REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO……. OF 2014
(Arising out of SLP (C) No.22035 of 2013)

Usha Bharti …Appellant

VERSUS

State of U.P. & Ors. ...Respondents

WITH
CONTEMPT PETITION (C) No. 287 of 2013
IN
CIVIL APPEAL NO……. OF 2014
(Arising out of SLP (C) No.22035 of 2013)

WITH
CIVIL APPEAL NO……OF 2014
(Arising out of SLP(C) No.29740 of 2013)

J U D G M E N T

SURINDER SINGH NIJJAR, J.

1. Leave granted.

2. These appeals are directed against the judgment and order passed by the High Court of Judicature at Allahabad (Lucknow Bench) in Review Petition No.103 of 2013 on 4th July, 2013 dismissing the review petition

filed by the appellant.

3. Since the issues raised in these appeals are pristinely legal, it would not be necessary to make a detailed reference to the facts, leading to the filing of the present appeals. Even otherwise, the High Court in the impugned judgment has made an elaborate survey of the facts. Therefore, it is unnecessary to repeat the same. However, the foundational facts for challenging the impugned judgment of the High Court are recapitulated for ready reference.

4. The appellant successfully contested the election held in October, 2010 for becoming a Member of the Zila Panchayat, Sitapur, U.P. 62 candidates were elected as the Members of the Zila Panchayat including the appellant and respondents 5 to 37. On 12th December, 2010, the appellant was elected as Adhyaksh of the Zila Panchayat, Sitapur. On 30th October, 2012, a notice of proposed Motion of No

Confidence was given to the Collector, Sitapur for calling a meeting under Section 28 of the U.P. Kshettra Panchayat & Zila Panchayat Act, 1961 (for short 'the Act'). The notice calling for a Motion of No Confidence was signed by 37 members. The legal requirement under Section 28(2) is that a motion expressing want of confidence in the Adhyaksh must be signed by not less than half of the total number of elected members. On 31st October, 2012, the Collector, Sitapur issued a notice informing the elected members that a meeting for considering the Motion of No Confidence will be held on 23rd November, 2012.

5. Aggrieved by the issuance of said notice, the appellant filed Writ Petition No.9654 of 2012 on various grounds alleging that the motion for no confidence has been done with an ulterior motive to usurp the office of the appellant. It was alleged that atleast three members whose names were mentioned in the Motion for No Confidence had not signed the motion/notice

requesting the Collector to call a meeting. The appellant made the following prayers in the writ petition :-

> "(i) Issue an appropriate writ, order or direction in the nature of certiorari quashing the impugned notice of intent to bring no-confidence motion against the petitioner;
>
> (ii) Issue a writ, order or direction or writ in the nature of certiorari quashing the notice dated 31st October, 2012, issued by respondent No.3, as contained in Annexure No.1 to the writ petition.
>
> (iii) Issue a writ, order or direction or writ in the nature of mandamus directing the respondent No.3 to verify the genuineness of the signature of the member's on the notice to bring motion against the petition dated 30th October, 2012,
>
> (iv) Issue a writ, order or direction or writ in the nature of mandamus commanding the opposite parties to let the petitioner to continue on the office of Adhyaksha, Zila Panchayat Sitapur of Tehsil & District Sitapur.
>
> (v) Issues an ad-interim mandamus to the above effect.

(vi) Issue any other appropriate writ, order or direction in favour of the petitioner as the Hon'ble Court may deem fit in the circumstances of the case.

And

(vii) Award the costs of the petition to the petitioner."

6. The High Court on 21st November, 2012 directed the District Judge or any Additional District Judge nominated by him to hold an enquiry to ascertain genuineness of the affidavits and signatures of members and to submit a report thereon before the next date of hearing. It was also directed that further proceedings of "No Confidence Motion" shall remain in abeyance. The matter was to be listed on 20th December, 2012. The report was duly submitted, which indicated that 33 Members had admitted their signatures appearing on the notice, and the affidavits, submitted in connection with the motion of no confidence. It was also stated that "among those members, in respect of whom signatures and affidavits

were doubted, the report of Deputy Director (Pralekh) mentions that Zila Panchayat Member Mr. Vijay Kumar has also proved to have been signed and submitted the notice and the affidavit. Accordingly, 34 Zila Panchayat Members are found to have applied for bringing in the motion of no confidence." Taking note of the aforesaid report, the High Court dismissed the writ petition with the following observations:

> "As the requirement of valid signature for carrying out the No Confidence Motion is only 31, whereas in the enquiry report it has been found to be 34, now nothing would survive in this writ petition. Hence, it is dismissed."

7. On 6th February, 2013, the Collector, Sitapur issued notice fixing 22nd February, 2013 for consideration of the Motion of No Confidence.

8. Aggrieved by the judgment of the High Court dated 5th February, 2013, the appellant moved this Court through S.L.P.(C) No.8542 of 2013.

9. Mr. Shanti Bhushan, learned senior counsel appearing for the appellant submitted that the High Court had wrongly relied upon the report submitted by the Additional District Judge without giving the appellant any opportunity to submit any objection to the report. This apart, in view of the provisions contained in Article 243C(2)of the Constitution of India, no provision has been made for No Confidence Motion in Panchayat elections. It was submitted by Mr. Shanti Bhushan that the aforesaid issues with regard to the applicability of scope and ambit of Article 243 of the Constitution of India, even though specifically raised the writ petition and argued before the High Court have neither been noticed nor considered. Taking note of the aforesaid submissions, this Court passed the following order :-

> "If that be so, in our opinion, the remedy of the petitioner would be to seek review of the judgment of the High Court rather than to challenge the same by way of this special leave petition."

10. The prayer made by Mr. Shanti Bhushan that the operation of the impugned order be stayed for two weeks to enable the appellant to approach the High Court by way of review petition was declined. It was, however, made clear that the result of the meeting, which was scheduled to be held on 22nd February, 2013, shall not be declared for a further period of two weeks.

