

A M/S GUJARAT PRADESH PANCHAYAT PARISHAD AND ORS.

v
STATE OF GUJARAT AND ORS.

JULY 30, 2007

B [C.K. THAKKER AND P.K. BALASUBRAMANYAN, JJ.]

Gujarat Panchayats Act, 1993—ss. 83 and 162—Powers of President of District Panchayat vis-à-vis powers of District Development Officer—In the administration of District Panchayat—Held: Powers conferred on District Development Officer u/s 162, regarding executive matters are 'absolute' and 'unqualified'—And not subject to orders of the President of District Panchayat—President of District Panchayat is empowered to secure only implementation of Policy decisions—Part IX of the Constitution only conferred constitutional status to the Local Self Government to the District Panchayats, and does not require the District Development Officer to exercise his executive powers, subject to the orders of the President of District Panchayat—Constitution of India, 1950—Part IX, Article 243-G (as inserted by Constitution (Seventy-third Amendment) Act, 1992).

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E Appellant No. 2 District Panchayat, is a member of appellant No. 1-society. The District Panchayat passed a resolution that District Development Officer (DDO) shall consult the President of the District Panchayat in matters of recruitment, appointment, transfer, promotion, posting, deputation etc. of all Panchayat employees of the District Panchayat. DDO-respondent No. 3 did not observe the resolution on the ground that such powers could be exercised only by the DDO and the President of District Panchayat had no voice in executive or administrative functions. Appellants filed Writ Petition. Single Judge of High Court dismissed the Petition endorsing the view of the DDO interpreting the provisions of Gujarat Panchayats Act, 1993 by referring to the Rules framed thereunder. Division Bench of High Court, in Letters Patent Appeal approved the judgment of Single Judge. Hence, the present appeal.

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Dismissing the appeal, the Court

HELD: 1.1. It cannot be said that the District Development Officer must

exercise statutory powers conferred on him by Gujarat Panchayats Act, 1993 A only after consulting the President of the District Panchayat or the President of the District Panchayat can issue omnibus directions to the District Development Officer to place all files relating to recruitment, appointment, promotion, transfer, deputation, disciplinary action, etc. before him prior to taking any action in such matters. [Para 39] [653-E, F]

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1.2. It cannot be said that the powers conferred on District Development Officer are not 'absolute' or 'unqualified' but they are subject to orders of the President of the District Panchayat. Reading s. 162 of the Act as a whole and the use of the words "if any" clearly suggests that the power exercisable by the District Development Officer under the Act is statutory power to be exercised by him. The executive initiation remains with the District Development Officer and he need not wait for a 'nod from the President' before performing any administrative function or taking any executive decision within the four corners of law. [Para 31] [650-E, F, G]

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Syed Bashiruddin Ashraf v. Bihar Subai Sunni Majlis-e-awqaf and Ors., D [1965] 2 SCR 205, followed.

1.3. The District Development Officer who is vested with the executive powers of the District Panchayat is not required to obtain prior or even subsequent orders of the President of the District Panchayat. In individual cases, the President may direct the District Development Officer to take appropriate steps for securing effective implementation of resolutions or orders passed by the Panchayat or of any committee thereof.

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[Para 33] [651-C, D]

1.4. In matters relating to services under the Panchayats, no express power has been conferred nor duties imposed on the President of the District Panchayat or members (elected wing). The Legislature thus intended services under the Panchayats to be dealt with separately by the District Development Officer and other officials of the Panchayat. It may be recalled that District Development Officer is Class-I Officer of the Indian Administrative Service appointed by the State. He is also *ex-officio* Secretary of the District Panchayat. [Para 34] [651-E, F]

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1.5. Section 83 of the Act empowers the President to secure implementation of policy decisions taken by the elected wing of the District Panchayat by issuing necessary instructions and directions to District Development Officer. [Para 29] [650-A]

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A 1.6. There is clear distinction between elected representatives and civil servants. Elected representatives of the people at District Panchayat level will formulate policy and civil servants will execute it by implementing programmes and policy decisions. In matters of formulation of policies and programmes also, civil servants may make significant contribution by bringing the relevant data to the notice of the political executive. Likewise, elected representatives may inform civil servants about problems and difficulties of people which can be taken care of by the administration. But, both the functions are to be performed by two wings which are different though interdependent. [Para 38] [653-C, D, E]

C *A. Sanjeevi Naidu, etc. v. State of Madras and Anr.*, [1970] 1 SCC 443; and *Tarlochan Dev Sharma v. State of Punjab*, [2001] 6 SCC 260, relied on.

“Government and Bureaucracy in India of 1947-76” by Mr. B.B. Mishra, referred to.

D 2. The controversy raised and interpretation sought to be suggested by the parties as regards powers of President of District Panchayat on the one hand and of the District Development Officer on the other has nowhere affected directly or even indirectly Part IX of the Constitution. The question agitated has no bearing on constitutional set up or status of Local Self Government.

