill is being issued."

(4) In support of challenge to theAmendment Act, it is submitted that having regard to the constitutional objective of local self Government at the panchayat level, it is necessary that Sarpanch should have confidence

of majority electing him and should be removable by a No Confidence Motion. Scheme of No Confidence Motion is necessary not only for smooth functioning of Panchayat but is also consistent with the constitutuinal value of democracy. Under the Act, Chapter II deals with the panchayats, Chapter VI deal with Panchayat Samitis for the blocks and Chapter VII deals with Zila Parishads for the districts. Prior to the impugned amendment, Section 19 provided for No Confidence Motion against Sarpanch and there are corrsponding provisions for No Confidence Motion against Chairman/Vice Chairman of Zila Parishad while provision for No Confidence Motion for Panchayat Samitis and Zila Parishads, bas been returned, provision for No Confidence Motion against Sarpanch has been deleted which is discriminatory and arbitrary. Provision for No Confidence Motion has to be implied as sarpanch is selected by the majority of panches under Section 13A and an authority competent to appoint has authority to remove as per General Clauses Act incorporating the principle of common law. Deletion of Section 19 is against the object of grass root democracy of giving authority to people's elected representatives to appoint or remove a Sarpanch. Alternatively, it is submitted that deletion of Section 19 and thereby taking away power of passing a No Confidence Motion retrospectively from 1st July, 2010 is arbitrary as it affects removal already lawfully effected prior to the Act i. e. on it 14th October, 210 and taking over of the functions of the Sarpanch as per Section 87(1). Thus, retrospectivity affects vestes rights arbitrarily. It has been stated by learned counsel for the parties that about 120 Sarpanches had been removed in similar manner by No Confidence Motion after. 1st July, 2010 and also before coming into force of the impugned Act and also before the issuance of Ordinance dated 14th October, 2010. Some other No Confidence Motions were also pending. In some cases, fresh Sarpanches had been duly elected and notified.

(5) Notice was issued and served on the respondents but no reply has been filed. It was stated that reply was not necessaryas facts were not in dispute and only legal question was involved.

(6) We have heard learned counsel for the parties.

(7) On behalf of the State, the impugned Act has been justified on the ground that right to remove an elected representative has to be found in a statute and could not be exercised in absence thereof. The legislature

was competent to legislate prospectively as well as retrospectively. Deletion of provision for No Confidence Motion was within the legislative competence. If a legislature could make a provision for No Confidence Motion, it could delete the same. Requirement of a provision for No Confidence Motion, was not a consititutional mandate but only creation of a statute. The deletion intends to achieve the object of smooth functioning of a panchayat and to avoid groupism in the village and to promote unhampered development. Even after deletion of provision for No Confidence Motion, a Sarpanch could be removed under Sections 20 and 21. Section 20 provides for removal of Sarpanch by the Director for any misconduct specified therein while Section 21 provides for cessation from the office of Sarpanch on failure to deposite the amount as require under Section 216 for any loss caused to the Panchayat. Similarly, Section 5 provides for cessation of Sarpanch from the office for failure to hold two consecutive general meetings. Thus, deletion of provision for No Confidence Motion does not in any manner provide for arbitrary working of a Sarpanch. It being a matter of legislative policy, the choice of the legislature has to prevail.

(8) The questions to be determined are as under :—

(I) Whether legislature is competent to delete provision providing for No Confidence Motion ?

(II) Whether deletion of the provision with retrospective effect could be held to be beyond the legislative competence or arbitrary ?

