AFR

Chief Justice's Court

Public Interest Litigation (PIL) No 54764 of 2015

Sant Ram Sharma

Vs

State of U P & Ors

with

Writ – C No 57296 of 2015

Durg Vijay Yadav & Ors
Vs
State of U P & Ors
With
Writ – C No 57293 of 2015
Manoj Kumar Yadav
Vs
State of U P & Ors
With
Public Interest Litigation (PIL) No 58044 of 2015
Ram Hit
Vs
State of U P & Ors
With
Public Interest Litigation (PIL) No 57685 of 2015
Ramesh Chandra
Vs
State of U P & Ors
With
Writ-C No 57292 of 2015
Devi Singh
Vs
State of U P & Ors
With
Writ-C No 58035 of 2015
Pushpendra Pratap Singh Chauhan & Ors
Vs
State of U P & Ors
With
Writ-C No 56951 of 2015
Ashwini Pal
Vs
State of U P & Ors
With
Public Interest Litigation (PIL) No 57930 of 2015
Deen Dayal Singh
Vs
State of U P & Ors
With

Writ-C No 57633 of 2015
Ram Chander
Vs
State of U P & Ors
With
Writ-C No 57588 of 2015
Harish Chandra
Vs
State of U P & Ors
With
Writ – C No 56971 of 2015
Shri Kant
Vs
State of U P & Ors
With
Writ – C No 56965 of 2015
Mukesh Kumar Singh
Vs
State of U P & Ors
With
Writ – C No 56604 of 2015
Smt Gyanmati Devi
Vs
State of U P & Ors
With
Writ – C No 56870 of 2015
Narendra Singh Chauhan
Vs
State of U P & Ors
With
Writ – C No 56865 of 2015
Virendra Singh
Vs
State of U P Ors
With
Writ – C No 57089 of 2015
Chhediram Vishwakarma
Vs
State of U P & Ors
With
Writ – C No 57045 of 2015
Krishna Kumar & Ors
Vs
State of U P & Ors
With
Writ – C No 56745 of 2015
Tej Ram
Vs
State of U P & Ors

With

Writ – C No 57106 of 2015
Uma Shanker
Vs
State of U P & Ors
With
Writ – C No 57108 of 2015
Nageshwar
Vs
State of U P & Ors
With
Writ – C No 57096 of 2015
Vijendra Singh
Vs
State of U P & Ors
With
Writ – C No 57357 of 2015
Shushil Kumar
Vs
State of U P & Ors
With
Writ – C No 56929 of 2015
Narvada
Vs
State of U P & Ors
With
Writ – C No 56987 of 2015
Charan Singh & Anr
Vs
State of U P & Ors
With
Public Interest Litigation (PIL) No 56868 of 2015
Rajesh Kumar Singh & Anr
Vs
State of U P & Ors
With
Writ – C No 56600 of 2015
Indar
Vs
State of U P & Ors
With
Writ – C No 56602 of 2015
Manoj Kumar
Vs
State of U P & Ors
With
Writ – C No 56603 of 2015
Arun Kumar
Vs
State of U P & Ors

With

Public Interest Litigation (PIL) No 54937 of 2015
Lalit Sharma
Vs
State of U P & Ors
With
Public Interest Litigation (PIL) No 55067 of 2015
Bhupendra Singh
Vs
State of U P & Ors
With
Writ – C No 55967 of 2015
Ram Kishan & Ors
Vs
State of U P & Ors
With
Writ – C No 55870 of 2015
Manbodh & Anr
Vs
State of U P & Ors
With
Writ – C No 55872 of 2015
Kedar Nath Yadav & Anr
Vs
State of U P & Ors
With
Writ- C No 56278 of 2015
Jilajeet
Vs
State of U P & Ors
With
Writ – C No 56598 of 2015
Jagdish Prasad & Anr
Vs
State of U P & & Ors
With
Writ – C No 56606 of 2015
Sanjeev Verma
Vs
State of U P & Ors

Appearance:

For petitioners: Mr P N Saxena, Senior Advocate
Mr Rakesh Pandey, Advocate
Mr Ajay Bhanot, Advocate
Mr Gaurav Singh, Advocate
Mr Narendra Mohan, Advocate
Mr A P Singh Raghav, Advocate
Mr D K S Rathor, Advocate

Mr Arvind K Mishra, Advocate
Mr H P Misra, Advocate
Mr Ramesh Rai, Advocate
Mr Indramani Tripathi, Advocate

For the respondent State: Mr Vijay Bahadur Singh, Advocate General
Mrs Sangeeta Chandra, Addl CSC

For the State Election Commission:
Mr Ravi Kant, Senior Advocate, with
Mr Tarun Agrawal, Advocate

Hon'ble Dr Dhananjaya Yeshwant Chandrachud, Chief Justice
Hon'ble Yashwant Varma, J

(Per Dr D Y Chandrachud, CJ)

The Issue

The issue which has been raised before the Court in this batch of writ petitions pertains to the constitutional validity of the Uttar Pradesh Panchayat Raj (Reservation and Allotment of Seats and Offices) (Tenth Amendment) Rules, 2015[1]. These Rules were published in the government Gazette on 16 September 2015. The Rules amended the provisions of the Uttar Pradesh Panchayat Raj (Reservation and Allotment of Seats and Offices) Rules, 1994[2]. The amended Rules of 2015 are challenged on the ground that they are ultra vires Article 243D, Article 243K and the provisions of Section 11-A (5) and Section 12 (5) of the Uttar Pradesh Panchayat Raj Act, 1947.

A preliminary objection has been raised to the maintainability of the writ petitions on the ground that Article 243-O(a) of the Constitution contains a bar on the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under

1 Rules of 2015
2 Rules of 1994

Article 243K being called into question in any court.

The constitutional challenge to the validity of the Rules of 2015 would fall for consideration only if Article 243-O is held not to bar this Court in the exercise of its jurisdiction under Article 226 from considering such a challenge. The election process for holding elections to gram panchayats in the State of Uttar Pradesh is yet to commence and hence the bar under clause (b) of Article 243-O is not yet attracted.

For convenience of exposition, this judgment is divided into the following parts:

PART A – Part IX of the Constitution and the statutory provisions in Uttar Pradesh

PART B – Delimitation and reorganisation of panchayats in Uttar Pradesh

PART C – Submissions

PART D – Analysis

PART E – Conclusion

PART A : Part IX of the Constitution and the statutory provisions in Uttar Pradesh

A I Part IX of the Constitution

Part IX of the Constitution was introduced by the seventy-third amendment which came into force with effect from 24 April 1993. A provision is made in Part IX for panchayats, which are defined in clause (d) of Article 243 to mean institutions of self-government constituted under Article 243B, for rural areas. The expression 'population' is defined by clause (f) to mean the population as ascertained at the last preceding census of which the relevant figures have been published. Article 243 requires the constitution, in every State, of panchayats at the village, intermediate and district levels in accordance with the provisions of the Part. Article 243C (1) empowers the legislatures of states, by law, to make

provisions with respect to the composition of panchayats. All seats in a panchayat are required to be filled up by clause (2) of Article 243C, by direct election from territorial constituencies in the panchayat area.

The controversy in the present case, turns upon interpretation of the provisions of Article 243D, which are as follows:

> "**243D. Reservation of seats.–**(1) Seats shall be reserved for–
>
> (a) the Scheduled Castes; and
>
> (b) the Scheduled Tribes,
>
> in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.
>
> (2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.
>
> (3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.
>
> (4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:
>
> Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population

of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State:

Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women:

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in Article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens."

A II Uttar Pradesh Panchayat Raj Act 1947

Consequent upon the introduction of Part IX of the Constitution, Chapter III-A was introduced into the U P Panchayat Raj Act 1947 to make provisions in relation to gram panchayats. Section 11-A(1) provides that that shall be a pradhan of the gram panchayat. Section 11-A provides as follows:

"**11-A. Pradhan of Gram Panchayat**–(1) There shall be a Pradhan of the Gram Panchayat who shall be the Chairperson thereof.

(2) The State Government shall, by order, reserve offices of Pradhans for the Scheduled Castes, the Scheduled Tribes, and the Backward Classes:

Provided that the number of offices of Pradhan reserved for the Scheduled Castes, the Scheduled Tribes and the Backward Classes in the State shall bear, as nearly as

may be, the same proportion to the total number of such offices as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or the backward classes in the State bears to the total population of the State:

Provided that the reservation for the Backward Classes shall not exceed twenty-seven percent of the total number of offices of Pradhans:

Provided also that if the figures of population of the Backward Classes are not available, their population may be determined by carrying out a survey in the prescribed manner.

(3) Not less than one-third of the total number of offices of Pradhans reserved under sub-section (2) shall be reserved for women belonging to the Scheduled Castes, Scheduled Tribes and the Backward Classes.

(4) Not less than one-third of the total number of offices of Pradhans, including the number of offices of Pradhans reserved under sub-section (3), shall be reserved for women.

(5) **The offices of the Pradhans reserved under this Section shall be allotted by rotation to different Gram Panchayats in such order as may be prescribed.**

(6) The reservation of the offices of Pradhans for the Scheduled Castes and the Scheduled Tribes under the Section shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution.