E Therefore, it cannot be said that the decision of the High Court impugned in the present appeal is inconsistent with the provisions of Part IX of the Constitution. [Para 28] [649-D, E, F]

Kishansing Tomar v. Municipal Corporation of the City of Ahmedabad and Ors., [2006] 8 SCC 352, followed.

F 3. It is true that the Rules (delegated Legislation) must be consistent with the provisions of the Act (parent Legislation). But it cannot be said that the High Court was wrong in referring to those rules while interpreting the provisions of the Act. Reading the relevant provisions of the Act and the Rules framed thereunder harmoniously, it appears to be crystal clear that in the matters of services under the Panchayats, the Legislature wanted the District Development Officer and other officials of the District Panchayats to exercise statutory powers and the High Court was right in referring to the Rules.

[Para 41] [654-B, C]

From the Judgment & Order 14.06.2005 of the High Court of Gujarat at A Ahmedabad in LPA No. 1126/2002 in Spl. Civil Appln. No. 1192 of 2002.

Huzefa Ahmadi, Nakul Dewan, Mahesh Agarwal, Rishi Agrawala, E.C. Agarwala, Gaurav Goel and Varun Mathur for the Appellants.

Sumita Hazarika, Hemantika Wahi and Shivangi for the Respondents. B

The Judgment of the Court was delivered

C.K. THAKKER, J. 1. Leave granted.

2. A question of considerable public importance has been raised by the C appellant in the present appeal which has been instituted against judgment and order passed by a Single Judge of the High Court of Gujarat in *Gujarat Pradesh Panchayat Parishad & Ors. v. State of Gujarat & Ors.*, in Special Civil Application No. 1192 of 2002 and companion matters decided on 25th October, 2002 and reported in (2003) 1 Guj LR 633 and confirmed by a Division Bench of the High Court in Letters Patent Appeal No. 1126 of 2002 decided D on June 14, 2005.

3. To appreciate the controversy raised in the appeal, few relevant facts may be stated:

4. The Gujarat Pradesh Panchayat Parishad, appellant No.1 herein, is a E Society registered under the Societies Registration Act, 1860. All District Panchayats, Taluka Panchayats and Gram Panchayats are members of the Parishad. Appellant No.1 purports to protect the interest of the Panchayats in the State of Gujarat by ensuring that their members function as institutions of 'Local Self Government'. Appellant No.2 is the Sabarkantha District F Panchayat consisting of elected representatives. Appellant No.3 is the President of the said District Panchayat. Respondent No.1 is the State of Gujarat, Respondent No.2 is the Development Commissioner, while respondent No.3 is the District Development Officer of Sabarkantha District Panchayat.

5. The question raised by the appellants before the High Court as well G as before us centres round the powers of the District Development Officer *vis-a-vis* the powers of the President of District Panchayat in the administration of District Panchayat under the Gujarat Panchayats Act, 1993 (hereinafter referred to as 'the Act').

6. According to the appellants, Part IX of the Constitution read with the H

A relevant provisions of the Act leaves no room for doubt that the District Development Officer is expected to exercise all executive powers of the District Panchayat, subject to the orders, if any, of the President of the District Panchayat.

7. It is alleged by appellant No.2 that the District Development Officer,

B Sabarkantha (Respondent No.3) started ignoring the President of the District Panchayat in matters concerning administration, particularly relating to appointment, transfer, promotion, posting, etc., of Panchayat employees. The appellant No.2, District Panchayat, Sabarkantha, therefore, passed Resolution No.6 on November 21, 2001, *inter alia*, resolving that the District Development

C Officer shall consult the President of the District Panchayat in matters of recruitment, appointment, transfer, promotion, posting, deputation etc. of all Panchayat employees of the District Panchayat. By an Office Order dated December 13, 2001 the President of the District Panchayat in the purported exercise of the power under Section 83 read with Section 162 of the Act, directed the District Development Officer to place all the files relating to

D recruitment, appointment, promotion, transfer and deputation of employees in the District Panchayat for his consultation. The District Development Officer, however, was adamant in his attitude and asserted that in administrative matters of recruitment, appointment, promotion, transfer, deputation, etc., of employees of the District Panchayat, the power could be exercised only by

E the District Development Officer and the President of the District Panchayat had no voice in executive or administrative functions of the District Development Officer. Because of the difference and non-observance of the resolution passed by the District Panchayat, the appellant approached the High Court by invoking Article 226 of the Constitution for an appropriate writ, direction or order compelling the District Development Officer to act in

F accordance with Section 162 of the Act, abiding by Resolution No.6 passed by the District Panchayat and by taking all decisions in conformity with the said resolution.