Re: (I)

(9) Main submission on behalf of the petitioner is that under the Scheme of the Constitution, panchayats are basic units of self governance and though initially, this mandate was manifested in Article 40 of the Constitution, by way of a Directive Principle, by 73rd Amendment in the year 1993, Part IX was added to the Constitution. Under Article 243B, constitution of a panchayat is mandatory. The amended provisions also provide for conferment of important powers and responsibilities on panchayats, for imposition of taxes for raising funds for the panchayats and for constitution of a Finance Commission to review the financial position. The Panchayat has to plan for economic development and social justice and implement schemes for such purposes as have been mentioned in Eleventh

Schedule to the Constitution. No doubt, the manner of election of Sarpanch has been left to the State legislature, the Panches are to be directly elected under Article 243C. Under the State Law, Sarpanch is elected by Panches. Reliance has been placed on following judgments:—

Ram Beti *versus* **District Panchayat Raj Adhikar (1)**	To submit that provision for No Confidence Motion is consistent with the principles of democracy.
Bhanumati and others *versus* **State of Uttar Pradesh, (2)** paras 52 to 58, 66, 67	
Bar Council of Delhi *versus* **Bar Council of India, (3)** Para 11	To submit that even in absence of a provision, an authority competent to appoint was competent to remove under the common law.
Bindhya Charan Sinha *versus* **State of WB, (4)** Para 10	
Mohan Chandra *versus* **The ICA of India, (5)** Para 43	
Dr,. Bool Chand *versus* **Chancellor, Kurukshetra University, (6)** Para 11	
E.P. Royappa, *versus* **State of Tamil Nadu, (7)**	To submit that arbitrariness was a facet of Article 14 and a legislation could be questioned on the ground of arbitrariness and thus being violative of Article 14.

(1) (1998) 1 SCC 680
(2) (2010) 12 SCC 1
(3) AIR 1975 Delhi 200
(4) AIR 2004 Cal. 27
(5) AIR 1972 Delhi 9
(6) AIR 1968 SC 292
(7) AIR 1974 SC 555

Maneka Gandhi *versus* **Union of India, (8)**

Harbilas Rai Bansal *versus* **State Punjab and another, (9)** — To submit that even deletion of a provision so as to result in discrimination could be set aside to enforce Article 14.

Rai Ramkrishna and others State of Bihar, (10) — To submit that even though *versus* legislature may have power to make a law retrospectively, the retrospectivity could be qustioned as arbitrary.

State of Gujarat and another *versus* **Raman Lal Keshav Lal Soni and others, (11)**

(10) On the other hand, submission on behalf of the State is that provision for No Confidence Motion is not a creature of the Constitution but of the statute and in such a situation, it is within the competence of the State Legislature under Entry 5 of List II to make a provision or to delete the provision on the subject. Learned counsel for the State mainly relied upon judgment of the Hon'ble Supreme Court in **Mohan Lal Tripathi** *versus* **District Magistrate, Rai Bareilly and others, (12)** to submit that right of No Confidence Motion flows from a statute and the common law pronciple must remain stranger to the enacted election law. Reliance was also placed on judgment of the Hon'ble Supreme Court in **Vijay** *versus* **State of Maharashtra and others, (13)** to submit that a legislation can be retrospective.

(11) It will be approprivate to reproduce some of the observations on which emphasis has been laid during hearing.

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(8) AIR 1978 SC 597
(9) AIR 1996 SC 857
(10) AIR 1963 SC 1667
(11) (1983) 2 SCC 33
(12) (1992) 4 SCC 80
(13) (2006) 6 SCC 289