11. Thereafter, the petitioner filed Review Petition No. 103 of 2013 before the High Court. The appellant stated that members owning allegiance to the Samajwadi Party led by Smt. Madhu Gupta, W/o Shri Hari Om Gupta – Respondent No.5, were not able to muster any signature for the initiation of the Motion and, therefore, appended forged signature of several Members on the notice of intent to move the Motion of No Confidence. These forged signatures were used by the Samajwadi Party to induce other Members to join for giving the notice for moving the Motion of No Confidence. It was stated that the very initiation of the

Motion was a fraud on the system and against the settled democratic principles. The act of forgery of signatures was committed on the instance of Respondent No. 5 and her supporters. Therefore, the initiation of Motion of No Confidence was invalid and illegal. The appellant pointed out that in the earlier writ petition, it was specifically pleaded that in terms of Article 243N, the provision of Section 28 have been rendered otiose. The provision contained in Section 28 of the Act, being inconsistent with the constitutional scheme, which does not comprehend the removal of Adhyaksh of Zila Panchayat, mid term and as such, the Motion otherwise also could not be permitted to be carried. It was further stated that "in view of the provisions of Article 243C(ii) of the Constitution of India, there being no provision in the Panchayat election for Motion of No Confidence whether Section 28 of the Panchayatiraj Adhiniyam would continue to operate in view of Article 243N".

12. Upon completion of the pleadings, the High Court by an elaborate judgment has dismissed the Review Petition by the impugned order dated 4th July, 2013. On 10th July, 2013, the District Magistrate, Sitapur fixed a meeting for counting of votes on 12th July, 2013. Aggrieved by the judgment of the High Court, the appellant filed SLP in this Court on 11th July, 2013. The matter was mentioned in Court at 10.30 A.M. before the Chief Justice of India. A direction was issued by the Chief Justice of India to the Registry to place the matter before this bench at the end of the list. In the meantime, No Confidence Motion was passed against the appellant with 33 votes in favour of the No Confidence Motion and 23 against with 6 votes being declared invalid. The counting was supervised by the Civil Judge, Sitapur. The representative of the petitioner/appellant was present and had stated that he is satisfied with the counting of votes. There has been no challenge to the result of the No Confidence Motion, with regard to the counting of votes. On 12th July, 2013,

at about 12.15 P.M., this Court issued notice and directed that "in the meanwhile, status quo, as it exists today, shall be maintained". Since Respondent No.5 had filed a caveat on 11th July, 2013 at about 11.00 A.M. and no notice had been given to her before hearing the Special Leave Petition, she filed an application seeking recall of the aforesaid order dated 12th July, 2013. It was claimed that Respondent No. 5 sought recall on the following grounds:-

(i) No notice was given to Respondent before hearing and passing Order dated 12.07.2013.

(ii) Counting of votes was already done and the no confidence Order was passed well before passing the Order dated 12.07.2013 by this Hon'ble Court.

(iii) Present SLP is not maintainable as per the settled law laid down by this Hon'ble Court namely that an SLP is not maintainable against the dismissal of review filed before the HC after dismissal of SLP.

(iv) In any case the SLP is also not maintainable as the issue raised in the SLP is already covered by the judgment of this Hon'ble

Court in Bhanumati and Ors. V. State of U.P. & Ors. reported in 2010 (12) SCC 1.

13. Whilst the matter was pending, on 23rd July, 2013, the petitioner filed Contempt Petition No. 287 of 2013 for violating the orders of this Court dated 12th July, 2013. It is stated that Respondent No.5 admittedly made false statement in the application to recall the order dated 12th July, 2013. The order of this Court was communicated whilst the meeting for counting of votes was still in progress. The appellant states that one of the newspapers "Amar Ujala" has reported that the result had been declared at 1.15 P.M.

14. Respondent No. 5 was impleaded as Respondent No. 4 in the aforesaid Contempt Petition. However, notice of contempt was issued only against official Respondent Nos. 1, 2 and 3. I.A. No. 8 was filed on 18th November, 2013 pointing out that in spite of No Confidence Motion having been passed, the appellant has continued to take policy decisions which were not

only prejudicial to public interest but would also create several problems for Zila Panchayat, in case the present appeal is dismissed. The aforesaid application came up for hearing on 19th November, 2013. It was pointed out on behalf of Respondent No. 5 that the appellant had issued a Notice of Meeting on 8th November, 2013 of the meeting of the Zila Panchayat, Sitapur to be held on 20th November, 2013 at 11.30 A.M. to take decision on Subject Nos. 1 to 16 enumerated in Annexure A3 to the Interlocutory Application.

15. On the other hand, it was submitted on behalf of the appellant that the notice merely indicates the subjects on which decisions are required to be taken for the development work within the Zila Panchayat. It was submitted that the appellant ought to be permitted to take necessary decisions. However, during the course of deliberations, Mr. Shanti Bhushan had very fairly submitted that the appellant will voluntarily not preside

over the aforesaid meeting, rather the Collector may be requested to chair the meeting. A direction was, therefore, issued that the District Magistrate, Sitapur would chair the meeting on 8th November, 2013. It was made clear that the issuance of the aforesaid direction will not in any manner vary/alter the status quo order passed by this Court on 12th July, 2013, which was directed to continue. Submissions of the parties in the appeal were heard on 3rd December, 2013, 5th December, 2013 and 11th December, 2013 when the judgment was reserved.

16. Very detailed and elaborate submissions have been made by the learned counsel for the parties, which can be briefly summed up as follows:-

(i) At the outset, Dr. Rajiv Dhawan submitted that the Special Leave Petition is not maintainable as it is directed only against the judgment rendered by the High Court in Review Petition No. 103 of 2013. In support

of the submissions, learned senior counsel relied on judgments of this Court in **State of Assam** Vs. **Ripa Sarma**[1] and **Suseel Finance & Leasing Co.** Vs. **M. Lata & Ors.**[2]. Dr. Dhawan also submitted that even otherwise, the SLP deserves to be dismissed as the matter is squarely covered against the petitioner/appellant by the judgment of this Court in **Bhanumati & Ors.** Vs. **State of Uttar Pradesh through its Principal Secretary & Ors.**[3] Relying on the aforesaid judgment, it was submitted by Dr. Dhawan that the petitioner can not even be heard on the proposition that Section 28 of the Act is inconsistent with Part IX of the Constitution. Mr. Ashok Desai, learned senior counsel also submitted that in view of the law laid down in **Bhanumati & Ors. (supra)**, the issue raised herein is no longer *res integra*. Learned

[1] (2013) 3 SCC 63
[2] (2004) 13 SCC 675
[3] (2010) 12 SCC 1

senior counsel also submitted that the SLP against the judgment of the High Court rendered in the Review Petition would not be maintainable without challenging the judgment which was sought to be reviewed.