8. The learned Single Judge heard the petition, and considered rival submissions of the parties. He referred to the relevant parts of the Constitution

G and material provisions of the Act and held that it was obvious that the Legislature did not contemplate superimposing role of the President of the District Panchayat over the functions performed and powers exercised by the District Development Officer as the executive head of the District Panchayat.

H The learned Judge ruled that the executive powers of the District Panchayat are not vested in the President of the District Panchayat but they are to be

exercised by the District Development Officer. Considering the case-law on the point, the learned Judge held that the status and position of the President of the District Panchayat was neither similar to the Chief Minister of a State, nor of a *Sarpanch* of village Panchayat. The contention of the appellants that the District Development Officer was merely a Secretary of the Panchayat and could not exercise any power without order to that effect by the President of the District Panchayat was negatived. In the opinion of the learned Single Judge, the President could issue directions to the District Development Officer in individual cases and the District Development Officer must pay heed to such 'tap on his shoulder'. He should also inform the President about the action taken or order passed by him. The Court posited that the District Panchayat had no power, authority or jurisdiction to pass a resolution directing the District Development Officer to place all matters relating to recruitment, promotion, transfer posting, deputation, etc. of employees of the Panchayat for consultation of the President of the District Panchayat nor to obtain prior or even subsequent permission, approval or order from him.

9. The learned Single Judge, in the light of the decision, recorded the following conclusions;

- (i) (a) The Constitution has not conferred upon District Panchayats or any other institution of Local Self Government any status or role conferred upon States as Provinces in a Federation. While constitutional status is conferred on Panchayats as institutions of self-Government, the Constitution has left it to the State Legislature to determine the extent of devolution of powers to such institutions at the appropriate level, subject to such conditions as may be specified in the State enactment.
- (b) The State Legislature has in the Gujarat Panchayats Act, 1993 provided for fusion of the principle of local self-Government with the principle of centralised planning. If not properly operated, the two principles may have the potential of conflicting with each other, but the Legislature has, by carefully selected expressions, carved out distinct roles for elected heads of Panchayats and for civil servants and also provided for State Government control for specific purposes.
- (ii) The executive powers of the District Panchayat are not vested in the President of the District Panchayat, unlike the vesting of the executive powers of the Village Panchayat in the elected *Sarpanch*.

A (iii) The executive powers of the District Panchayat are vested in the District Development Officer and the exercise of these powers is subject to the orders, if any, of the President of the District Panchayat or the District Panchayat, as the case may be. But this does not mean that the District Development Officer is required to obtain prior orders of the President or the District Panchayat.

B (iv) While the powers and functions of the President of the District Panchayat do include watching over the financial and executive administration of the Panchayat and exercising administrative supervision on the District Development Officer for securing implementation of resolutions or decision of the Panchayat or any committee thereof, such watching over and exercising administrative supervision does not mean taking decisions in matters of day-to-day administration or in matters of appointment, transfer or other conditions of service of the Panchayat employees or of officers posted by the State Government under the Panchayats. The Act and the Rules, therefore, do not contemplate that the District Development Officer is required to obtain prior approval of the President of the District Panchayat or of the District Panchayat before taking decisions in executive matters, much less in matters which are entrusted to the District Development Officer by the statutory rules under Section 227 of the Act.

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E (v) However, the power of the District Development Officer to exercise such executive powers including the powers conferred by the Rules under Section 227(5) of the Act is subject to the orders of the President of the District Panchayat or the District Panchayat in individual cases i.e. it is open to the District Panchayat and to the President of the District Panchayat to issue instructions to the District Development Officer to take appropriate remedial measures in matters causing concern to the elected representatives of the people, when the local people suffer any hardships or if the benefits intended to reach the people at large or the specified categories of beneficiaries do not reach them.

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H (vi) The D.D.O. is not merely a Secretary of the District Panchayat. The Act has contemplated a much larger and more important role for the D.D.O. In all executive matters while the D.D.O. need not wait for a nod of approval from the President, he must pay heed

to a tap on the shoulder from the President, if at all the President finds it necessary to do so in a given case. In short, the executive initiative remains with the D.D.O..

(vii) In matters of preparing development projects and the projects for the benefit of the people within the sphere of Panchayats, the elected office-bearers will have a greater say while setting out the goals, but in deciding as to how those goals are to be achieved, and for deciding as to through which officers and employees the particular tasks at hand are to be carried out, it is the District Development Officer and the other administrative officers who will have greater say, subject to the power of the President to exercise administrative supervision over the District Development Officer for securing implementation of the resolutions or decisions of the Panchayat/Committee thereof.