Explanation – It is clarified that nothing in this section shall prevent persons belonging to the Scheduled Castes, the Scheduled Tribes, the Backward Classes and the women from contesting election to unreserved seats." (emphasis supplied)

Section 12(5) provides for the manner in which seats shall be reserved for the Scheduled Castes, the Scheduled Tribes and the Backward Classes in every

gram panchayat. Section 12(5) reads as follows:

> "(5) (a) In very Gram Panchayat, seats shall be reserved for the Scheduled Castes, the Scheduled Tribes and the Backward Classes and the number of seats so reserved shall, as nearly as may be, bear the same proportion to the total number of seats in the Gram Panchayat, as the population of the Scheduled Castes in the Panchayat area or of the Scheduled Tribes in the Panchayat area or of the Backward Classes in the Panchayat area bears to the total population of **such area and such seats may be allotted by rotation to different territorial constituencies in the Gram Panchayat in such order as may be prescribed:**
>
> Provided that the reservation for the Backward Classes shall not exceed twenty-seven percent of the total number of seats in the Gram Panchayat:
>
> Provided further that if the figures of population of the Backward Classes are not available, their population may be determined by carrying out a survey in the prescribed manner.
>
> (b) Not less than one-third of the seats reserved under clause (a) shall be reserved for the women belonging respectively to the Scheduled Castes, the Scheduled Tribes and the Backward Classes.
>
> (c) Not less than one-third of the total number of seats in the Gram Panchayat, including the number of seats reserved for women under clause (b), shall be reserved for women and such seats may be allotted by rotation to different territorial constituencies in a Gram Panchayat in such order as may be prescribed.
>
> (d) The reservation of seats for the Scheduled Castes and the Scheduled Tribes shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution.

Explanation–It is clarified that nothing in this Section shall prevent the persons belonging to the Scheduled Castes, the Scheduled Tribes and the Backward Classes and the women for contesting election to unreserved seats." (emphasis supplied)

A III The Rules of 1994

In exercise of the rule-making power conferred by Section 110 and and by the provisions of Section 11-A(5) and Section 12(5), the Uttar Pradesh Panchayat Raj (Reservation and Allotment of Seats and Offices) Rules, 1994 were notified in the government Gazette on 24 August 1994. Rule 4 provides for the allotment of seats which are reserved in a gram panchayat to different territorial constituencies by rotation. Rule 4 provides thus:

"**Allotment of seats by rotation.-** (1) Subject to the provisions of other sub-rules, **the seats reserved in a Gram Panchayat shall be allotted to different territorial constituencies in the Gram Panchayat in the following order :**

(a) women belonging to the Scheduled Tribes;
(b) the Scheduled Tribes;
(c) women belonging to the Scheduled Castes;
(d) the Scheduled Castes;
(e) women belonging to the Backward Classes;
(f) the Backward Classes; and
(g) women.

(2) If on the basis of population of the Scheduled Tribes or of the Scheduled Castes or of the Backward Classes in a Panchayat area, only one seat can be reserved for the Scheduled Tribes or for the Scheduled Castes or for the Backward Classes, as the case may be, such seat shall go to a woman belonging to the Scheduled Tribes or to the Scheduled Castes or the Backward Classes, as the case may be.

(3) If on the basis of population in a Panchayat area, a

seat cannot be reserved for the Scheduled Tribes or for Scheduled Castes or for the Backward Classes, the order mentioned in sub-rule (1) shall be so adhered to as if there was no reference in it to the Scheduled Tribes or to the Scheduled Castes or to the Backward Classes, as the case may be.

(4) **The number of seats as provided in Rule 3 shall be allotted to different territorial constituencies on the basis of population in the descending order, that is from amongst the territorial constituencies in a Gram Panchayat, the territorial constituency having the largest population** of the Scheduled Tribes **shall be allotted to them**, and the territorial constituency having the largest population of the Scheduled Castes shall be allotted to them, and the territorial constituency having the largest population of the Backward Classes shall be allotted to them, and **in the subsequent election the allotment shall be made in the aforesaid manner so however that as far as may be, the territorial constituency allotted in the previous elections to the Scheduled Tribes shall not be allotted to the Scheduled Tribes, and the territorial constituency allotted to the Scheduled Castes shall not be allotted to the Scheduled Castes and the territorial constituency allotted to the Backward Classes shall not be allotted to the Backward Classes :**

Provided that if in any election, the population of the Scheduled Tribes, or of the Scheduled Castes or of the Backward Classes cannot be ascertained territorial constituency-wise, the descending order may be determined on the basis of number of families in the territorial constituencies of the Scheduled Tribes, or of the Scheduled Castes or of the Backward Classes, as the case may be.

(5) Not less than one-third of the territorial constituencies allotted to the Scheduled Tribes, the Scheduled Castes or the Backward Classes under sub-rule (4) shall be allotted to the women belonging to the Scheduled Tribes, the Scheduled

Castes or the Backward Classes, as the case may be.

(6) Not less than one-third of the total number of territorial constituencies including the number of territorial constituencies reserved for women under sub-rule (5) shall be allotted to women, so however that the territorial constituencies having the largest population excluding the population of the Scheduled Tribes, the Scheduled Castes and the Backward Classes shall be allotted to them and in the subsequent election the allotment shall be made in the aforesaid manner so however that, as far as may be, the territorial constituencies allotted to women in the previous election shall not be allotted to women." (emphasis supplied)

Similarly, Rule 5 provides for the allotment of offices of pradhans by rotation amongst the Scheduled Castes, Scheduled Tribes and Other Backward Classes in the following manner:

"**5. Allotment of offices by rotation**:-(1) The number of offices of Pradhans as computed in Rule 3 for the Scheduled Tribes, the Scheduled Castes and the Other Backward Classes of citizens shall be distributed Khand-wise for being allotted to the constituent Gram Panchayats in the following manner, –

(a) the number of offices of Pradhans for the Scheduled Tribes in the Khand shall bear, as nearly as may be, the same proportion to the number of offices of Pradhans as computed in Rule (3) as their population in the Khand bears to their total population in the State.

(b) the number of offices of Pradhans for the Scheduled Castes in the Khand shall bear as nearly as may be, the same proportion to the total number of offices of Pradhans in the Khand as their population in the Khand bears to the total population of the Khand, subject to be maximum of the ratio of their population in the State, to the total population of the State;

Provided that in the case of undistributed numbers of

offices of Pradhans as computed in Rule (3) shall be redistributed amongst only those Khands where the proportion of their population in the total population of the Khand exceeds the proportion of their population in the total population of the State, in the descending order of the ratio of their population in the total population of the Khand.

(c) The number of offices of Pradhans for Other Backward Classes of citizens in the Khand shall bear as nearly as may be, the same proportion to the total number of offices of Pradhans in the Khand as their population in the Khand bears to the total population of the Khand:

Provided that the number of offices of Pradhans reserved for Other Backward Classes in a Khand shall not exceed twenty-seven percent of the total number of offices of Pradhans in the Khand:

Provided further that in the case of undistributed numbers of offices of Pradhans as computed in Rule 3 shall be redistributed amongst only those Khands, where the proportion of their population in the total population of the Khand exceeds the proportion of their population in the total population of the State, in the descending order of the ratio of their population in the total population of the Khand.

(2) The number of offices of Pradhan for the Scheduled Tribes, the Scheduled Castes and the Backward Classes as determined in sub-rule (1) shall be allotted to different Gram Panchayats in the Khand on the basis of the ratio of their population in the Panchayat area to the total population of the Panchayat area, in the descending order, that is, from amongst the Gram Panchayats in the Khand, the Gram Panchayat in whose territorial area the ratio of population of the Scheduled Tribes is highest shall be allotted to them, and the Gram Panchayat in whose territorial area the ratio of population of the Scheduled Castes is highest shall be allotted to them, and the Gram Panchayat in whose territorial area the ratio of population of

the Backward Classes is highest shall be allotted to them and in the subsequent election the allotment shall be made in the aforesaid manner, so however, that, as far as may be, the Gram Panchayat allotted in the previous election to the Scheduled Tribes shall not be allotted to the Scheduled Tribes, and the Gram Panchayat allotted in the previous elections to the Scheduled Castes shall not be allotted to the Scheduled Castes and the Gram Panchayat allotted in the previous elections to the Backward Classes shall not be allotted to the Backward Classes;

Provided that if the population of the Scheduled Tribes or the Scheduled Castes or Backward Classes in the Panchayat area is less than two, the office of Pradhan of the Gram Panchayat for such Panchayat area shall not be allotted to the Scheduled Tribes, the Scheduled Castes or the Backward Classes, as the case may be.

(3) Not less than one-third of the Gram Panchayats allotted to the Scheduled Tribes, the Scheduled Castes or the Backward Classes under sub-rule (2) shall be allotted to the women belonging to the Scheduled Tribes, the Scheduled Castes or the Backward Classes, as the case may be.

(4) Not less than one-third of the total number of the offices of Pradhans in the Khand including the number of offices of Pradhans reserved for women under sub-rule (3) shall be allotted to women so however that the territorial areas of the Gram Panchayats allotted to them have the largest population, excluding the population of the Scheduled Tribes, the Scheduled Castes and the Backward Classes shall be allotted to them and in the subsequent election, the allotment shall be made in the aforesaid manner so however that, as far as may be, the Gram Panchayats allotted to women in the previous elections shall not be allotted to women.