(ii) Mr. Shanti Bhushan has submitted that the issue raised in the present appeal is of vital importance, i.e., whether Section 28 of the Act, which provides for bringing No Confidence Motion against the Chairman of Zila Panchayat is valid in so far as it is inconsistent with Part IX of the Constitution of India. Therefore, this Court will have to determine whether the impugned provision falls within the legislative competence of the State Legislature. The Court will also have to decide as to whether the impugned provision is inconsistent with Article 243N of the Constitution of India?

(iii) It is submitted by the learned senior counsel that the provision of No Confidence Motion for removing the Chairman or Adhyaksha of Zila Panchayat is inconsistent with Part IX of the Constitution. He submits that Part IX of the Constitution containing Articles 243A to 243O were inserted wide the Constitution (73rd Amendment Act, 1992) w.e.f. 24th April, 1993. The aforesaid articles have laid down exhaustive provisions for self-governance at Panchayat level. This includes election of Panchayat Members and its Chairman as well as their disqualification. However, no provision is made for bringing a No Confidence Motion against the Chairperson of Panchayat. Article 243C(v) provides that the Chairperson of a Panchayat at the village level shall be elected in such a manner as the Legislature of a State may, by law, provide. Article 243F provides that Panchayat can

make law for disqualification of Panchayat Members. Sections 18, 19 and 29 of the Act, which provides for composition of Zila Panchayat, election of Adhyaksha and removal of Adhyaksha respectively are in consonance with the aforesaid Articles of the Constitution of India. Section 19 of the aforesaid Act provides for election of Adhyaksha by elected members of the Zila Panchayat from amongst themselves. Section 29(1) of the Act enumerates the grounds for removal of Adhyaksha but does not include the provision for bringing a Motion of No Confidence against the Chairman.

(iv) Learned senior counsel further submitted that the provision contained in Section 28(1) of the Act is repugnant to Part IX of the Constitution. Mr. Shanti Bhushan submits that in any event, the provisions contained in

Section 28 of the Act could not have continued after expiry of one year of the enactment of the 73rd Amendment of the Constitution of India, which came into effect from 24th April, 1993. Such continuance would be inconsistent with the provisions contained in Article 243N of the Constitution of India.

(v) Learned senior counsel further submitted that Article 243D for the first time introduced reservation of seats for Scheduled Castes, Scheduled Tribes as well as ladies both in the election of members of Panchayat as well as for the office of Chairperson. It is submitted that the provision of "No Confidence" like Section 28 of the Act can frustrate the provision for such reservation. SC, ST and ladies always being in minority in Panchayat, a Chairperson from the reserved category can easily be removed from the said office by

majority of general category Panchayat members. Such a result was not envisaged by the provisions contained in Article 243D. It is further submitted that Part IX of the Constitution has exhaustively specified the areas for which a State Legislature, as local self-governance falls in the State List, can make laws in order to have complete decentralization of the governance. This, according to the learned senior counsel was the main objective of the 73rd Amendment Act which does not provide for any law to be made by the State Legislature for bringing a No Confidence Motion against the Chairperson/Adhyaksha/Zila Panchayat.

(vi) According to Mr. Bhushan, if there had been no existing provision for No Confidence like Section 28 in the Act, then after 73rd amendment in the Constitution, the State Legislature could not have brought such a

provision as it is not competent to do so. The provision, according to Mr. Bhushan, is likely to be struck down as the powers vested in the elected body are sought to be taken over and vested in the executive, which would be opposed to the basic structure of the Constitution of India. Mr. Bhushan emphasized that by permitting the provisions in Section 28 to continue, the State Legislature and Executive are trying to deprive the elected representatives of their fundamental rights enshrined in Part III and Part IX of the Constitution of India. Relying on the judgment of this Court in **I.R. Coelho** Vs. **Union of India[4].** He has submitted that fundamental rights include within itself the *right to choose*. The aforesaid *right to choose* would continue till the tenure of the representative of the people for which he has

[4] (2007) 2 SCC 1

been elected is exhausted. The provision in Section 28 permits such tenure to be curtailed, which would infringe the fundamental right of the voters that elected such a member. Giving numerous examples from different Articles of the Constitution of India, it is submitted that provision of No Confidence Motion has been specifically provided wherever it was intended. As example, he points out Articles 67(b), 90(c), 94(c) providing for No Confidence Motion for the removal of Vice President, Deputy Chairman of the Council of States and the Speaker or Deputy Speaker of the House of people respectively. He also points out that there are offices/posts in the Constitution, which are filled up through a process of election but the persons so elected can not be removed by way of moving a Motion for No Confidence. For example, he relies on

Article 80(4), 81(1)(a) and Article 54. Therefore, Rajya Sabha Members, Lok Sabha Members and President of India can not be removed by moving a Motion for No Confidence. Mr. Bhushan submits that the question here is as to whether the No Confidence provisions contained in the Act can continue after the amendment of the Constitution. A provision for moving a Motion for No Confidence is in other words the right to recall of an elected member by the voters. The Constitution may or may not provide for moving a Motion for No Confidence. He submitted that provision for moving the Motion for No Confidence is not necessarily part of democracy. In fact, right to recall an elected member has not been legally recognized. In support of this submission, he makes a reference to Article 243N read with Article 243(c)(iv) and (v) and in particular,

sub-clause 5(b). He further submits that the reservation was introduced for the first time by 73rd amendment, which incorporated Article 243 in the Constitution of India w.e.f. 24th April, 1993. He, thereafter, outlined the various provisions for reservation of seats as contained in Article 243D. It is emphasized that the provision contained in Article 243D(ii) makes it mandatory that not less than one third of the total number of seats reserved under Clause 1 shall be reserved for ladies belonging to the Scheduled Castes or as the case may be, the Scheduled Tribes. Articles 243F(1)(a) and Article 243F(1)(b) which correspond to Article 102 and 103 provides for disqualification for being chosen as, and for being a member of a Panchayat. Mr. Bhushan submitted that the Constitution provides for removal and consequential disqualification. This would not apply to a

vote of No Confidence. This would tantamount to giving the voters a right to recall which does not exist in law in so far as Panchayat Adhyaksha is concerned. Learned senior counsel further submitted that Article 243 makes provision for reservation, to advance the aim of our Constitution for the upliftment of the poor sections of the society. Therefore, the Parliament has taken extra care to ensure that such members of the weaker society once elected should not be removed by the strongest segment of the society by bringing a Motion of No Confidence. He reiterated that wherever it was felt necessary, the Parliament had provided for moving a Motion of No Confidence. He has made a specific reference to Articles 89, 90, 93, 94(c), 80(iv), 81, 54, 61, 66 and 67(b).