(viii) The illustration given in Para 11.9 hereinabove exemplifies the scheme of the Gujarat Panchayats Act and the roles envisaged for the President of the District Panchayat and the administrative officers. In any Panchayat set-up, it is for the D.D.O. and other administrative officers and the President of the District Panchayat and other elected representatives of the people to build up a smooth working relationship. No administration can effectively or properly function if the political executive and the civil servants are always at loggerheads or if they do not focus their attention on their basic duties i.e. formulation of policies and programmes by the political executive and implementation of such policies and programmes by the civil servants.

It is with the aforesaid perspective that the President of the District Panchayat and the D.D.O. have to play their respective roles and with due sensitivity to the role of the other. They have to co-operate with and complement each other and function as the two wheels of a chariot. The difficulty arises when the wrong question is asked as to who is in the driver's seat - the President or the D.D.O.? The simple answer to this question which ought not to arise in the first place is - the Public Welfare has to be in the driver's seat. Once, this truth is realised, the Panchayat administration will run very smoothly and as intended by the Constitution as well as the Legislature.

(ix) The question whether the D.D.O. is to exercise his executive

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A powers subject to the orders of the President and the District Panchayat or subject to the general control of the District Panchayat will depend on the nature of the matters in which such powers are to be exercised.

B (x) The State Government may exercise its control over the District Panchayat through the D.D.O. within the parameters and as per the modalities as indicated in para 14 hereinabove.

(xi) Resolution No. 6 passed by the Sabarkantha District Panchayat on 21-11-2001 and the office order dated 13-12-2001 issued by the President of the Sabarkantha District Panchayat are illegal, as they are inconsistent with the principles laid down in this judgment.

C (xii) So also in case of Junagadh and Jamnagar District Panchayats, orders of the Presidents of these respective District Panchayats suffer from the same infirmity.

D 10. Being aggrieved by the judgment and order passed by the Single Judge, the appellants herein approached the Division Bench by filing intra court appeal (Letters Patent Appeal) under Clause 15 of the Letters Patent. The Division Bench of the High Court again considered the relevant provisions of the Act as also of the Constitution and observed that it was in agreement with the view taken by the learned Single Judge and the conclusions reached

E by him. The conclusions arrived at could not be said to be inconsistent with the provisions of law.

11. The Division Bench, therefore, stated:

F "We, therefore, agree with the learned Single Judge that the District Development Officer is not required to seek previous approval or permission of the District Panchayat or its President. However, the District Panchayat or the President of the Panchayat shall have powers to issue direction to the District Development Officer to bring his actions within the constitutional or statutory frame and in accordance with the economic plan".

G 12. On April 10, 2006, the Special Leave Petition was placed for admission-hearing and notice was issued. On January 19, 2007, the Court directed the Registry to post the matter for final hearing. The matter is thus placed before us.

H 13. We have heard learned counsel for the parties.

14. Learned counsel for the appellants strenuously contended that the judgment and order passed by the learned Single Judge and confirmed by the Division Bench of the High Court is contrary to law and inconsistent with the letter and spirit of the Constitution (Seventy-third Amendment) Act, 1992 as also against the Gujarat Panchayats Act, 1993. According to the counsel, Part IX came to be inserted in the Constitution by ensuring democracy at the grass root level and by conferring powers on such local bodies in their day-to-day administration. The High Court committed an error of law in holding that while exercising administrative powers under the Act, the District Development Officer was not required to comply with the orders passed by the District Panchayat and the President of the Panchayat. It was submitted that such a view would destroy the constitutional set up in Part IX. It would also make Sections 83 and 162 of the Act totally unworkable, otiose and redundant. It was also argued that the High Court was not right in placing reliance on Rules framed under the Act (child legislation) and in upholding the power of the District Development Officer ignoring clear provisions of the Act (parent legislation) and the language used in Section 162 which is clear, unambiguous and unequivocal.

15. It was, therefore, submitted on behalf of the appellants that the judgment of the High Court deserves to be set aside by upholding the validity of Resolution No.6 passed by the District Panchayat and by issuing necessary directions to the District Development Officer to obey the said resolution and to act in accordance with the directions issued thereunder.

16. The learned counsel for the District Development Officer, on the other hand, supported the judgment and order passed by the learned Single Judge and confirmed by the Division Bench of the High Court. She submitted that the High Court considered in detail the relevant provisions of the Constitution as also of the Act and held that there is difference between President of the District Panchayat and other representatives of people (elected members) and the District Development Officer and officials of District Panchayat (administration wing). So far as policy matters are concerned, the President of the District Panchayat and elected members are competent to take appropriate decisions which are to be implemented by the administrative wing through District Development Officer and officers of the District Panchayat. But as far as day-to-day civic administration and recruitment, appointment, promotion, posting, transfer, disciplinary proceedings, etc. of officers and employees of the District Panchayat is concerned, the Legislature has invested executive and administrative powers in the District Development

A Officer. And it is the District Development Officer who exercises administrative powers subject to the orders, if any, of the President of the District Panchayat. The High Court, according to the counsel, interpreted the relevant provisions keeping in view the intention of the Legislature and issued necessary directions which cannot be said to be unlawful or inconsistent with the provisions of the Constitution or of the Act. The appeal, therefore, deserves to be dismissed.