In **Mohan Lal Tripathi,** it was observed:—

"(2) Democracy is a concept, a political philosophy, an ideal practised by many nations culturally advanced and politically mature by resorting to goveranance by representatives of the people elected directly or in directly. But electing representatives to govern is neither a ' fundamaental right' nor a ' common law right' but a special right created by the statutes (**N.P. Ponnuswami** *versus* **Returning Officer, Namakkal Constituency, AIR,1952 SC 64; Jagan Nath** *versus* ***Jaswant Singh, AIR 1954 SC 210),*** or a 'political right' or 'privilege' and not a 'natural', 'absolute'or 'vested right'**(American Jurisprudence, 2d, Vol. 63, p. 771.**
'Concepts familiar to common law and equity must remain strangers to Election Law unless statutorily embodied.' (**Jyoti Basu versus Debi Ghosal (1982) 1 SCC 691; Arun kumar Bosse,** *versus* **Mohd. Furkan Ansari (1984) 1 SCC 91,** Right to remove an elected representative, too, must stem out of the statute as 'in the absence of a constitutional restriction is within the power of a legislature to enact a law for the recall of officers' **American Jurisprudence, 2d, Vol. 63, p. 238).** Its existence or validity can be decided on theprovision of the Act and not, as a matter of policy. In the **American Political Dictionary (Jack C. Plano/Milton Greenberg),** the right of recall is defined as, 'a provision enabling voters to remove an elected official from office because his or her term expired'.**American Jurisprudence** explains it thus, 'Recall is a procedure by a which an elected officer may be removed at any time during his term or after a specified time by vote of the people at an election called for such purpose by a specified number of citizens' **American Jurisprudence, 2d, Vol. 63, p.770)** It was urged that recall gives dissatisfied electors the right to propose between elections that their representatives be removed an replaced by another more in accordance with popular will' **(Mordern Political Constitution, 8th Edn. By C.S. Strong)** therefore the appellant could have been recalled by the same body, namely, the people who elected him. Urged

Shri Sunil Gupta, learned council, that since, 'A referendum involves a decision by the electorate without the interme diary of representatives and, therefore, exhibits form or direct democracy' **(Dictionary of Political Thought by Roger Scrutton, 1982)** the removal of the appellant by a vote of no-confidence by the Board which did not elect him was subversive of basic concept of democracy. Academically the submission appeared attractive but applied as a matter of law it appears to have little merit. None of the political theorists, on whom reliance was placed, have gone to suggest that an elected representative can be recalled, only, by the persons or body that elected him. Recall expressess the idea that a "public officer is indeed a 'servant of the people' and can therefore be dismissed by them" **(Dictionary of Political Science and Law by Rudolph Reimanson)**. In modern political set up direct popular check by recall of elected representative has been universally acknowldged in any civilised system. Efficacy of such a device can hardly admit of any doubt. But how it should be initiated, what should be the procedure, who should exercise it within ambit of constitutionally permissible limits falls in the domain of legislative power. 'Under a constitutional provision authorizing municipalities of a certain population to frame a charter for their own government consistent with and subject to the Constitution and law of the State, and a statutory provision that in certain municipalities the Mayor and member of the municipal council shall be elected at the time, in the manner, and for the term prescribed in the charter, a municipal corporation has authority to enact a recall provision' **(American Jurisprudence, 2d, Vol. 63, p.771)**. Therefore, the validity or otherwise of a no-confidence motion for removal of a President, would have to be examined on applicability of satutory provision and not on political philosophy. The Municipality Act provides in detail the provisions for election of President, his qualification, resignation, removal etc. Constitutional validity of these provisions was not challenged, and rightly, as they do not militate, either, against the concept of democracy or the method of electing or removing the representatives. The recall of an elected representative

therefore, so long it is in accordance with law cannot be assailed on abstract notions of democracy.

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6. Another offshoot of the same submission was that when removal was by a smaller body the legislature in 1949 provided a safeguard that a Chairman elected by people removed by vote of no-confidence if re-elected could not be removed again by a vote of no-confidence. According to the learned counsel in absence of such safeguard the provision in Section 47-A, as it stands now, becomes arbitrary and in absence of clear language it should be held inapplicable to President elected by the electrotate. The approach does not appear to be sound. Legislature's power to enact such provision is derived from entry 5 of List II of VII Schedule which is couched in very wide terms. In absence of any challenge of legislative competence, the omission of the proviso to sub-section (5) of (sic of Section 47-A, as introduced by) Act 7 of 1949, by amendment since 1955 can neither be characterised as irrational nor arbitrary. Moreover whether a President should be elected by the people directly or by the Board was for the legislature to decide. These are matters of policy which cannot be examined by court. Legislature being the best judge of the needs of the people it is for the legislature to decide which system of electing representatives to the elective bodies and in what manner they should be removed awould be best suitable for governance of the State. So long the policy is not vitiated by any *mala fide* or extraneous consideration the courts have neither jurisdiction nor are adequately furnished with material to adjudicate upon its validity or correctness."