(vii) In support of the submission that Section 28 of the Act is repugnant to Part IX of the Constitution of India, in particular, Article 243N. The learned senior counsel relied on a number of judgments of this Court:-

Deep Chand Vs. **State of U.P.**[5], **Zaverbhai Amaidas** Vs. **State of Bombay**[6], **N. Bhargawan Pillai** Vs. **State of Kerala**[7], **State of U.P.** Vs. **Synthetics and Chemicals Ltd.**[8], **Babu Parasu Kaikadi** Vs. **Babu**[9], **Nirmaljeet Kaur** Vs. **State of M.P.**[10], **Zee Telefilms Ltd.** Vs. **Union of India**[11], **Board of Control for Cricket in India** Vs. **Netaji Cricket Club**[12]

(viii) Learned senior counsel then submitted that the judgment in **Bhanumati & Ors. (supra)** is *per incuriam* as the issue with regard to the

[5] (1959) Supp. 2 SCR 8
[6] (1955) 1 SCR 799
[7] (2004) 13 SCC 217
[8] (1991) 4 SCC 139
[9] (2004) 1 SCC 681
[10] (2004) 7 SCC 558
[11] (2005) 4 SCC 649
[12] (2005) 4 SCC 741

reservation had not been considered at all. The judgment also does not consider the provisions where specifically Motion for No Confidence has not been provided. It is also submitted that most of the judgment is obiter. In fact, Mr. Bhushan submitted that the judgment is a *treatise* in law and should be given the same status.

(ix) Mr. Bhushan then addressed us on the issue as to whether the SLP would be maintainable against the judgment rendered in review without challenging the judgment of which the review was sought. The learned senior counsel submitted that firstly the petitioner had challenged the main writ petition by way of SLP No. 8542 of 2013. The same was disposed of with opportunity to file review petition before the High Court after noticing the objections raised by the petitioner, which were not considered by the High Court. The

earlier judgment of the High Court in the writ petition clearly merged in the judgment of the High Court dismissing the review petition. Therefore, it was necessary only, in the peculiar facts of this case, to challenge only the judgment of the High Court in the review petition. It is submitted by Mr. Shanti Bhushan that Section 114 of the CPC contains no limits on the circumstances under which the Court can review its own judgment. The section merely states that the person aggrieved may apply for a review of judgment to the Court, which passed the decree or made the order, and the Court may make such order on it as it thinks fit. So far as the High Court is concerned, it would have inherent powers to review any decision.

(x) Learned senior counsel elaborated that Section 114 CPC gives full powers to the Court to pass any order in the interest of

justice. It can not be curtailed by the Rules made by the High Court or the Supreme Court. These Rules can be amended by the High Court or the Supreme Court but Section 114 can only be amended by the Parliament. He points out that Section 121 and 122, which permits the High Court to make their own rules on the procedure to be followed in the High Court as well as in the Civil Court subject to their superintendence. Learned senior counsel further submitted that even Order 47 Rule 1 does not curtail the power to review which is untrammeled. According to Mr. Bhushan, Section 114 is incorporated in Order 47 Rule 1 as it provides that review can be made by the Courts either on facts as well as on law. The Court has a power to rehear the entire matter in order to do complete justice between the parties. Mr. Bhushan further pointed out that Section 151

CPC is also part of the same scheme to do complete justice between the parties. It is emphasized that the powers of the Courts have not been curtailed by the Code of Civil Procedure. In fact, it is well known that the provisions of Code of Civil Procedure are a hand maiden to justice. He, therefore, submitted that full play should be given to the expression "or for any other sufficient reason" to ensure that the Court can do complete justice. The principle of *Ejusdem Generis* should not be applied for interpreting these provisions. Learned senior counsel relied on **Board of Cricket Control (supra)**. He relied on Paragraphs 89, 90 and 91. learned senior counsel also relied on **S. Nagaraj & Ors.** Vs. **State of Karnataka & Anr.**[13] He submits finally that all these judgments show that justice is above all.

[13] (1993) Supp. 4 SCC 595

Therefore, no constraints can be put on the power to review of the Court. Mr. Bhushan also relied on **Green View Tea & Industries** Vs. **Collector, Golaghat, Assam & Anr.**[14]

(xi) Mr. Bhushan has submitted that grounds for challenging the theories of the Act of the anvil of Article 243 or will be read into Prayers 1and 2(i) wherein a specific declaration is sought that the provision is *ultra vires* to the Constitution of India. Mr. Bhushan then referred to Article 243N. He reiterated that the provision in Section 28 ceased to exist after one year. Therefore, it was not necessary to plead as Section 28 would *ipso facto* be rendered unconstitutional. He reiterated on the basis of Paragraphs 20 and 21 that necessary averments have been made that provision for

[14] (2004) 4 SCC 122

No Confidence Motion is not provided for in Part IX of the Constitution of India. Therefore, if Paragraph 28 and Paragraph 31 are read with Ground F, it would clearly indicate that the removal under the Act can only be under Section 29 which does not provide for moving a Motion for No Confidence.

(xii) Coming back to the submission that Section 28 is inconsistent with Part IX of the Constitution of India, he submits that Part IX is a complete code in relation to Panchayats. Therefore, State Legislature can not make a provision inconsistent to Part IX. Similar power has been reserved for the Stated Legislature as exceptions as enumerated in Articles 243a, 243C(iv) & (v). He further submitted that Article 243f, 243G and 243H only give limited powers to the State Legislature. This clearly show that Part IX is a

complete code. Therefore, unless power is specifically conferred on the State Legislature, it would not be competent to legislate on matters which are specifically dealt with in Part IX. He also refers to Articles 243I (ii), (iii) & (iv), J(iv) and K to emphasise that even in these Articles no provision existed for moving a Motion for No Confidence. Finally, it is submitted by Mr. Shanti Bhushan that since the issues raised in the appeal entail interpretation of the provisions of the Constitution of India, the matter needs to be referred to at-least five judges.

(xiii) Mr. Ashok Desai, learned senior counsel appearing for Respondent No. 5 has submitted that admittedly the petitioner does not enjoy the confidence of the majority of the members of the Panchayat. She has not even challenged the result of the No

Confidence vote. He has given an elaborate explanation of all the proceedings, which we have recounted earlier.