B 17. A counter affidavit on behalf of the State Government is filed by the Development Commissioner supporting the stand taken by the District Development Officer. It is contended that the relief claimed by the appellants that the President and/or the District Panchayat is required to be consulted for appointment, transfer, promotion, disciplinary action, etc. of its employees is 'not warranted'. According to the deponent, the District Development Officer is a 'statutory office' conferred with the executive powers of a District Panchayat.

C 18. We have gone through the decision of the learned Single Judge, confirmed by the Division Bench of the High Court. Our attention has also been invited by the learned counsel for the parties to Part IX of the Constitution, relevant provisions of the Act and Rules framed under the Act.

D 19. So far as Part IX of the Constitution is concerned, the same has been inserted by the Constitution (Seventy-third Amendment) Act, 1992. Article E 243 defines various terms used in that Part. Article 243-B provides for establishment of Panchayats in every State at the village, intermediate and district levels. Article 243-C provides for composition of Panchayats. 243-G deals with powers, authority and responsibilities of Panchayats. It reads as under:

F 243G. *Powers, authority and responsibilities of Panchayats.*—Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to—

G (a) the preparation of plans for economic development and social justice;

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(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

20. It is not in dispute that before Part IX was introduced in the Constitution, the Gujarat Panchayats Act, 1961 was in force in the State. After the Constitution (Seventy-third Amendment) Act, however, the State Legislature enacted the present Act (Gujarat Panchayats Act, 1993) to bring the law relating to Panchayats in the State in conformity with Part IX of the Constitution. Clause (14) of Section 2 of the Act defines 'Panchayat' to mean a village Panchayat, taluka Panchayat or district Panchayat. Clause (6) of the said section defines 'District Development Officer' as such officer as the State Government may appoint to be a District Development Officer for the purposes of the Act. 'District Panchayat' is defined in Clause (7) as the District Panchayat constituted under the Act. Part III of Chapter IV relates to District Panchayats. Section 81 fixes the term of office of members of District Panchayat and of President and Vice-President. Section 83 enumerates powers and functions of President and Vice-President of the District Panchayat. Sub-section (1) (a) of Section 83 reads thus:

(1)(a) The President shall—

- (i) convene, preside at and conduct meetings of the district Panchayat;
- (ii) have access to the records of the Panchayat;
- (iii) discharge all duties imposed, and exercise all the powers conferred on him by or under this Act;
- (iv) watch over the financial and executive, administration of the Panchayat and submit to the Panchayat all questions connected therewith which shall appear to him to require its order; and
- (v) exercise administrative supervision over the District Development Officer for securing implementation of resolutions or decisions of the Panchayat or of any Committee thereof.

21. Chapter V, *inter alia*, provides for administrative powers and duties of officers and servants of District Panchayats. Section 161 mandates that there shall be a Secretary for every District Panchayat. It also states that a District Development Officer posted under the Panchayat shall be *ex-officio* Secretary of the Panchayat. Section 162 is another material provision

A prescribing powers and functions of District Development Officer. The relevant part is sub-section (1) which reads thus:

162. Powers and functions of District Development Officer.—(1) Save as otherwise expressly provided by or under this Act, the executive powers of a district panchayat for the purpose of carrying out the provisions of this Act, shall vest in the District Development Officer who shall subject to the orders, if any, of the President or of the district Panchayat, as the case may be—

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- (a) perform all the functions and exercise all the powers specifically imposed or conferred upon him by or under this Act, or under any law for the time being in force; and
- (b) lay down the duties of all officers and servants of the district panchayat.

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22. Chapter XIII (Sections 227-236) makes detailed provisions relating to services. Section 227 requires constitution of Panchayat services in connection with the affairs of Panchayats and clarifies that Panchayat Service shall be distinct from State Service. It states that the State Government may by order from time to time determine the classes, cadres and posts and the initial strength of officers and servants in the Panchayat service. Sub-section (5) is important and reads thus:

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- (5) Subject to the provisions of this Act, the State Government may make rules regulating the mode or recruitment either by holding examinations or otherwise and conditions of service or persons appointed to the Panchayat service and the powers in respect of appointments, transfers and promotions of officers and servants in the Panchayats service and disciplinary action against any such officers or servants.

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23. Section 230 provides for allocation of officers and servants to Panchayat service.

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24. The Act enables the Government to make rules (Sections 227, 228, 235, 236, 274).

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25. In exercise of powers conferred by the Act, the State Government has framed several rules relating to services under the Panchayat. The learned Single Judge referred to those rules and observed that so far as Panchayat

service is concerned, District Development Officer, Deputy District Development Officer and other officials are having vide powers in recruitment, appointment, promotion, transfer, deputation, disciplinary matters, etc., of employees.