(5) The provisions of sub-rules (1), (2) and (3) of Rule 4 shall mutatis mutandis apply to the allotments of

offices of Pradhan and this rule."

A IV The amending Rules of 2015

The provisions of the Rules of 1994 were amended by the tenth amendment Rules of 2015 which were notified on 16 September 2015. As a result of the amendment, the following proviso was introduced in Rule 4(4):

> "Provided further that whenever there is General delimitation of territorial constituencies of Gram Panchayats in the State on the basis of General modification in areas of 'Panchayat areas' of Gram Panchayats in the State or otherwise, before a General election of the members of Gram Panchayats, then the allotment of number of seats as provided in Rule 3 shall be made afresh to different territorial constituencies without taking into consideration their status of allotment in previous elections."

A similar proviso was introduced into Rule 4(6). Correspondingly, Rule 5(2), which provides for the allotment of offices of pradhans for the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes by rotation, was amended by the introduction of the following proviso:

> "Provided further that whenever there is General modification in areas of the 'Panchayat areas' of Gram Panchayats in the State, on the basis of change in population of 'Panchayat areas' or otherwise, before a General election for the offices of Pradhans, then the allotment of number of offices of Pradhans for the Scheduled Tribes, the Scheduled Castes and the Backward Classes, as determined in sub-rule (1), shall be made afresh to different Gram Panchayats in the Khand without taking into consideration their status of allotment in previous elections."

Rule 5(4) has also been amended by the introduction of a proviso which

reads as follows:

> "Provided further that whenever there is General modification in areas of 'Panchayat areas' of Gram Panchayats in the State, on the basis of change in population of 'Panchayat areas' or otherwise, before a General election for the offices of Pradhans, then the allotment of number of offices of Pradhans reserved for women shall be made afresh without taking into consideration their status of allotment in previous elections."

PART B: Delimitation and reorganisation of panchayats in Uttar Pradesh

After the introduction of the Rules of 1994 in the State of Uttar Pradesh following the seventy-third amendment to the Constitution, elections took place to the three-tier panchayats in 1995, 2000, 2005 and 2010. The three tier panchayats comprise of the gram panchayats at the village level, kshetra panchayats at the intermediate level and zila panchayats at the district level. During the course of each of these elections, seats were reserved for Scheduled Castes, Scheduled Tribes and Other Backward Classes. Following the last elections to gram panchayats which were held in November 2010, the term of office commenced on 8 November 2010. Article 243E of the Constitution provides for a duration of five years for every panchayat from the date appointed for the first meeting. Hence, fresh elections are required to be completed and gram panchayats to be reconstituted by 7 November 2015 so as to enable the newly elected gram panchayats to commence functioning without a constitutional hiatus.

On 11 August 2015, the State Government issued a Government Order laying down the modalities for completing the elections to the three tiers of panchayats. The Government Order laid down a time schedule between 12 August 2015 and 12 September 2015 for the allotment of reserved seats in the territorial

constituencies of gram panchayats in the State. The Government Order noted that the total number of gram panchayats in the State was 59,163 while those of kshetra panchayats was 821 and district panchayats, 75. The allotment of reserved constituencies for the Scheduled Castes and the Scheduled Tribes was to take place on the basis of the census figures of 2011, according to which the proportion of population of Scheduled Tribes was 0.57 percent and of the Scheduled Castes 20.6982 percent. For the Other Backward Classes, the proportion of population was determined at 53.33 percent on the basis of a rapid survey which is stated to have taken place in 2015. The Scheduled Tribes in the State accounted for a minuscule proportion of 0.06 percent according to the census of 2001; this proportion having increased in the census of 2011 to 0.57 percent. Clause 6 of the Government Order provided as follows:

> "गत पंचायत सामान्य निर्वाचन 2010 के उपरान्त प्रथमबार गठित ग्राम पंचायतों में आरक्षित पदों के आवंटन में पूर्ववर्ती निर्वाचनों की प्रास्थिति (स्टेट्स) को संज्ञान में नहीं लिया जायेगा, अपितु पदों के आवंटन हेतु बनाये गये अनुपातिक जनसंख्या के अवरोही क्रम में उनकी (प्रथमबार गठित ग्राम पंचायतों की) प्रास्थिति (स्टेट्स) के आधार पर उनका नये सिरे से आरक्षण व आवंटन किया जायेगा।"

Clause 6 contemplated that, while making allotment of reserved seats in respect of those gram panchayats which had been constituted after the last elections which took place in 2010, the status following the allotment of reserved seats in a descending order of population in the previous elections shall not be taken into consideration. In the case of newly constituted panchayats, it was contemplated that the allotment of reserved seats should be made on the basis of the proportionate population of reserved categories in a descending order.

After the Government Order was issued on 11 August 2015, the time

schedule which was indicated was altered on two occasions and the time for the preparation of the final list was extended. According to the State Government, during the exercise of reserving and allotting seats, it was found that there was a huge demographic shift in the population of gram panchayats. Since the last election in 2010, 7,315 new gram panchayats have been created, many of which were carved out from one or more existing panchayats. As a result of the creation of new gram panchayats, the composition of nearly 8,000 other gram panchayats has been affected. The territorial constituencies of wards in gram panchayats increased from 6,51,160 to 7,45,475 reflecting a net enhancement of 94,315 territorial constituencies.

The State Government issued a Government Order on 5 September 2015, directing that the reservation and allotment of seats for kshetra panchayats and zila panchayats would follow the time schedule indicated in the Government Order dated 9 July 2010 but the procedure for reservation and allotment of seats in respect of gram panchayats was postponed. A policy decision was then taken by the State Government to the effect that in view of the reorganization of gram panchayats since the last elections and the general delimitation exercise which had taken place, the Rules of 1994 should be amended by the introduction of a proviso in various parts of Rules (4) and (5) of the Rules of 1994, by permitting the commencement of a new rotation, ignoring the prior status of the reservation/rotation for gram panchayats in respect of each of the reserved categories. Following this, the Rules of 2015 were notified on 16 September 2015 and a consequential Government Order of the same date came to be issued. Both the Rules of 2015 and the Government Order dated 16 September 2015 have been challenged in this batch of writ petitions.

PART C : Submissions

C I Petitioners

The submissions which have been urged on behalf of the petitioners are thus:

(I) There is a constitutional mandate for the rotation of seats in gram panchayats under Article 243D (1) and of the offices of pradhans under the third proviso to Article 243D(4) which cannot be amended either by an enactment of the state legislature or by subordinate legislation;

(II) Section 11-A (5) and Section 12 (5) (a) of the U P Panchayat Raj Act, 1947 which implement the provisions of Article 243D, specifically contemplate the rotation of seats in gram panchayats and of the offices of pradhans in a manner that would ensure that the category to which a seat or office was allotted in the previous election, shall not be allotted to the same category in the ensuing elections;

(III) In view of the amended Rules of 2015, the cycle of rotation has been broken by a subordinate legislation which is contrary to the provisions of Article 243D as a well as of Section 11-A and Section 12 (5) of the U P Panchayat Raj Act 1947;

(IV) In respect of the territorial constituencies which have been newly created, either by the creation of new gram panchayats or otherwise as a result of the delimitation exercise, the cycle of rotation would not be attracted but because of the creation of nearly 7,315 new gram panchayats and 94,315 territorial constituencies, the cycle of rotation for the existing constituencies could not be broken;

(V) The earlier Government Order dated 9 July 2010 contained provisions for situations where the status of a constituency in the previous election would not

be taken into consideration and the succeeding Government Order dated 11 August 2015 also made a provision in respect of the newly constituted panchayats where it was provided that the allotment of a reserved seat in the previous round of elections of 2010 would not be taken into consideration;

(VI) The rationale for rotation is that the reservation of a seat should not permanently disable other segments of the community from participating in the democratic process. This principle seeks to further the concept of political empowerment. A fresh census takes place after every ten years and there is an enhancement in the population of the State. If a de novo exercise of rotation is done, the allotment of reserved seats will be made only to those constituencies with the highest proportion of population of reserved categories, resulting in infringement of the right of representation for those constituencies where the population of reserved categories may be on a comparatively lower scale; and

(VII) The framework of reference for reservation and rotation must be the State and as a result of the amendment which has been made to Rules (4) and (5) of Rules of 1994, the State has abrogated the principle of rotation and has put into place a discriminatory principle.