(xiv) Countering the submissions of Mr. Shanti Bhushan that the Petitioner belongs to the Scheduled Casts, therefore, she is entitled to special protection, Mr. Ashok Desai has submitted that this issue was not raised in the writ petition or even in the review petition and is sought to be raised for the first time before this Court. He further pointed out that the petitioner did not contest the election of Adhyaksha as a member of Scheduled Castes but as a lady candidate for whom the seat was reserved. He further submitted that the present case is, in any event, squarely covered by the judgment of this Court in **Bhanumati & Ors. (supra)**. Therefore, there is no need for embarking on a fresh reconsideration of all the issues. He has

submitted that the submission of Mr. Shanti Bhushan that the earlier judgment was confined to the amendment of Section 28 and not the original statute is a result of misreading of judgment. The judgment of this Court in **Bhanumati & Ors. (supra)** clearly applies in the facts and circumstances of this case and, therefore, the Special Leave Petition deserves to be dismissed. Learned senior counsel elaborated that the submission with regard to Section 28 of the Act being inconsistent with Part IX of the Constitution deserves to be rejected outright. This submission can only be considered on the basis of precise pleadings in the present case. Except for making a statement that the provision in the act is inconsistent with Part IX of the Constitution, no other reasons are given.

(xv) This apart, Section 28 can not be said to be contrary to the foundational principles of democracy. These provisions are referring to Sections 17, 18, 21 and 28 of the Act. The learned senior counsel submitted that the aforesaid provisions are to ensure that the Adhyaksha always enjoys confidence of the constituency while in power during the term for which such a person is elected.

(xvi) Mr. P.N. Mishra appearing for Respondent No.1 to 4 submitted that the Special Leave Petition deserves to be dismissed on the short ground that it is filed only against the judgment rendered by the High Court in review petition. He has relied on judgment of this Court in **Shanker Motiram Nale** Vs. **Shiolalsing Gannusing Rajput**[15]. He also relied on an unreported judgment in **Sandhya Educational Society & Anr.** Vs.

[15] (1994) 2 SCC 753

Union of India & Ors. [SLP(C) No. 2429 of 2012] to the same effect. He submitted that the powers of review would not permit this Court to reopen the entire issue and to rehear the entire matter on merits. The review is limited to the provision contained in Section 114 CPC read with Order 47 Rule 1. He submits that under this provision, review is limited only to circumstances where review is sought on discovery of new and important matter; or where evidence could not be produced in spite of exercise of due diligence or on account of some mistake or error apparent on the face of the record. He submits that the expression "or for any other sufficient reason" would not permit the Court to reopen the entire issue, which has already been judicially determined. This apart, according to the learned counsel, the petitioner has failed to show that injustice

has been done to her in the face of the fact that majority of the members of her constituency have voted in favour of the No Confidence Motion. Learned senior counsel further submitted that it is a matter of record that the No Confidence Motion was not challenged on merits. Therefore, the SLP deserves to be dismissed.

(xvii) Mr. Shanti Bhushan in reply submitted that these submissions of Mr. Ashok Desai and Mr. Mishra are fallacious as no Act of Parliament can interfere with the powers of this Court under Article 136. In the event, this Court holds that SLP is only against the judgment of review and is not maintainable, it would tantamount to amending Article 136 of the Constitution of India. The learned senior counsel submitted that the discretion of this Court cannot be whittled down let alone taken away as suggested by the

learned senior counsel appearing for the respondents. Even on facts, Mr. Bhushan submitted that the main judgment was challenged. In the judgment relied upon by Mr. Mishra in **State of Assam** Vs. **Ripa Sarma (supra)**, the impugned judgment had not been challenged. Therefore, this Court said that no SLP would be maintainable only against the judgment of the High Court rendered in a review petition, without challenging the main judgment. He reiterated that the judgment in **Bhanumati & Ors. (supra)** is mostly "*obiter*". It is also *per incuriam* as reservation for Scheduled Castes and Scheduled Tribes had not been taken into consideration.

17. We have considered the submissions made by the learned counsel for the parties.

18. We are not able to accept the submission of Mr. Shanti Bhushan that the provision contained in Section 28 of the Act are, in any manner, inconsistent with the provisions contained in Part IX, in particular, Article 243N of the Constitution of India.

19. Section 19 of the Act provides that in every Zila Panchayat, an Adhyaksha shall be elected by the elected members of the Zila Panchayat through amongst themselves. Section 19-A was introduced by U. P. Act No.9 of 1994 providing for reservation of the offices of Adhyaksha, for persons belonging to Scheduled Casts and Scheduled Tribes and the Backward Classes. It is, however, provided that the number of offices of Adhyaksha, so reserved, shall bear, as nearly as may be the same proportion to the total number of such offices in the State as the population of the Scheduled Castes, Scheduled Tribes and the Backward Classes in the State, bears to the total population of the State. The Section even provides that

the offices so reserved shall be allotted by rotation to different Zila Panchayats in the State in such manner as may be prescribed by the State Government. But the reservation for the Backward Classes shall not exceed 27% of the total number of offices of the Adhyakshas in the State. Section 19-A(2) is important in the present context which provides that "not less than one-third of the offices shall be reserved for the ladies belonging to the Scheduled Castes, Scheduled Tribes or the Backward Classes as the case may be." Under this Section, on a seat reserved for the aforesaid categories of Scheduled Castes, Scheduled Tribes and the Backward Classes, a person belonging to that category would be elected from a particular Panchayat in which reservation is made on the basis of the roster provided in Section 19-A(3). Section 20 of the Act provides that a Zila Panchayat shall continue for five years from the date appointed for its first meeting and no longer. It is also provided that Section 20(2) that the term of office of a member of a Zila Panchayat shall expire with the

term of Zila Panchayat unless otherwise determined under the provisions of the Act. Section 21 provides that save as otherwise provided in this Act, the term of office of the Adhyaksha shall commence on his election and with the term of Zila Panchayat. Section 23 provides for disqualification for corrupt practices, which is not applicable in the present case. Section 24 provides for resignation of Adhyaksha, again not applicable in the present case. Section 25 relates to filing of casual vacancy, again not applicable in this case. Section 26 provides for disqualification for being a member or an Adhyaksha in case a person has incurred any disqualification for being elected as a member of the Panchayat.