26. The argument that the view taken by the High Court has destroyed or considerably eroded constitutional set up in Part IX of the Constitution has not impressed us. In our opinion, it cannot be said that interpretation of various provisions of the Constitution or the Act has disturbed, truncated or adversely affected the status of Panchayats guaranteed by the Constitution. Part IX of the Constitution confers certain powers on Local Self Government. It promises duration of five years, free and fair election, representation of Schedule Castes and Schedule Tribes in the administration of institutions of Local Self Government, 'no-interference' by other organs of the State, including judiciary, etc. In our opinion, however, the High Court was right in observing that "a District Panchayat cannot arrogate to itself the status of a body as independent or autonomous as a Province in a Federation". Part IX of the Constitution or Article 243-G makes no change in the essential feature of the Panchayat organization. What was sought to be done by the Seventy-third Amendment was that constitutional status to the Local Self Government was conferred to District Panchayats, Taluka Panchayats and Village Panchayats. A State Legislature, in the light of constitutional provisions in Part IX, cannot do away with these democratic bodies at the local level nor their normal tenure be curtailed otherwise than in accordance with law nor State Government can delay elections of these bodies.

27. A question similar to one in hand of interpretation of provisions of the Constitution in Part IX-A concerning Municipalities came up for consideration before a Constitution Bench of this Court in *Kishansing Tomar v. Municipal Corporation of the City of Ahmedabad and Ors.*, [2006] 8 SCC 352 : JT (2006) 9 SC 320. Examining the underlying object of inserting Part IX-A by the Constitution (Seventy-fourth) Amendment Act, 1992 and highlighting effective and meaningful role to be played by local bodies in political governance of the country, K.G. Balakrishnan, J. (as His Lordship then was) stated;

"The object of introducing these provisions was that in many States the local bodies were not working properly and the timely elections were not being held and the nominated bodies were continuing for long periods. Elections had been irregular and many times unnecessarily delayed or postponed and the elected bodies had been superseded

A or suspended without adequate justification at the whims and fancies of the State authorities. These views were expressed by the then Minister of State for Urban Development while introducing the Constitution Amendment Bill before the Parliament and thus the new provisions were added in the Constitution with a view to restore the rightful place in political governance for local bodies. It was considered necessary to provide a Constitutional status to such bodies and to ensure regular and fair conduct of elections. In the statement of objects and reasons in the Constitution Amendment Bill relating to urban local bodies, it was stated:

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C In many States, local bodies have become weak and ineffective on account of variety of reasons, including the failure to hold regular elections, prolonged supersessions and inadequate devolution of powers and functions. As a result, urban local bodies are not able to perform effectively as vibrant democratic units of self-Government.

D Having regard to these inadequacies, it is considered necessary that provisions relating to urban local bodies are incorporated in the Constitution, particularly for -

(i) putting on a firmer footing the relationship between the State Government and the Urban Local Bodies with respect to:

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(a) the functions and taxation powers, and

(b) arrangements for revenue sharing.

(ii) ensuring regular conduct of elections.

(iii) ensuring timely elections in the case of supersession; and

(iv) providing adequate representation for the weaker sections like Scheduled Castes, Scheduled Tribes and women.

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Accordingly, it has been proposed to add a new Part relating to the Urban Local Bodies in the Constitution to provide for—

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(f) fixed tenure of 5 years for the Municipality and re-election within a period of six months of its dissolution.

The effect of Article 243-II of the Constitution is to be appreciated in

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the above background. Under this Article, the duration of the Municipality is fixed for a term of five years and it is stated that every Municipality shall continue for five years from the date appointed for its first meeting and no longer. Clause (3) of Article 243-U states that election to constitute a Municipality shall be completed - (a) before the expiry of its duration specified in Clause (1), or (b) before the expiration of a period of six months from the date of its dissolution. Therefore, the constitutional mandate is that election to a Municipality shall be completed before the expiry of the five years' period stipulated in Clause (1) of Article 243-U and in case of dissolution, the new body shall be constituted before the expiration of a period of six months and elections have to be conducted in such a manner. A Proviso is added to Sub-clause (3) Article 243-U that in case of dissolution, the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such period. It is also specified in Clause (4) of Article 243-U that a Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued under Clause (1) had it not been so dissolved".

28. In our judgment, the controversy raised and interpretation sought to be suggested by the parties as regards powers of President of District Panchayat on the one hand and of the District Development Officer on the other has nowhere affected directly or even indirectly Part IX of the Constitution. With respect, the question agitated has no bearing on constitutional set up or status of Local Self Government. We are, therefore, unable to agree with the learned counsel for the appellant that the decision of the High Court impugned in the present appeal is inconsistent with the provisions of Part IX of the Constitution.