In **Bhanumati,** it was observed:—

"48. The appellant have not challenged U. P. Act 20 of 1998 by which Section 15 of the 1961 Act was continued in amended version. Therefore, the continuance of no-confidence provision has not been challenged—what has been challenged is the

reduction of the period from "two years" to "one year" and the requirement majority from "not less than two thirds" to "more than half". It is thus clear that the statutory provision of no-confidence is not contrary to Part IX of the Constitution.

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

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

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57. It has already been pointed out that the object and the reasons of Part IX are to lend status and dignity to Panchayati Raj institutions and to impart certainty, continuity and strength to them. The learned counsel for the appellant unfortunately, in his argument, missed the distinction between an individual and an institution. If a no-confidence motion is passed against the Chairperson of a panchayat, he/she ceases to be a chairperson, but continues to be a member of the panchayat and the panchayat continues with a newly-elected Chairperson. Therefore, there is no institutional setback or impediment to the continuity or stability of the Panchayati Raj institutions.

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

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

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

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86. Reliance was also placed on the Constitution Bench judgment of this Court in **State of Gujarat** *versus* **Mirzapur Moti Kureshi Kassab Jamat** (2005) 8SCC 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 recognise 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."

(12) It is clear that under the scheme of the Constitution, panchayats are required to be constituted and its members are to be directly elected. The election of Chair person is left by the Constitution to the State legislature. A provision for No Confidence Motion has been held to be valid and within the legislative competence. There is, however, no provision in the Constitution compelling the State Legislature to incorporate a provision for No Confidence Motion. A legislation can be struck down by the Court only if the same is violative of any constitutional provision either on account of lack of legislative competence under Articles 245 or on account of violation of fundamental rights or otherwise. No doubt, the scope of Article 14 has been expanded to cover any arbitrary action—administrative or legislative, there is a presumption of validity of a legislation and also that the legislature correctly understands the needs of the people. If a choice of policy is available, the legislature may make such choice in absence of compulsion of incorporating a provision. Mere fact that a provision for No Confidence Motion may be valid, does not imply that absence of such a provision or deletion of an existent provision for No Confidence Motion would be beyond the legislative competence. Right of removing a Sarpanch by passing a No Confidence Motion cannot be recognized as fundamental right under Article 14 in view of **Mohan Lal.** Therein, it has been expressly held that right to remove an elected representative must stem out of a statute. Its existence or validity can be decided on the provisions of Act and not as a matter of policy. This being the position, to hold that No Confidence Motion provision connot be deleted will be against the principles laid down in **Mohan Lal.** As regards observations in **Bhanumati,** the same are in the context of upholding a provision for No Confidence Motion. A judgment

is an authority for the proposition it lays down and not what may logically appear to flow therefrom. Moreover, the said judgment cannot be held to have reversed the view taken in **Mohan Lal** holding that right of No Confidence Motion flows from a statute. Even if we find merit in the contention that No Confidence Motion is desirable, it may not be possible to give a direction for incorporation of such a provision or set aside deletion thereof by a legislation. Accordingly, we are unable to hold that the impugned Act to the extent it deletes the provision for No Confidence Motion, unconstitutional.

(13) We may now come to the question of retrospectivity.