C II Submissions of the State

On behalf of the State, the learned Advocate General has raised a preliminary objection to the maintainability of the writ petitions on the basis of the provisions of Article 243-O and the judgment of the Supreme Court in **Anugrah Narain Singh Vs State of U P**[3]. While supplementing the submissions of the learned Advocate General, Smt Sangeeta Chandra, learned Additional Chief Standing Counsel urged that:

(I) The reservation of seats in the case of Schedule Castes and Scheduled

3 (1996) 6 SCC 303

Tribes on the basis of the proportion of the population in the panchayat area to the total population of that area is mandatory as is indicated by the use of the expression "shall" in clause (1) of Article 243D of the Constitution. In the case of rotation, Article 243D(1) makes an enabling provision, whereas in the case of chairpersons of panchayats rotation of seats is mandatory since the third proviso to Article 243D(4) uses the expression "shall";

(II) In the case of Other Backward Classes, clause (6) of Article 243D makes an enabling provision by allowing the legislatures of the states to make provisions for the reservation of seats in panchayats and in respect of the offices of chairpersons of panchayats. Consequently, in regard to the Other Backward Class category, the Constitution has left it to the discretion of the state legislatures to frame appropriate legislation;

(III) The state legislature has, in terms of the provisions of Article 243D, enacted Section 11-A which provides for reservation of the offices of pradhan for the members of the Schedule Castes, Schedule Tribes and Other Backward Classes, based on the proportion of the population of these categories to the total population of the state. Insofar as seats in gram panchayats are concerned, Section 12(5) provides for reservation for the Schedule Castes, Scheduled Tribes and Other Backward Classes "as nearly as may be" in the same proportion to the total number of seats in the gram panchayat, as their population in the panchayat area bears to the total population of such panchayat area;

(IV) Section 11-A(5) and Section 12(5) postulate that the rotation of territorial constituencies among different categories shall be made in the manner prescribed. The Rules of 1994 govern the allotment of seats by rotation and, inter-alia, provide for the order in which allotment of reserved seats would be made. The principle is that as far as may be, a territorial constituency allotted in the

previous election shall not be allotted to the same reserved category in the next election;

(V) The rotation of seats does not constitute a roster in the manner in which it is understood in the context of service law;

(VI) In the State of Uttar Pradesh, an exercise for reorganization and delimitation of constituencies took place after fifteen years. This exercise took place after the last elections to gram panchayats which were held in 2010. As a result of the exercise of reorganization and delimitation, 7,315 new gram panchayats were constituted under Section 11-F and the number of gram panchayats which was 51,914 in 2010 rose to 59,143 in 2015. The number of wards of gram panchayats increased from 6,51,160 to 7,45,475 reflecting an enhancement of 94,315 wards. The constitution of new panchayats and the creation of new territorial constituencies affected an equal number of existing panchayats and constituencies from which the new panchayats were carved out. The process of reorganization and delimitation would also change the demographic profile of panchayats and constituencies from which new divisions were carved out. The rotational principle has been applied by the State Government in four elections which took place after the seventy-third amendment, in 1995, 2000, 2005 and 2010 and the rotational cycle has substantially if not almost been completed. As a result of the massive demographical change which had taken place in the meantime and the reorganization and delimitation exercise which took place for the first time after fifteen years, a considered decision was taken by the State Government for enacting provisos to Rule 4(4) and Rule 5 of the Rules of 1994, for the commencement of rotation afresh. It has been urged that the State Government has not abrogated the principle of rotation but has provided that, in the changed circumstances, the rotation would begin afresh;

(VII) The right to vote and the right to contest an election has consistently been held to be a statutory right and not a fundamental right and this position was reaffirmed in the judgment of the Supreme Court in **K Krishna Murthy Vs Union of India**[4], which upheld the constitutional validity of the provisions of Article 243D of the Constitution. Once it has been held that the right to vote or to get elected is a statutory right, rotation flows out of a statutory provision. The Constitution having made only an enabling provision, there is no violation of a fundamental right; and

(VIII) The submission that the commencement of a fresh cycle of rotation will deprive those constituencies in which there is a comparatively lower scale of persons belonging to reserved categories, has no merit. Even if the rotational principle was to be applied as before, the allotment of reserved seats would have to be made in a descending order of population, based on the census figures of 2011 of the Scheduled Castes and Scheduled Tribes (and on the survey made for backward classes) as a result of which there would be no guarantee that a reserved seat in a particular category would be allotted to a particular constituency in the ensuing election.

Learned Senior Counsel for the State Election Commission fairly assisted the Court.

These submissions fall for consideration.

PART D : Analysis

D I The preliminary objection

The first aspect of the matter, upon which it is necessary to dwell, is the preliminary objection which has been raised by the learned Advocate General to the maintainability of the writ petitions.

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4 (2010) 7 SCC 202

Article 243-O of the Constitution provides as follows:

> **"243-O. Bar to interference by courts in electoral matters**.—Notwithstanding anything in this Constitution,—
> (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243K, shall not be called in question in any court;
> (b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State."

Article 243-O finds a parallel in the provisions of Article 243ZG (which forms a constituent part of Part IXA dealing with the municipalities) and Article 329 (forming part of Part XV which deals with elections). Article 243-O commences with a non-obstante clause which operates 'notwithstanding anything contained in the Constitution'. Under clause (a), where a law is made or is purported to be made under Article 243K, and the law relates to the delimitation of constituencies or to the allotment of seats to such constituencies, the validity of such a law cannot be called into question in any court. Clause (b) contains a bar by which an election to a panchayat cannot be called into question except in the form of an election petition presented to an authority in a manner which is provided by a law made by the state legislature.

In the present case, the arguments before this Court have proceeded on the basis, which is undisputed, that as yet no notification has been issued by the State Election Commission declaring elections to gram panchayats. Hence the issue which has then canvassed by the Advocate General before the Court is in relation to the bar contained in clause (a) of Article 243-O. In order for the bar under

Article 243-O to apply, two conditions must be fulfilled. The first condition is that the law must be made or must be purported to be made under Article 243K. Clause (4) of Article 243K empowers the state legislatures, subject to the provisions of the Constitution, to make provisions with respect to all matters relating to or in connection with elections to the panchayats. The first condition for the applicability of clause (a) of Article 243-O is, hence, that the law must be made by the **legislature of a state** under Article 243K. The second condition is that the law must relate to the delimitation of constituencies or the allotment of seats to such constituencies. Clause (4) of Article 243K confers a wide power upon the state legislature to make provisions with respect to all matters relating to or in connection with the elections to the panchayats. While engrafting the bar in clause (a) of Article 243-O, the Constitution has not excluded the jurisdiction of the High Courts to test the validity of any law whatsoever, but a law of a specific nature, namely, a law which relates to the delimitation of constituencies or allotment of seats. Moreover, before the bar can be attracted, there must be a law which must be made by the legislature of a state. That is the clear intendment of the reference to Article 243K in Article 243-O. If the intent of the Constitution was to include within the constitutional sweep of the bar, every law, including an order, bye-law, rule, regulation, notification, custom or usage having in the territory of India, the force of law [that being the definition of the expression 'law' in Article 13 (3) (a)], such a provision would have been made in clause (a) of Article 243-O. By referring to a law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under Article 243K, the Constitution has carefully imposed a bar confined to that area alone. Moreover, the power of judicial review under Article 226 has consistently been held to be a part of the basic structure of the Constitution.

In the present case, the challenge before the Court is not to the validity of a provision contained in the U P Panchayat Raj Act 1947 which has been enacted by the state legislature but to the provisions of the tenth amendment Rules of 2015. The submission which was urged on behalf of the state is that the rules which are made by the State Government as delegate of the state legislature in exercise of the powers conferred by Section 110 read with Section 11-A (5) and Section 12 (5) would have the effect of having been enacted as if they form a part of the Act. In this event – it is urged – the bar which is provided under Article 243-O would equally apply to a challenge questioning the constitutional validity of the rules. Reliance in this regard was placed by learned Senior Counsel for the State Election Commission on the judgment of a Constitution Bench of the Supreme Court in **State of U P Vs Babu Ram Upadhya**[5].

In **Babu Ram Upadhya**, a Sub Inspector of Police was dismissed from service. A writ petition challenging the dismissal was allowed by a Division Bench of the High Court holding that the provisions contained in Para 486 of the U P Police Regulations had not been observed under which, where an offence alleged against a police officer amounted to an offence only under Section 7 of the Police Act, there could be no magistrerial enquiry under the Criminal Procedure Code. In such cases, an enquiry was to be made under the directions of the Superintendent of Police in accordance with certain rules. The Supreme Court held that the Police Act of 1861 was good law under the Constitution and Para 477 of the Police Regulations indicated that the Rules in Chapter XXXII had been framed under 7 of the Police Act. Under Para 479 (a), the Governor's power to punish with reference to all officers was preserved. In that context, the judgment of the Supreme Court

5 AIR 1961 SC 751

cited the following principle contained in Maxwell on the Interpretation of Statutes and held thus:

> "Rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act, and are to be judicially noticed for all purposes of construction or obligation": see Maxwell "On the Interpretation of Statutes", 10th edn., pp. 50-51. The statutory rules cannot be described as, or equated with, administrative directions."