29. The learned counsel for the appellant relied upon Section 83 of the Act, which we have already referred to. It deals with powers and functions of the President and Vice-President of the District Panchayat and, *inter alia*, states that the President of the District Panchayat may exercise administrative supervision over the District Development Officer for securing implementation of resolutions or decisions of the Panchayat or of any committee thereof. Inviting our attention to dictionary meaning of 'administration' and 'supervision', the counsel contended that both the expressions are of wide

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A amplitude and take within their sweep all administrative matters which are subject to supervisory control of the President. In our view, the High Court is right that Section 83 empowers the President to secure implementation of policy decisions taken by the elected wing of the District Panchayat by issuing necessary instructions and directions to District Development Officer.

B 30. The learned Single Judge has explained this principle by giving an illustration. It was stated that suppose a primary health centre or a primary school is to be set up by the Panchayat. In taking such decision, elected wing of the District Panchayat would play primary role as that wing is alive to the needs of the people in the area. If the President finds undue delay in implementation or improper implementation of such decision, he may instruct the District Development Officer to take necessary steps for securing proper implementation of the resolution of the Panchayat or the decision of its Committee. But, once the centre is set up or the school is established, it is for the District Development Officer, District Health Officer or District Primary Education Officer to decide as to who should be appointed as Doctor in the health centre or teacher in the school. Such matters must be left to the administrative wing of the District Panchayat.

31. Strong reliance was placed on sub-section (1) of Section 162 of the Act which enumerates powers of District Development Officer. It was submitted that though the said provision relates to powers and functions of District Development Officer, it states explicitly that the executive powers of the District Panchayat will be vested in the District Development Officer who would exercise such powers "subject to orders, if any, of the President of the District Panchayat". It was, therefore, urged that the powers conferred on District Development Officer are not 'absolute' or 'unqualified' but they are subject to orders of the President of the District Panchayat. Reading the provision as a whole and the use of the words "if any", however, clearly suggests that the power exercisable by the District Development Officer under the Act is statutory power to be exercised by him. The executive initiation remains with the District Development Officer and he need not wait for a 'nod from the President' before performing any administrative function or taking any executive decision within the four corners of law.

32. In this connection, we may refer to a decision of this Court in *Syed Bashiruddin Ashraf v. Bihar Subai Sunni Majlis-e-awqaf & Ors.*, [1965] 2 SCR 205 : AIR (1965) SC 1206. In *Syed Bashiruddin Ashraf*, a Constitution Bench of this Court was called upon to interpret a similar expression ("subject

to any order by the competent Court") under Bihar Wakfs Act, 1947. Section 32 of the Act conferred jurisdiction on the *Majlis* to make temporary appointment in the office of the Mutawalli subject to any order by a competent Court. It was contended that the *Majlis* was not competent to appoint Moulvi on a temporary basis even if there was a vacancy without obtaining prior permission of the Court. This Court, however, negatived the argument and held that the Act clearly conferred jurisdiction on the *Majlis* to make temporary appointments when there was a vacancy in the office of the *Mutawalli* and the words "subject to any order by the competent Court" could not be construed to mean that there ought to be either prior permission or subsequent assent before the appointment. The said words denote that the appointment was to endure according to its tenor "till an order to the contrary was passed by a competent Court".

33. In our considered opinion, the ratio in *Syed Bashiruddin Ashraf* applies in interpreting the provisions of sub-section (1) of Section 162 of the Act in question. The District Development Officer who is vested with the executive powers of the District Panchayat is not required to obtain prior or even subsequent orders of the President of the District Panchayat. In individual cases, the President may direct the District Development Officer to take appropriate steps for securing effective implementation of resolutions or orders passed by the Panchayat or of any committee thereof.

34. The High Court also considered an important aspect that in matters relating to services under the Panchayats, no express power has been conferred nor duties imposed on the President of the District Panchayat or members (elected wing). The Legislature thus intended services under the Panchayats to be dealt with separately by the District Development Officer and other officials of the Panchayat. It may be recalled that District Development Officer is Class-I Officer of the Indian Administrative Service appointed by the State. He is also *ex-officio* Secretary of the District Panchayat.