20. The whole debate in this case centres around Section 28, which provides for a Motion of No Confidence in Adhyaksha. The section provides detailed procedure with regard to the issuance of written notice of intent to make the motion, in such form as may be

prescribed, signed by not less than one-half of the total number of the elected members of the Zila Panchayat for the time being. Such notice together with the copy of the proposed motion has to be delivered to the Collector having jurisdiction over the Zila Panchayat. Therefore, the Collector shall convene a meeting of the Zila Panchayat for consideration of the motion on a date appointed by him which shall not be later than 30 days the date from which the notice was delivered to him. The Collector is required to give a notice to the elected members of not less than 15 days of such meeting in the manner prescribed. The meeting has to be presided over by the District Judge or a Civil Judicial Officer not below the rank of a Civil Judge. Interestingly, the debate on the motion cannot be adjourned by virtue of provisions contained in Section 28(7). Sub-section (8) further provides that the debate on the No Confidence Motion *shall automatically terminate* on the expiration of 2 hours from the time appointed for the commencement of the meeting, if it is not concluded

earlier. Either at the end of 2 hours or earlier, the motion has to be put to vote. Further more, the Presiding Officer would be either District Judge or a Judicial Officer is not permitted to speak on the merits of the motion, and also not entitled to vote. Sub-section (11) provides that "if the motion is carried with the support of (more than half) of the total number of (elected members) of the Zila Panchayat for the time being". In our opinion, the aforesaid provision contained in Section 28 is, in no manner, inconsistent with the provisions contained in Article 243N. To accept the submission of Mr. Bhushan of inconsistency would be contrary to the fundamental right of democracy that those who elect can also remove elected person by expressing No Confidence Motion for the elected person. Undoubtedly, such No Confidence Motion can only be passed upon observing the procedure prescribed under the relevant statute, in the present case the Act.

21. We are unable to accept the submission of Mr. Bhushan that removal of Adhyaksha can only be on the grounds of misconduct as provided under Section 29 of the Act. The aforesaid Section provides that a procedure for removing an Adhyaksha who is found guilty of misconduct in the discharge of his/her duties. This Section, in no manner, either overrides the provisions contained in Section 28 or is in conflict with the same.

22. We also do not agree with the submission of Mr. Bhushan that Section 28 could not have continued after expiry of one year of the enactment of 73rd Amendment of the Constitution of India, which came into effect on 24th April, 1993. Such an eventuality would have arisen only in case it was found that Section 28 is inconsistent with any provision of Part IX of the Constitution. Merely because Article 243F is silent with regard to the removal of an Adhyaksha on the basis of a Motion of No Confidence would not render the

provision inconsistent with the Article 243 of the Constitution of India.

23. We also do not find any merit in the submission of Mr. Bhushan that the petitioner being a Scheduled Caste Lady cannot be removed through a vote of No Confidence. We do not find any merit that the provisions contained in Section 28 would frustrate the provisions for reservation for Scheduled Caste Ladies. Even if an Adhyaksha belonging to one of the reserved categories, Scheduled Castes, Scheduled Tribes and other Backward Classes is removed on the basis of the vote of No Confidence, she can only be replaced by a candidate belonging to one of the reserved categories. Therefore, the submission of Mr. Shanti Bhushan seems to be focused only on the petitioner, in particular, and not on the candidates elected from the reserved categories, in general. The submission is wholly devoid of any merit and is hereby rejected.

24. We are entirely in agreement with Mr. Shanti Bhushan that Part IX of the Constitution has made provisions for self-governance at Panchayat level, including the election of Panchayat Members and its Chairman. Thus, ushering in complete decentralization of the Government and transferring the power to the grass roots level bodies; such as the Panchayats at the village, intermediate and District level, in accordance with Article 243C of the Constitution. Article 243C is as under:

> "**243C. Composition of Panchayats.** -
> (1) Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats:
>
> Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State.
>
> (2) All the seats in a Panchayat shall be filled by persons chosen by direct election from

territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.

(3) The Legislature of a State may, by law, provide for the representation—

(a) of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level;

(b) of the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the district level;

(c) of the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly a Panchayat area at a level other than the village level, in such Panchayat;

(d) of the members of the Council of States and the members of the Legislative Council of the State, where they are registered as electors within—

(i) a Panchayat area at the intermediate level, in Panchayat at the intermediate level;

(ii) a Panchayat area at the district level, in Panchayat at the district level.

(4) The Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayats.

(5) The Chairperson of—

(a) a panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide; and

(b) a Panchayat at the intermediate level or district level shall be elected by, and from amongst, the elected members thereof."

This Article as well as some others, such as

Articles 243-A, 243-C(5), 243-D(4), 243-D(6), 243-F(1), (6), 243-G, 243-H, 243-I(2), 243-J, 243-K(2), (4) of the Constitution etc make provision for the State to enact necessary legislation to implement the provisions in Part IX of the Constitution of India. Therefore, we are not able to agree with the submission of Mr. Bhushan that State Legislature will have no power to make provision for no-confidence motion against the Adhyaksha of Zila Panchayat.

25. We are also unable to agree with the submission of Mr. Bhushan that a person once elected to the position of Adhyaksha would be permitted to continue in office till the expiry of the five years terms, even though he/she no longer enjoys the confidence of the electorate. To avoid such *catastrophe,* a provision for no-confidence, as observed earlier, has been made in Section 28 of the Act. The extreme submission made by Mr. Bhushan, if accepted, would destroy the foundational precepts of democracy that a person who

is elected by the members of the Zila Panchayat can only remain in power so long as the majority support is with such person.

26. We also do not find any merit in the submission of Mr. Bhushan that permitting the provision contained in Section 28 of the Act to remain on the statute book would enable the executive to deprive the elected representatives of their fundamental rights enshrined in Part III and Part IX of the Constitution of India. In our opinion, the ratio of the judgment in **I.R.Coelho (supra)** relied upon by Mr. Bhushan is wholly inapplicable in the facts and circumstances of this case. There is no interference whatsoever in the right of the electorate to choose. Rather Section 28 ensures that an elected representative can only stay in power so long as such person enjoys the support of the majority of the elected members of the Zila Panchayat. In the present case, at the time of election, the petitioner was the *chosen one,* but, at the time when the Motion of No

Confidence in the petitioner was passed, *she was not wanted.* Therefore, the right to chose of the electorate, *is very much alive* as a consequence of the provision contained in Section 28.

27. We are unable to accept the submission of Mr. Bhushan that the provisions contained in Section 28 of the Act cannot be sustained in the eyes of law as it fails to satisfy the twin test of reasonable classification and rational nexus with the object sought to be achieved. In support of this submission, Mr. Bhushan has relied on the judgment of this Court in **D.S. Nakara vs. Union of India**[16]. We fail to see how the provisions contained in Section 28 of the Act would take away the autonomy of the Panchayati Raj Institutions. In our opinion, the judgments relied upon by Mr. Bhushan in support of the submissions that provisions of No Confidence Motion in Section 28 of the Act would put the executive authorities in the State in control of

[16] (1983) 1 SCC 305

Village Panchayats or District Panchayats. Apart from the use of superlatives, that the party *now* in power is trying to remove all the office holders of Panchayats in U.P. belonging to the opposite party, no other material has been placed on the record.