The above extract from the judgment holds that statutory rules are not mere administrative instructions. The judgment in **Babu Ram Upadhya's** case was delivered on 25 November 1960. In a subsequent decision of a Constitution Bench delivered on 10 February 1961 in **Chief Inspector of Mines Vs. Karam Chand Thapar**[6], the Supreme Court held that even if rules and regulations, by a legislative provision, have effect as if enacted as an Act, they continue to be rules subordinate to the Act. In that context, the Supreme Court observed as follows:

> "**The true position appears to be that the rules and regulations do not lose their character as rules and regulations, even though they are to be of the same effect as if contained in the Act. They continue to be rules subordinate to the Act, and though for certain purposes, including the purpose of construction, they are to be treated as if contained in the Act, their true nature as subordinate rule is not lost.** Therefore, with regard to the effect of a repeal of the Act, they continue to be subject to the operation of Section 24 of the General Clauses Act." (emphasis supplied)

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6 AIR 1961 SC 838

In **Bharathidasan University Vs All India Council for Technical Education**[7], the Supreme Court held that the mere fact that regulations may have the force of law, does not confer any more sanctity or immunity as though they are statutory provisions themselves. The Supreme Court held that it would be impermissible to hold that the regulations, which were framed under an enactment, would have constitutional and legal status, even if one or more of them was found not to be consistent with specific provisions of the enabling legislation itself. In that context, the Supreme Court observed as follows:

> "The fact that the Regulations may have the force of law or when made have to be laid down before the legislature concerned does not confer any more sanctity or immunity as though they are statutory provisions themselves. Consequently, when the power to make regulations is confined to certain limits and made to flow in a well-defined canal within stipulated banks, those actually made or shown and found to be not made within its confines but outside them, the courts are bound to ignore them when the questions of their enforcement arise and the mere fact that there was no specific relief sought for to strike down or declare them ultra vires, particularly when the party in sufferance is a respondent to the lis or proceedings cannot confer any further sanctity or authority and validity which it is shown and found to obviously and patently lack. It would, therefore, be a myth to state that Regulations made under Section 23 of the Act have "Constitutional" and legal status, even unmindful of the fact that anyone or more of them are found to be not consistent with specific provisions of the Act itself. Thus, the Regulations in question, which AICTE could not have made so as to bind universities/UGC within the confines of the powers conferred upon it, cannot be enforced against or bind a university in the matter of any necessity to seek prior approval to commence a new

7 (2001) 8 SCC 676

> department or course and programme in technical education in any university or any of its departments and constituent institutions."

The line of argument which has been urged on behalf of the State would, if accepted, lead to absurd consequences. Even if a provision in subordinate legislation is contrary to or ultra vires the enabling statute under which the rule has been framed, the Court in the exercise of its power under Article 226 would be barred from examining its validity, if such a submission were to be accepted. If the bar under clause (a) of Article 243-O were held to apply, the consequence would be that even if a provision contained in the subordinate legislation is contrary to the law made by the state legislature from which the rule-making authority derives its power to frame rules, the Court would be displaced from exercising its jurisdiction to scrutinize the validity of the rule. This would possibly not be a consequence within the contemplation or intent of the Constitution. The purpose of the bar is to impart sanctity to **legislation** relating to delimitation of constituencies and allotment of seats to constituencies. Moreover, disputes over elections have to be addressed in the form of an election petition after the result is declared. That is why the provisions contained in Clause (a) of Article 243-O have structured the nature and extent of the bar by providing that it is only in respect of a law falling within the ambit of Article 243-K and relating to the delimitation of constituencies or to the allotment of seats to those constituencies, that the bar would stand attracted. The bar cannot displace a challenge to the constitutional validity of subordinate legislation.

A considerable degree of reliance has been placed on behalf of the State on the judgment of the Supreme Court in **Anugrah Narain Singh (supra)**. In that case, a direction had been issued by the Allahabad High Court to the State

Government to hold elections to municipal corporations by a stipulated date since no elections had taken place for ten years. A notification was issued for holding elections for all town areas and municipal corporations and the last date which was prescribed for the filing of nominations and for the withdrawal of nominations had expired. The process of reservation of wards and delimitation of constituencies had been completed in June 1995 and a writ petition was filed under Article 226 on 26 October 1995 where the elections were due to commence on 17 November 1995. The Supreme Court held that the petition ought to have been held to be barred by laches alone. In that context, the Supreme Court observed as follows:

> "... The bar imposed by Article 243-ZG is twofold. Validity of laws relating to delimitation and allotment of seats made under Article 243-ZA cannot be questioned in any court. No election to a municipality can be questioned except by an election petition. Moreover, it is well settled by now that if the election is imminent or well under way, the court should not intervene to stop the election process. If this is allowed to be done, no election will ever take place because someone or the other will always find some excuse to move the court and stall the elections..."

The Supreme Court emphasized that the electoral process was well underway and was scheduled to be completed in less than ten days' time and hence the High Court ought not to have entertained a petition at the behest of a few individuals. The judgment of the Supreme Court has also dwelt on Clause (a) of Article 243ZG which is pari materia to Article 243-O. In the following observations, the Supreme Court held that the validity of the Act of the state legislature dealing with the delimitation of wards could not be questioned because of the bar imposed by Article 243ZG:

> "The validity of Sections 6-A, 31, 32 and 33 of the U. P. Act dealing with delimitation of wards cannot be

> questioned in a court of law because of the express bar imposed by Article 243-ZG of the Constitution. Section 7 contains rules for allotment of seats to the Scheduled Castes, the Scheduled Tribes and the Backward Class people. The validity of that section cannot be also be challenged. That apart, in the instant case, when the delimitation of the wards was made, such delimitation was not challenged on the ground of colourable exercise of power or on any other ground of arbitrariness. Any such challenge should have been made as soon as the final order was published in the Gazette after objections to the draft order was considered and not after the notification for holding of the elections was issued..."

It would also be necessary to note here that the Supreme Court held that there was a material distinction between the Delimitation Commission Act, 1962 which was absent in the Uttar Pradesh legislation. Under the former Act, there was a provision that an order of delimitation upon publication in the gazette, shall have the force of law and could not be questioned in any court. Hence, the bar under Article 329 would apply. On the other hand, it was held that the U P Municipal Corporation Act, 1959 (U P Act 2 of 1959) did not contain a provision that, upon reaching finality, it would have a force of law and shall not be questioned in any court of law. Consequently, it was held that such an order made under the provisions of Section 32 of the U P Act 2 of 1959 would not be beyond challenge by virtue of Article 243-ZG. The Supreme Court also held that such a challenge could not be addressed before the Election Court in the form of an election petition. In that context, the observation of the Supreme Court was in the following terms:

> "In this connection, it may be necessary to mention that there is one feature to be found in the Delimitation Commission Act, 1962 which is absent in the U.P. Act.

Section 10 of the Act of 1962 provided that the Commission shall cause each of its order made under Sections 8 and 9 to be published in the Gazette of India and in the Official Gazettes of the States concerned. Upon publication in the Gazette of India every such order shall have the force of law and shall not be called in question in any Court. Because of these specific provisions of the Delimitation Commission Act, 1962, in the case of Meghraj Kothari v. Delimitation Commission[8], this Court held that notification of orders passed under Sections 8 and 9 of that Act had the force of law and therefore, could not be assailed in any court of law because of the bar imposed by Article 329. The U.P. Act of 1959, however, merely provides that the draft order of delimitation of municipal areas shall be published in the Official Gazette for objections for a period of not less than seven days. The draft order may be altered or modified after hearing the objections filed, if any. Thereupon, it shall become final. It does not lay down that such an order upon reaching finality will have the force of law and shall not be questioned in any court of law. For this reason, it may not be possible to say that such an order made under Section 32 of the U.P. Act has the force of law and is beyond challenge by virtue of Article 243-ZG. But any such challenge should be made soon after the final order is published. The Election Court constituted under Section 61 of the U.P. Act will not be competent to entertain such an objection. In other words, this ground cannot be said to be comprised in sub-clause (iv) of clause (d) of Section 71 of the U.P. Act. In the very nature of things, the Election Court cannot entertain or give any relief on this score. The validity of a final order published under Section 33 of the U.P. Act is beyond the ken of Election Court constituted under Section 61 of the said Act."

8 AIR 1967 SC 669

We are not inclined to accept the preliminary objection which has been raised on behalf of the State to the maintainability of the writ petitions under Article 226. The challenge, in the present case, is to subordinate legislation. Subordinate legislation cannot have the same status or character as an enactment of the state legislature. Subordinate legislation is always subordinate to the Act of the state legislature and the challenge on the ground that the Rules which have been enacted by subordinate legislation are ultra vires the enabling legislation or violate a provision of the Constitution, would not be hit by the bar under clause (a) of Article 243-O of the Constitution. Clause (a) of Article 243K applies to a law made by the legislature of a state under Article 243K of the Constitution.

We now deal with the ground of challenge to the subordinate legislation.

D II : The challenge to the amending Rules of 2015

Article 243D provides for a reservation of seats in panchayats to-

(i) the Scheduled Castes;

(ii) the Scheduled Tribes; and

(iii) women.

For the backward classes of citizens, clause (6) of Article 243-D empowers the legislatures of the states to make provisions for reserving seats in panchayats and in offices of chairpersons with a stipulation that nothing contained in the Part will operate as a restraint.