35. In *A. Sanjeevi Naidu, etc. v. State of Madras & Anr.*, [1970] 1 SCC 443 : AIR (1970) SC 1102, this Court had an occasion to consider the role to be played by Council of Ministers (elected wing) and Civil Servants (administrative wing). Keeping in view the democratic governance, the Court made the following observations:

"The cabinet is responsible to the legislature for every action taken in any of the ministries. That is the essence of joint responsibility. That does not mean that each and every decision must be taken by

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A the cabinet. The political responsibility of the Council of Ministers does not and cannot predicate the personal responsibility of the Ministers to discharge all or any of the governmental functions. Similarly an individual Minister is responsible to the legislature for every action taken or omitted to be taken in his ministry. This again is a political responsibility and not personal responsibility. Even the most hard working minister cannot attend to every business in his department. If he attempts to do it, he is bound to make a mess of his department. In every well planned administration, most of the decisions are taken by the civil servants who are likely to be experts and not subject to political pressure. *The Minister is not expected to burden himself with the day to day administration. His primary function is to lay down the policies and programmes of his ministry while the Council of Ministers settle the major policies and programmes of the government. When a civil servant takes a decision, he does not do it as a delegate of his Minister. He does it on behalf of the government.*

B It is always open to a Minister to call for any file in his ministry and pass orders. He may also issue directions to the officers in his ministry regarding the disposal of government business generally or as regards any specific case. Subject to that over all power, the officers designated by the 'Rules' or the standing orders, can take decisions on behalf of the government. These officers are the limbs of the government and not its delegates.

(emphasis supplied)

F 36. A similar view was expressed recently by this Court in *Tarlochan Dev Sharma v. State of Punjab*, [2001] 6 SCC 260 : AIR (2001) SC 2524 : JT (2001) 5 SC 645.

F 37. The parties also referred to the "Government and Bureaucracy in India of 1947-76" by Mr. B.B. Mishra. The learned author, in that work, stated;

G "It must, however, be recognized that even the most dynamic and competent of Minister has understandable limitations which restrict the sphere of direct participation in all the intricate and detailed aspects of administration. These include the complexities of a modern Government, the possibility of frequent changes in the ministerial field, the frequency of visits to constituencies, parliamentary preoccupations, and above all, the technical nature of the various decisions that have to be made without a thorough knowledge of

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connected papers contained in original files. The Minister's dependence on his Secretary necessarily increases in a democratic set-up. And although his leadership in the entire sphere of administration is in theory recognized as all pervasive, the scope of his actual operation does not go much beyond a clear understanding and direction of policy matters, and not a knowledge of details. Thus, the Maxwell Committee in 1937 laid down a principle calculated to ensure administrative efficiency within the frame-work of ministerial responsibility. *The Committee emphasized that as collective ministerial responsibility maintained the political unity of Government, so should the unity of administrative control of each Department be ensured by concentrating the responsibility to advise the Minister in one official, namely the Secretary".*

(emphasis supplied)

38. It is evident from the above that there is clear distinction between elected representatives and civil servants. Elected representatives of the people at District Panchayat level will formulate policy and civil servants will execute it by implementing programmes and policy decisions. In matters of formulation of policies and programmes also, civil servants may make significant contribution by bringing the relevant data to the notice of the political executive. Likewise, elected representatives may inform civil servants about problems and difficulties of people which can be taken care of by the administration. But, both the functions are to be performed by two wings which are different though interdependent.

39. We are, therefore, unable to uphold the bald assertion of the learned counsel for the appellant that the District Development Officer must exercise statutory powers conferred on him by the Act only after consulting the President of the District Panchayat or the President of the District Panchayat can issue omnibus directions to the District Development Officer to place all files relating to recruitment, appointment, promotion, transfer, deputation, disciplinary action, etc. before him prior to taking any action in such matters.

40. It was also urged by the learned counsel for the appellant that the High Court had committed an error of law in interpreting and relying on various Rules framed under the Act and in upholding the power of the District Development Officer in relation to service matters under the District Panchayat. It was submitted that it is settled law that the delegated legislation must be subject to the parent Act and not vice versa. When the Act itself provides

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A that the District Development Officer will exercise powers subject to the order passed by the President of the District Panchayat, Rules cannot travel beyond the said provision nor they can be interpreted to mean that President of the District Panchayat has 'no place' in services under the Panchayat. In other words, the authority of the District Development Officer cannot be upheld in Panchayat service on the basis of the Rules framed under the Act.

B 41. Now it is true that the Rules (delegated Legislation) must be consistent with the provisions of the Act (parent Legislation). But it cannot be said that the High Court was wrong in referring to those rules while interpreting the provisions of the Act. Reading the relevant provisions of the Act and the Rules framed thereunder harmoniously, it appears to us to be crystal clear that in the matters of services under the Panchayats, the Legislature wanted the District Development Officer and other officials of the District Panchayats to exercise statutory powers and the High Court was right in referring to the Rules.

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D 42. For the foregoing reasons, in our opinion, the view taken by the High Court cannot be said to be contrary to law, inconsistent with the provisions of the Act or infringing Part IX of the Constitution. We see no infirmity in the judgment and order passed by the learned Single Judge and confirmed by the Division Bench of the High Court. The appeal, therefore, deserves to be dismissed and is accordingly dismissed, however, with no order as to costs.

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K.K.T.

Appeal dismissed.