28. It is true that in the Constitution, Article 67B provides for removal of the Vice-President by a resolution of the Council of States as provided therein passed by the majority of all the then members of the Council and agreed to by the House of People. It is also correct that under Article 90C, the Deputy Chairman of the Council of States can be removed from his office on a resolution of the Council passed by all the majority members of the then Council. Similarly, Article 94 provides that a member of holding office as Speaker or Deputy Speakers of the House of People may be removed from his office by a resolution of the House of People passed by a majority of all the then members of the House.

29. It is also true that there are certain positions in the Constitution, which are filled up through election but individuals so elected cannot be removed by way of No Confidence Motion, e.g. Rajya Sabha Members, Lok Sabha Members and the President of India. We are, however, unable to accept the submission of Mr. Bhushan that Part IX of the Constitution of India has placed office of an Adhyaksha of a Zila Panchayat on the same pedestal as the President of India. Article 243F empowers the States to enact any law for a person who shall be disqualified for being chosen as a member of a Panchayat. This would also include a member of a Panchayat, who is subsequently appointed as Adhyaksha of a Zila Panchayat. There is no prohibition under Article 243F disenabling any State Legislature for enacting that an elected Adhyaksha shall remain in office only so long as such elected person enjoys the majority support of the elected members of the Zila Panchayat. Therefore, we have no

hesitation in rejecting the aforesaid submissions of Mr. Shanti Bhushan.

30. The submissions of Mr. Bhushan on depriving a candidate belonging to the reserved category of a position to which he or she has been elected on the basis of reservation are wholly fallacious. The seat for the office of Adhyaksha of Zila Panchayat was reserved for women candidates, i.e., all women candidates. It was not specifically reserved for Ladies belonging to the reserved categories of Scheduled Castes, Scheduled Tribes and the Backward Classes. The petitioner contested as a Lady Candidate and not as a candidate belonging to any reserved category and was elected on a seat reserved for Ladies generally.

31. Having said all this, we would like to point out that in normal circumstances the present SLP would not have been entertained. Dr. Rajiv Dhawan and Mr. Ashok Desai had pointed out at the very initial hearing that

the SLP would not be maintainable as it challenges only the judgment of the High Court rendered in review petition. The main judgment dated 5th February, 2013 rendered in W.P.(C) No.9654 of 2012 which has been reviewed by the High Court in the impugned order has not been challenged. As a pure statement of law, the aforesaid proposition is unexceptionable. However, in the present case, we have been persuaded to entertain the present SLP in view of the order passed by this Court on 19th February, 2013. In **Ripa Sarma case (supra**), it was not disputed before this Court that the judgment and order dated 20th November, 2007 passed in **Ripa Sarma (supra)** was not challenged by way of an SLP before this Court. Relying on Order 47 Rule 7 of the Code of Civil Procedure, 1908 and the earlier judgments of this Court it was held that :

> "In view of the above, the law seems to be well settled that in the absence of a challenge to the main judgment, the special leave petition filed challenging only the subsequent order rejecting the review petition, would not be maintainable."

32. With regard to the second submission of Dr. Dhawan and Mr. Ashok Desai that the issue raised in the present proceeding is no longer *res integra* in view of the law laid down by this Court in **Bhanumati (supra),** we are of the opinion that the submission deserves to be accepted, in so far as the matter is covered by the ratio laid down in **Bhanumati (supra).**

33. A careful perusal of the judgment of this Court in **Bhanumati (supra)** would show that this Court had considered the provisions contained in all the Articles Part IX of the Constitution, in all its hues and colours. However, it appears that the issue with regard to the adverse impact of the provision in Section 28 of the Act on the reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes was neither argued nor considered. We have, therefore, examined the issue raised by Mr. Bhushan.

34. In our opinion, the provision under Section 28A of

the Act in no manner dilutes or nullifies the protection given to the candidates belonging to Scheduled Castes, Scheduled Tribes and Backward Classes in the 73rd Amendment of the Constitution of India. Therefore, we accept the submission of Dr. Dhawan and Mr. Ashok Desai that in view of the law laid down in **Bhanumati's case (supra),** the issue is no longer *res integra.*

35. As noticed earlier, we have been persuaded to entertain the Special Leave Petition as Mr. Bhushan had highlighted that permitting the Vote of No Confidence as a ground for disqualifying an elected Zila Panchayat Adhyaksha, Zila Panchayat would leave a candidate, elected from the reserved categories of Scheduled Castes/ Scheduled Tribes, *vulnerable* to unjustified attacks from the elected members of the general category. This issue was not raised before the High Court either in original writ petition being W.P. No. 9654 of 2012 nor was it raised before the High Court in the Review Petition. However, in view of the seminal

importance of the issue raised, we had entertained the Special Leave Petition. Having said that, it must be pointed out that the raising of such an issue is neither justified nor relevant in the facts of the present case. As pointed out earlier, the petitioner herein had contested the election as an Adhyaksha, Zila Panchayat from a seat reserved for *Ladies*. Merely because she happens to belong to the reserved category, it can not be permitted to be argued, that the provision with regard to the reservation for the members of the Scheduled Castes/Scheduled Tribes/Backward Classes has been in any manner diluted, let alone nullified. It has been specifically noted in the Statement of Objects and Reasons of the 73rd Amendment as follows:-

> "Though the Panchayati Raj institutions have been in existence for a long time, it has been observed that these institutions have not been able to acquire the status and dignity of viable and responsive people's bodies due to a number of reasons including absence of regular elections, prolonged supersessions, insufficient representation of weaker sections like Scheduled Castes, Scheduled Tribes and Women, inadequate devolution of powers and lack of financial resources.

> 2. Article 40 of the Constitution which enshrines one of the directive principles of State Policy lays down that the State shall take steps to organise Village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. In the light of the experience in the last forty years and in view of the shortcomings which have been observed, it is considered that there is an imperative need to enshrine in the Constitution certain basic and essential features of Panchayati Raj institutions to impart certainty, continuity and strength to them."