The salient aspects of Article 243-D are as follows:

(I) In reserving seats in every panchayat for the Scheduled Castes and the Scheduled Tribes, the number of seats to be reserved has to bear, as nearly as may be, the same proportion which the population of the Scheduled Castes or, as the case may, the Scheduled Tribes in the panchayat area bears to the total population of the area;

(II) Not less than one-third of the total number of seats has to be reserved for women belonging to the Scheduled Castes or the Scheduled Tribes;

(III) At least one-third of the total number of seats in every panchayat, including the seats which have been reserved for women belonging to the Scheduled Castes and the Scheduled Tribes have to be reserved for women;

(IV) The state legislatures are empowered by law to provide for the manner in which offices of chairpersons in the panchayats at the village or any other level shall be reserved for the Scheduled Castes, Scheduled Tribes and for women;

(V) While reserving offices for chairpersons, the number of reserved seats must bear, as nearly as may be, the same proportion as the population of the Scheduled Castes or the Tribes in the State bears to the total population of the State;

(VI) At least one-third of the total number of offices of chairpersons in the panchayats have to be reserved for women;

(VII) Reservation of seats for the Scheduled Castes and the Scheduled Tribes in the panchayats and in respect of the offices of chairpersons shall continue until the expiration of the period mentioned in Article 334 but the reservations for women are not conditioned by this stipulation of time;

(VIII) Article 243-D contemplates a rotation of seats reserved for the panchayats and in respect of the offices of chairpersons. Clause (1) of Article 243-D provides that the reserved seats “may be allotted by rotation to different constituencies in a panchayat”. Similarly, clause (3) of Article 243-D provides that the seats which are reserved for women may be allotted by rotation to different constituencies in a panchayat. An enabling provision for rotation is made. The third proviso to clause (4) of Article 243-D stipulates that the offices which are reserved for chairpersons “shall be allotted by rotation to different panchayats at

each level";

(IX) For the backward classes of citizens, an enabling provision is made in clause (6) of Article 243-D by which the state legislatures are empowered to make provisions. The provision to be made by the state legislatures may include a provision in regard to the rotation of seats. There is no specific provision in regard to the reservation of seats in panchayats and of chairpersons for backward classes of citizens apart from clause (6) of Article 243-D. The empowerment of the state legislatures under that provision would be broad enough to enable them to make a provision in regard to the rotation of seats.

The legislature of Uttar Pradesh enacted the provisions of Part III-A into the Uttar Pradesh Panchayat Raj Act, 1947 by U P Act No 9 of 1994. Section 11-F contemplates that the State Government may constitute a panchayat area comprising a village or a group of villages having, insofar as is practicable, a population of one thousand persons. Section 12(1)(c) contemplates, besides the pradhan, a panchayat consisting of nine members in a panchayat area with a population of one thousand persons. The statute contemplates a panchayat of eleven members for a population between one thousand and two thousand; of 13 members for a population between two thousand and three thousand, and a panchayat of fifteen members where the population of the panchayat area is more than three thousand. For the purpose of election of the members of a Gram Panchayat, each panchayat area is divided into territorial constituencies in a manner so that, as far as is practicable, the ratio between the population of each constituency and the number of seats allotted, should be the same throughout the panchayat area. Territorial constituencies are contemplated to be delimited in accordance with the rules which are framed in that regard.

Section 11–A has provided for the State Government to reserve offices of

pradhans for the Scheduled Castes, Scheduled Tribes and Backward Classes. In determining the number of offices of pradhans to be reserved, the principle which is required to be borne in mind is the proportion between the population of the Scheduled Castes, Scheduled Tribes or the Backward Classes in the State to the total population of the State. However, a ceiling of twenty seven percent is provided for the reservation of seats for the Backward Classes for the offices of chairpersons. One-third of the total number of offices reserved for the Backward Classes have to be reserved for women belonging to the Backward Classes. This is a horizontal reservation for women contemplated by sub-section (3) of Section 11-A. The horizontal reservation for women intersects with a vertical reservation for women because sub-section (4) of Section 11-A also requires that not less than one-third of the **total number** of offices of pradhans, including those which are reserved, shall be reserved for women. Sub-section (5) of Section 11-A has made a mandatory provision for the allotment by rotation of the offices of pradhans to different gram panchayats in such order as may be prescribed.

Section 12(5) provides for the manner in which reservation of seats in gram panchayats, including the principle of rotation, would work out. In computing the total number of reserved seats, the proportion which is required to be borne in mind is the population of the Scheduled Castes, Scheduled Tribes or Backward Classes in the panchayat area to the total population of the area. Sub-section (5) (a) of Section 12 has contemplated the allotment of seats by rotation to different territorial constituencies in such order as may be prescribed. Rule 4(1) of the Rules of 1994 provides the order in which seats which are reserved in a gram panchayat are to be allotted to different territorial constituencies in the gram panchayat. The order of allotment is:

(i) women belonging to the Scheduled Tribes;

(ii) Scheduled Tribes;

(iii) women belonging to the Scheduled Castes;

(iv) Scheduled Castes;

(v) women belonging to the Backward Classes;

(vi) Backward Classes; and

(viii) women.

Sub-rule (4) of Rule 4 lays down the principle of allotting seats which are reserved, to different territorial constituencies on the basis of population in a descending order. What this envisages is that the territorial constituency with the largest population of Scheduled Tribes will be allotted a seat reserved for the Scheduled Tribes. The same principle is followed in allotting seats reserved for the Scheduled Castes and the Backward Classes. Rule 4 (4) also lays down the principle consistent with the underlying logic of rotation, that as far as may be, a territorial constituency which has been allotted in a previous election to the Scheduled Tribes shall not be allotted to the Scheduled Tribes and similarly a territorial constituency which was allotted in an earlier election to the Scheduled Castes or the Other Backward Classes, as the case may be, shall not be allotted to the same category in the ensuing election.

Rule 4 (5) provides for the horizontal reservation of one-third of the territorial constituencies allotted to the Scheduled Castes, Scheduled Tribes and Backward Classes to women belonging to the said categories. Rule 4 (6) implements the vertical reservation of one-third of the total number of seats for women. Rule 4(6) applies the principle of rotation to those seats by providing that, as far as may be, a territorial constituency which had been allotted to a woman in a previous election, shall not be allotted to a woman in the subsequent election.

Rule 5 provides for the allotment of offices of pradhans to the Scheduled

Castes, Scheduled Tribes and Other Backward Classes. The seats which are reserved for these categories are **distributed block-wise** for being allotted to the constituent gram panchayats. In effecting this, the number of offices of pradhans allotted to the reserved categories bears the same proportion to the total number of offices of pradhans in the block as their proportion in the block bears to the total population of the block. The number of offices which are so determined, are allotted to different gram panchayats in the block on the basis of the ratio of the population of the category in the panchayat area to the total population in the panchayat area in a descending order. The allotment of seats in a descending order is made in such a manner so that the gram panchayat in whose territorial area the Scheduled Tribes, the Scheduled Castes or the Backward Classes, as the case may be, are highest in number to the total population, would be allotted that category. The principle of rotation is applied by ensuring that a seat which is allotted to a particular reserved category in one election is not allotted to that category, as far as may, in a subsequent election.

A challenge to the provisions of Article 243-D was considered by the Supreme Court in **K Krishna Murthy (supra)**. The issue which fell for consideration before the Supreme Court related to the constitutional validity of Article 243D (6) which provides for reservations in favour of Backward Classes for occupying seats in and positions of chairpersons in panchayats and of Article 243T (6) which is a corresponding provision for municipalities. Several principles emerge from the judgment of the Supreme Court. These have a bearing on the controversy in the present case and hence it is necessary to analyse each of those precepts.

The judgment of the Supreme Court lays down, first and foremost, the principle that the purpose and object of providing reservations in local self-

government institutions has a constitutional basis which is distinct and independent from the purpose of providing reservations in higher education and public employment under Articles 15 (4) and 16 (4) of the Constitution. In that context, the Supreme Court observed as follows:

> "...We endorse the proposition that Article 243-D and 243-T form a distinct and independent constitutional basis for reservations in local self-government institutions, the nature and purpose of which is different from the reservation policies designed to improve access to higher education and public employment, as contemplated under Articles 15 (4) and 16 (4) respectively."

Explaining the distinction, the Supreme Court observed thus:

> "It must be kept in mind that there is also an inherent difference between the nature of benefits that accrue from access to education and employment on one hand and political representation at the grassroots level on the other hand. While access to higher education and public employment increases the likelihood of the socio-economic upliftment of the individual beneficiaries, participation in local-self government is intended as a more immediate measure of empowerment for the community that the elected representative belongs to.
>
> The objectives of democratic decentralisation are not only to bring governance closer to the people, but also to make it more participatory, inclusive and accountable to the weaker sections of society. In this sense, reservations in local self-government are intended to directly benefit the community as a whole, rather than just the elected representatives..."

The second principle which decision of the Supreme Court lays down is the rationale for rotation of seats. The Supreme Court held that the policy of rotation which has been adopted in Article 243D (4) is "**a safeguard against the**

possibility of a particular office being reserved in perpetuity"[9]. The Supreme Court also held that though Article 243D (6) does not explicitly provide guidance on the quantum of reservation, yet, in the absence of explicit criteria or limits, the reservation policy contemplated thereunder must ordinarily be guided by the standards of "**proportionate representation**".

The **third principle** which emerges from the decision of the Supreme Court is that Article 243-D (6) which enables the state legislatures to reserve seats as well as posts of chairpersons in favour of Backward Classes is an **enabling** provision. The provision in itself does not indicate any guidance on the identification of Backward Classes or on the quantum of reservations. Instead, a discretion has been conferred on the state legislatures to design and confer reservation benefits in favour of Backward Classes.