Re: (II)

(14) It is well settled that a plenary legislature is competent to make law prospectively as well as retrospectively. At the same time, retrospective legislation though may not *per se* be beyond legislative competence, can be tested on the anvil of Article 14 and if having regard to a fact situation, it is found that retrospectivity is arbitrary, the same can be struck down. In a recent judgment in **M/s Shiv Shankar Industries** *versus* **The State of Haryana and others,** CPW No. 5957 of 2010, decided on 22nd March, 2011, this Court observed :—

> "8. It is well settled that a legislature has power not only to legislate prospectively but also retrospectively. However, there are certain inherent limitations in making retrospective legislation. The limitations have been judicially recognized to give effect to fundamental right under Article 14. Retrospectivity is not permissible if it is unreasonable and arbitrary. It has been held that a legislature cannot legislate today with reference to a situation which obtained 20 years ago ignoring the march of events and constitutional rights accruing in the meanwhile. Whether or not retrospective amendment is arbitrary is to be seen in the light of facts and circumstances under which an amendment is made. (**Ramanlal Keshav Lal Soni,** AIR 1984 SSC 161, **Lohia Machines Limited,** (1985) 2SCC 197, **C. R. Rangadhamaiah,** (1997) 6 SCC 623 and **Virender Singh Hooda)** AIR 2005 SC 137....."

(15) In **Ramanlal Keshav Lal,** it was observed :—

"52. Today's equals cannot be made unequal by saying that they were unequal 20 years ago and we will restore that position by making a law today and making it retrospective. Constitutional rights, constitutional obligations and constitutional conseqences cannot be tampered with that way. A law which if made today would be plainly invalid as offending constitutional provisions in the context of the existing situation cannot become valid by being made retrospective. Past virtue (constitutional) cannot be made to wipe out present vice Constitutional) by making retrospective laws. We are, therefore, firmly of the view that the Gujarat Panchayats (Third Amendment) Act, 1978 is unconstitutional, as it offends Articles 311 and 14 and is arbitrary and unreasonable....."

(16) In **Virender Singh Hooda,** it was observed :—

"69. In considering the question as to whether the legislative power to amend a provision with retrospective operation has been reasonably exercised or not, it becomes relevant to enquire as to how the retrospective effect of the amendment operates.

70. In **Chairman, Rly, Board** *versus* **C.R. Rangadhamaiah** *(1997) 6 SCC 623,* the Constitution Bench while holding that the rule which operates in future so as to govern future rights of those already in service cannot be assailed on the ground of retrospectivity as being violative of Articles 14 and 16 of the Constitution, observed that a *rule which seeks to reverse from an anterior date a benefit which has been granted or availed of e.g. promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively. (emphasis supplied)*

(17) What is stated above is summing up of principles laid down in the judgments of the Hon'ble Supreme Court referred to therein and also in the judgments relied upon behalf of the petitioner.

(18) Applying the above principles to the present case, we are of the view that Section 1(2) of the Act to bring into force the Amendment Act from 1st July, 2010 is arbitrary. The effect of the amendment would

be to nullify a lawfully passed No Confidence Motion and to remove a lawfully elected Sarpanch if in his place any other arrangement may have been put in place and operated for a period of more than six months. Only reason put forward to justify retrospectivity is the functioning of the panchayats. The said reason cannot be held to be valid as a Sarpanch who had lost confidence of 2/3rd members and was removed and subsitituted by another arrangement in his place cannot be held entitled to be put back in the name of smooth functioning. Puting him back will infact obstruct the functioning. There is nothing to show on what basis it can be held that putting back Sarpanch who had lost confidence of motion of 2/3rd members will be a smooth functioning. Moreover, in **Bhanumati,** a similar contention was considered and rejected in para 52 of the judgment. Retrospectivity ignores the march of events which gone by any arbitrarily affects rights which have been crystalised

(19) Accordingly, we partly allow this petition and declare Section 1(2) of the impugned Act to be ultra vires the Constitution. It is made clear that since the issue which has been dealt with may affect other similarly situated persons, this order will apply to all such cases.

A. AGG.