The fourth important facet of the decision flows from the third. The fourth principle elaborates on the issue of judicial review of state legislation. The Supreme Court contemplated that it was natural that questions would arise in respect of the exercise of discretionary powers by the state legislatures, as conferred by the Constitution, and that **"excessive and disproportionate reservations provided by the state legislations can, indeed, be the subject matter of specific challenges before the Court.**[10] The Supreme Court has, however, ruled that this would not result in the striking down of the constitutional provision for reservations which have been contemplated for the Backward Classes of citizens. The judgment of the Supreme Court has also emphasized that it was incumbent upon the executive to ensure that reservation policies are reviewed from time to time so as to **"guard against over-breadth"**[11]. Specifically in the context of the State of Uttar Pradesh, the Supreme Court noted that the claims about the

9 Para 8 at p. 212
10 Para 60 at p 226
11 Para 61 at p 227

extent of OBC population were based on the Census of 1991. The Supreme Court ruled that while it was not ruling upon a specific challenge to state legislation, it was left open to be urged, in an appropriate case, if flaws were pointed out in the identification of Backward Classes with the help of up-dated empirical data. Emphasizing the principle of proportionate reservation, the Supreme Court has held that a ceiling of fifty percent is stipulated as a quantitative restriction with respect to vertical reservations for the Scheduled Castes, Scheduled Tribes and Other Backward Classes. The seats which are earmarked for women belonging to the general category would not be accounted for in determining whether the upper ceiling of fifty percent has been breached.

The fifth aspect of the decision of the Supreme Court is that the reservation for chairpersons of panchayats is not to be construed as a reservation of solitary seats for the purpose of reservation. The frame of reference is the **entire pool** of chairperson positions in each tier of the three levels of panchayat raj institutions in the entire State. Out of the total pool of seats computed across the panchayats in the whole State, the number of offices which are reserved is to be determined on the basis of the proportion between the population belonging to these categories and the total population of the State.

The sixth principle which emerges from the decision of the Supreme Court is that while the exercise of electoral franchise is an essential component of a liberal democracy in Indian law, it is a well settled principle that the right to vote and contest elections does not have the status of a **fundamental right** but is in the nature of a **legal right** which can be controlled through legislation. The Supreme Court declined to accede to the submission that the right to vote and the exercise of electoral franchise should be regarded as a fundamental right and that the earlier decisions on the subject should be reconsidered.

Now, it is in this background, that it would be necessary for the Court to appreciate the manner in which the reservation of seats in panchayats and to the offices of chairpersons is effected in the State of Uttar Pradesh. This has been elucidated in a supplementary counter affidavit which has been filed on behalf of the State Government. For the purpose of illustration, the State has relied upon the instructions circulated to the District Panchayat Raj Officers, who are responsible for carrying out reservations and for allotment of offices. The illustration which has been placed before the Court consists of a Block with forty four gram panchayats with no population of Scheduled Tribes (the population of STs in the State is 0.57%). In such a situation, reservation has to be made in seats in gram panchayats for women belonging to the Scheduled Castes and Scheduled Castes; women belonging to Other Backward Classes and Backward Classes; and for women. If the total number of gram panchayats is forty four, twenty one percent being the population of Scheduled Castes, nine offices of pradhans have to be reserved. Out of these nine offices, the first three would be allotted to women from the Scheduled Castes, while the remaining six would go to Scheduled Castes. Since twenty seven percent of the seats are reserved for the backward classes, the number of offices reserved would be eleven. Of them, four offices representing one-third would be reserved for backward class women, while seven would be allotted to the backward classes. Moreover, there is a provision for reserving not less than one-third of the total number of offices for women. Out of forty four offices of pradhans, fifteen have to be reserved for women. Since three posts have been reserved for women belonging to the Scheduled Castes and four for women belonging to Backward Classes, eight posts would be reserved further for women from the general population.

The procedure which is followed by the State while making an allotment of

seats is that gram panchayats are arranged alphabetically (*Akradik kram* in Devnagari script)**.** Under this procedure, the serial number of each gram panchayat is determined on the basis of the order appearing in the Hindi Devnagri alphabet. The gram panchayats are arranged in three lists each in descending order of population: the first list consists of a descending order of panchayats arranged in the proportion of the population of the Scheduled Castes in a block; the second consists of a descending order of panchayats in proportion of the population of Backward Classes in that block; and the third for the unreserved population of gram panchayats.

The position as it obtains in the State of Uttar Pradesh, would now have to be elaborated. The factual data which has been placed before the Court is as follows:

(i) Total population of the State (2011 census figures): 19,98,12,341;

(ii) Rural population: 15,80,88,640;

(iii) Scheduled Tribes (2011 census figures): 11,34,273 (equivalent to **0.57%**);

(iv) Rural population of Scheduled Tribes: 9,81,126;

(v) Scheduled Castes population (2011 census figures): 4,13,57,608 (equivalent to **20.6982%**);

(vi) Rural population of Scheduled Castes: 3,61,23,039;

(vii) Rural population of Backward Classes (rapid survey) **:**8,43,01,319 (equivalent to **53.33%**).

The total number of gram panchayats in the State stood at 51,914 when the elections took place in 2010. As a result of the reorganization of gram panchayats under Section 11-F of the U P Panchayat Raj Act 1947, the number of gram panchayats has increased to 59,163. This has resulted in the addition of 7,315 new

gram panchayats. The total number of wards has increased from 6,51,160 to 7,45,475. This represents an increase of 94,315 territorial constituencies. The total number of seats of pradhans is 59,163. The manner in which the distribution has been made of these seats is indicated in the following chart:

Sr	Category	Number	Total
(i)	Scheduled Tribes Women	132	336 (i + ii)
(ii)	Scheduled Tribes	204	0.57 per cent
(iii)	Scheduled Castes Women	4341	12246 (iii + iv)
(iv)	Scheduled Castes	7905	20.6982 per cent
(v)	Backward Class Women	5592	15974 (v + vi)
(vi)	Backward Class	10382	27 per cent
(vii)	Total reserved posts		28556
(viii)	Percentage of reserved posts		48.27 per cent
(ix)	Total Unreserved	30607	
	Women	9927	
	Total Women (including Scheduled Castes Women, Scheduled Tribes Women and Backward Class)	19992	33.8 per cent

Now, it is in this background that the Court would have to notice the rationale which has been set forth by the State Government for the introduction of the tenth amendment to the Rules of 1994. The principle of rotation was applied by the State during the previous four general elections of panchayats which were held in 1995, 2000, 2005 and 2010 amongst the reserved categories of the Scheduled Castes, Scheduled Tribes and Other Backward Classes and also in respect of women. The last reorganization of gram panchayats and delimitation of territorial constituencies was made in 1995 on the basis of the Census figures of 1991. This was nearly twenty years ago. In the intervening period, the Census figures for 2001 and 2011 were published, which revealed a massive demographical shift, necessitating a fresh reorganization of gram panchayats and the delimitation of territorial constituencies at all three tiers of panchayats. This exercise was

undertaken in 2014-15. During the course of this exercise, as we have noticed earlier, 7,315 new gram panchayats were constituted by carving out areas of existing panchayats areas or gram panchayats. The constitution of new gram panchayats also affected the composition of almost 8,000 other gram panchayats from which the new panchayats were created. The demographic profile of the erstwhile gram panchayats (as it was prior to the reorganisation) has also been affected. As a result of this large scale exercise of reorganization, there was an increase in the territorial constituencies of gram panchayats by nearly 94,315 constituencies. It was in this background that, according to the State Government, a decision was taken to the effect that it has become necessary to commence a fresh cycle of rotation for the purpose of reservation and for the allotment of seats and offices in gram panchayats. This exercise, it has been submitted on behalf of the State, was not essential in respect of the 75 **district** panchayats and 821 **kshetra** panchayats. In these proceedings, we may clarify that we are not concerned with the delimitation of constituencies or the elections, either to the district panchayats or to the kshetra panchayats. The issue before the Court is whether the exercise of the rule-making power by the State Government runs afoul of the provisions of Article 243D on the one hand and the provisions which are contained in Section 11-A and Section 12(5) of the U P Panchayat Raj Act 1947 on the other.

The important aspect which has to be emphasised is that the Rules of 2015 have not abrogated the principle of rotation. The principle of rotation has been retained even in the Rules of 1994 as modified upon amendment. The Rules, as amended, contemplate that whenever there is a general delimitation of the territorial constituencies of gram panchayats in the State on the basis of a general modification in the areas of gram panchayats or otherwise before a general

election, then the allotment of the number of seats as provided in Rule 3 shall be made afresh to different territorial constituencies without taking into consideration their status of allotment in the previous elections. The challenge on the part of the petitioners is that by introducing a stipulation that the allotment of the number of seats shall be made afresh among different territorial constituencies without taking into consideration their status of allotment in the previous elections, the Rules substantially dilute the right of representation of those constituencies where the population of reserved categories may be on a comparatively lower scale and which have still not obtained the benefit of a reserved seat.

There are two perspectives in which this grievance can be looked at. First and foremost, it is a well settled principle of law that electoral franchise is not a fundamental right. Electoral franchise is subject to regulation by statute. Article 243D of the Constitution which provides for the reservation of seats, has specifically contemplated that the manner in which the reservation of seats and offices of chairpersons in the panchayats would be worked out, would be governed by state legislation. While making an enabling provision for rotation of reserved seats among territorial constituencies (the Supreme Court held that rotation is an enabling provision in Krishna Murthy's case), the Constitution has carefully not laid down either the manner in which the rotation would be carried out or the periodicity of the reservation. Article 243D would indicate an area of constitutional silence where, while framing Part IX, it has been left to the discretion of the state legislatures to determine the manner in which seats would be allocated to reserved constituencies and the manner in which rotation would be made.

The second important aspect which must be noted in this regard is that in making an allotment of reserved seats among territorial constituencies, Article 243D contemplates, firstly, that the number of seats which are reserved will bear,

as nearly as may be, the same proportion to the total number of seats to be filled in by election in that panchayat as the population of the Scheduled Castes and the Scheduled Tribes in that panchayat area bears to the total population of that area. Under clause (f) of Article 243, population is ascertained on the basis of the published figures of the last census. Article 243D spells out the basis on which the total number of seats which are reserved for the Scheduled Castes and the Scheduled Tribes shall be determined. Article 243D also provides for the extent of reservation for women, as we have noticed earlier, which is an area where the horizontal reservation intersects with a vertical reservation of one-third of the total number of seats in favour of women. In the case of chairpersons of panchayats, the Constitution lays down the basis on which the total number of offices of chairpersons would be reserved for the Scheduled Castes and the Scheduled Tribes. Similarly, there is a stipulation of the extent to which the reservation in favour of women is made, namely one-third of the total number of offices of chairpersons in the panchayat at each level. The Constitution lays down a broad principle or norm of rotation. There are thus two elements of constitutional philosophy which have to be balanced. The first is a representation to the Scheduled Castes and Tribes commensurate with their share of the population as ascertained in the last published census figures. This by its very nature is not static but must evolve so as to be commensurate with the share of population. The second constitutional precept of rotation is that **one** category does not hold a perpetual reservation to a particular seat. Both these concepts are in the very nature of their application not static. Beyond this, the Constitution has evidently not spelt out the details of the regulation or procedure by which the actual allotment of seats would take place among reserved constituencies in panchayats or in regard to the manner in which the rotation would be carried out. There is, therefore, a broad area

of discretion which has been left open to the state legislatures under the Constitution. Once this basic principle is borne in mind, having due regard to the principles which have been laid down by the Supreme Court in **K Krishna Murthy (supra)**, there is no manner of doubt that the state legislature and its delegate which frames the subordinate legislation, would have a requisite measure of discretion in regard to the methodology to be followed for the allotment of seats to territorial constituencies and the manner in which the principle of rotation is to be implemented.

The proviso which has been introduced by the tenth amendment to Rule 4 (4) has envisaged that the allotment of seats shall be made **afresh** to different territorial constituencies without taking into consideration the status of allotment in previous elections in specified contingencies. Such a contingency occurs when there is a general delimitation of territorial constituencies of gram panchayats of the State on the basis of a general modification of panchayat areas "or otherwise". The proviso must be construed as conferring a power on the state to commence rotation afresh on a general delimitation exercise in respect of territorial constituencies of panchayats on the basis of a **general** modification of panchayat areas. We are of the view that the expression "or otherwise" must be read down to mean that the circumstances in which the allotment of seats would be made afresh without taking into consideration the status of allotment in previous elections, must be based on reasonable and objective criteria akin to those specified. In other words, whether an allotment should be made afresh without having due regard to the status of allotment in a previous election, cannot be left to the unguided discretion of the State. Such a restraint would have to be read into the powers of the State Government in order to ensure against an arbitrary exercise of power. In each case, where the State Government attempts to initiate a fresh allotment of

territorial constituencies in terms of the proviso to Rule 4 (4), it is for the State Government, in the event of a challenge, to demonstrate before the Court the reasons on the basis of which such a determination was made. The amendment would in our view is hence not ultra vires.

In the facts of the present case, we are inclined to hold that the State Government has not acted arbitrarily or in violation of the underlying principles which emerge from the provisions of Article 243D of the Constitution and the U P Panchayat Raj Act 1947 in making the amendment to the Rules of 1994. The facts which have been narrated in the counter affidavit filed by the State Government as well as in the supplementary affidavit which has been filed in these proceedings, have not been controverted in any of the writ petitions. No countervailing material or factual data to dispute the material placed on the record by the State have been produced by the petitioners. The material which has been placed before the Court in the form of facts and figures is sufficient to indicate that there was a due and proper application of mind to the circumstances which had resulted in a situation where, over the last twenty years, there had been no delimitation exercise in the State of Uttar Pradesh. Admittedly, after 1995, a delimitation was carried out for the first time in 2014-15. The exercise of delimitation and the creation of new gram panchayats was the result of a massive exercise of reorganization and delimitation. In the meantime, based on the census figures of 2001 and 2011, there has been a major change in the demographic profile of the territorial constituencies in the rural parts of the State. These facts have not been disputed before the Court. The only submission which has been urged in response to the materials which have been placed on the record is that, as a result of the decision of the Sate Government based on the Rules of 2015 allowing the State to carry out a fresh exercise of rotation, those constituencies which had an expectation of a seat being rotated in

accordance with the erstwhile cycle would be deprived of that opportunity now. In particular, it was sought to be emphasized that, insofar as the Scheduled Castes in the State are concerned, 21 percent of the total number of seats would have been reserved during the course of each of the four elections which took place between 1995 and 2010. On this basis, it was sought to be submitted that 84 percent of the total constituencies have been reserved in the four previous elections leaving in balance 16 percent of the remaining constituencies which may have a small or marginal representation from amongst reserved categories. This hypothesis is countered by the Chief Standing Counsel by submitting that there is no guarantee that a seat or constituency will be reserved necessarily for a particular category in an ensuing election since an arrangement has to be made on each occasion in a descending order of population based on population figures. In our view, the point to be noted is that the exercise which has been conducted by the State Government, has not either abrogated the principle of rotation or deprived any reserved category – be it the Scheduled Castes, Scheduled Tribes, Other Backward Classes or women of their entitlement. The principle on the basis of which reserved seats would be determined in the panchayats and for the offices of chairpersons, would be strictly in accordance with the norms which have been laid down in Article 243D and as specified in Section 11-A and Section 12 (5) of the U P Panchayat Raj Act. During the course of every election to the three-tier panchayats, the process of allocating reserved seats to territorial constituencies and of rotating constituencies has to be necessarily carried out. The Rules, in their original form, make it clear that the principle of rotation has to be applied **as far as may be**. The words '**as far as may be**' which are used in Rule 4(4), Rule 4(6) and in Rule 5(2) are indicative of the fact that rotation itself is subject to such situational variations that may be required. When an electoral exercise on as gigantic scale as envisaged in the State

of Uttar Pradesh is to be carried out, situational variations are liable to occur. The constitutional validity of legislation or a subordinate legislation can not be made to depend upon such situational variations or aberrations.

Finally, before we conclude, we may also note that on behalf of the State, reliance was placed on a judgment of a Division Bench of this Court in **Krishna Dutt Mishra Vs State of U P**[12]. The judgment of the Division Bench was delivered on 18 July 2005 which is prior to the decision of the Supreme Court in K **Krishna Murthy** (supra)**.** The observations contained in the judgment of the Division Bench treat the principle of rotation purely as directory in nature. These observations of the Division Bench in **Krishna Dutt Mishra** (supra) will give way to the binding principles which have been laid down in the judgment of the Supreme Court in K **Krishna Murthy** (supra). The object of the principle of rotation is to ensure that no community or reserved category can lay a claim to a reserved seat in perpetuity. Any observation to the contrary contained in the judgment in **Krishna Dutt Mishra** (supra) would have no binding effect in consequence. The observations in the judgment of the Division Bench on the availability of judicial review would also give way to the binding principles laid down by the Supreme Court in **K Krishna Murthy.**

The learned counsel appearing on behalf of the petitioners sought to draw sustenance from a judgment rendered by a Division Bench of the Bombay High Court in **Prashant Bansilal Bamb Vs State of Maharashtra**[13]. The Division Bench held that in light of the previous statement made before the Bombay High Court by the State Election Commission coupled with the provisions of the State Rules of 1996 which mandated rotation of seats amongst reserved categories, the State Election Commission was bound to act in accordance with the rules. The judgment referred to, in our opinion, is clearly distinguishable inasmuch as in an

12 2005 ALJ 3016
13 Writ Petition No 6389 of 2006 decided on 9 February 2007

earlier round of litigation before the Bombay High Court, the State Election Commission had made an affirmation on oath that it would implement the rotation policy from the next elections. While the Rules, which fell for consideration, had been promulgated in 1996, the first elections had taken place in 1997 and the elections thereafter were to be held in 2007. It was in the above factual backdrop that the above decision came to be rendered. Insofar as the State of Uttar Pradesh is concerned, we find that the rotation policy had been followed in four subsequent elections and the cycle of rotation itself had been substantially completed. More importantly, we are faced with a statutory amendment which, while not doing away with the system of rotation only bids all to treat the ensuing elections to be the first elections and consequently provide that rotation would commence afresh. In the light of the above distinguishing features, we find that the judgment of the Bombay High Court does not carry the case of the petitioners any further.

PART E : Conclusion

For these reasons, we have come to the conclusion that there is no merit in the challenge which has been addressed before the Court and that the petitions would have to be dismissed. The Government Order dated 16 September 2015 is only consequential to the amendment of the Rules. No separate ground of challenge is urged.

The petitions are accordingly dismissed. However, in the circumstances of the case, there shall be no order as to costs.

9 October 2015
AHA

(Dr D Y Chandrachud, CJ)

(Yashwant Varma, J)