36. The provisions of the 73rd Constitutional amendment are to ensure that Panchayati Raj Institutions acquire "the status and dignity of viable and responsive people's bodies". The provisions are not meant to provide an all pervasive protective shield to an Adhyaksha, Zila Panchayat, even in cases of loss of confidence of the constituents. Provision in Section 28, therefore, cannot be said to be repugnant to Part IX of the Constitution of India.

37. In our opinion, the amendment as well as the main provision in Section 28 is in absolute accord with the vision explicitly enunciated in the Preamble of the Constitution of India. In fact, the spirit which led to ultimately encoding the goals of "WE THE PEOPLE" in the Preamble of the Constitution of India, permeates all other provisions of the Constitution of India. The fundamental aim of the Constitution of India is to give power to the *People.* Guiding spirit of the Constitution is "WE THE PEOPLE OF INDIA". In India, the *People* are supreme, through the Constitution of India, and not the elected Representatives. Therefore, in our opinion, the provision for *right to recall* through the *Vote of No Confidence* is in no manner repugnant to any of the provisions of the Constitution of India.

38. Upon examination of the entire Scheme of the 73rd Amendment, in the context of framing of the Constitution of India, this Court in **Bhanumati & Ors. (supra)**, observed as follows:-

> **"54.** The argument that as a result of the impugned amendment stability and dignity of the Panchayati Raj institutions has been undermined, is also not well founded. As a result of no-confidence motion the Chairperson of a panchayat loses his position as a Chairperson but he remains a member, and the continuance of panchayat as an institution is not affected in the least."

We are in respectful agreement with aforesaid conclusion.

39. We reiterate the view earlier expressed by this Court in **Bhanumati & Ors. (supra)**, wherein this Court observed as follows:-

> **"57.** It has already been pointed out that the object and the reasons of Part IX are to lend status and dignity to Panchayati Raj institutions and to impart certainty, continuity and strength to them. The learned counsel for the appellant unfortunately, in his argument, missed the distinction between an individual and an institution. If a no-confidence motion is passed against the Chairperson of a panchayat, he/she ceases to be a Chairperson, but continues to be a member of the panchayat and the panchayat continues with a newly-elected Chairperson. Therefore, there is no institutional setback or impediment to the continuity or stability of the Panchayati Raj institutions.
>
> **58.** These institutions must run on democratic principles. In democracy all

> persons heading public bodies can continue provided they enjoy the confidence of the persons who comprise such bodies. This is the essence of democratic republicanism. This explains why this provision of no-confidence motion was there in the Act of 1961 even prior to the Seventy-third Constitution Amendment and has been continued even thereafter. Similar provisions are there in different States in India."

40. The whole edifice of the challenge to the constitutionality of Section 28 is built on the status of the petitioner as a member belonging to the reserved category. It has nothing to do with the continuance, stability, dignity and the status of the Panchayat Institutions. In our opinion, the personal desire, of the petitioner to cling on to the office of Adhyaksha is camouflaged as a constitutional issue. The provision of No Confidence Motion, in our opinion, is not only consistent with Part IX of the Constitution, but is also foundational for ensuring transparency and accountability of the elected representatives, including Panchayat Adhyakshas. The provision sends out a clear message that an elected Panchayat Adhyaksha can

continue to function as such only so long as he/she enjoys the confidence of the constituents.

Is Bhanumati & Ors. per incuriam ?

41. This submission again, in our opinion, is not well founded. The only ground urged in support of the submission by Mr. Shanti Bhushan was that this Court in **Bhanumati & Ors. (supra)** had not considered the provision with regard to special protection to be given to the members of the Scheduled Castes, Scheduled Tribes and the Backward Classes. Firstly, such a submission was never made before this Court in **Bhanumati & Ors. (supra).** Secondly, as we have already pointed out earlier, the issue with regard to reservation for Scheduled Castes, Scheduled Tribes and the Backward Classes, does not arise in the facts of this case as the petitioner had not been elected to the office of Adhyaksha of Zila Panchayat reserved for Scheduled Castes and Scheduled Tribes. Mr. Ashok Desai has placed before us enclosure to Government Order

No.2746/33-1-2010-37G/2000 dated 15th September, 2010 indicating reservation for the year 2010 for the office of Adhyaksha of Zila Panchayat, District wise in the State of Uttar Pradesh. The order is divided into two columns: Districts' reserved for Schedule Caste Lady and Districts' reserved for Ladies. Extract of the aforesaid order is as follows:-

Districts' reserved for Schedule Caste Lady		**Districts' reserved for Ladies**	
S.No.	District	S.No.	District
1	Chatrapati Sahuji Maharajnagar	1	Allahabad
2	Sant Ravidas Nagar (Bhadohi)	2	Sitapur
3	Jaunpur	3	Hardoi
4	Ghajipur	4	Lakhimpur Khiri
5	Sant Kabir Nagar	5	Azamgadh

42. It is a matter of record that the petitioner was elected as Panchayat Adhyaksha of Sitapur District Reserved for Ladies, it is not reserved for a Schedule Caste Lady. Therefore, we are not able to accept the submission of Mr. Bhushan.

43. We also do not accept the submission of Mr. Bhushan that the aforesaid judgment needs reconsideration. A perusal of the judgment would show that this Court traced the history leading upto the insertion of Article 40 of the Constitution of India. The Court examined the relevant commentaries of many learned authors, Indian as well as Foreign; Constituent Assembly Debates; and concluded as follows :

> **"13.** The Constitution's quest for an inclusive governance voiced in the Preamble is not consistent with panchayat being treated merely as a unit of self-government and only as part of directive principle. If the relevant Constituent Assembly Debates are perused one finds that even that constitutional provision about panchayat was inducted after strenuous efforts by some of the members. From the debates we do not fail to discern a substantial difference of opinion between one set of members who wanted to finalise the Constitution solely on the parliamentary model by totally ignoring the importance of panchayat principles and another group of members who wanted to mould our Constitution on Gandhian principles of Village Panchayat."

44. The Court emphasized that Dr. Rajendra Prasad was the strongest critic of the Draft Constitution, who

had opined that “the village has been and will even continue to be our unit in this country.” (Para 15). The Court further notices the opinion of Mr. M.A. Ayangar and Mr. N.G. Ranga, both of whom suggested some amendments to the Draft Constitution. The Court also notices that a similar opinion was expressed by Mr. S.C. Mazumdar, who had struck a balance between Gandhian Principles and the Parliamentary model of the Constitution. The insertion of Article 40 was accepted by Dr. Ambedkar. This Court further notices the opinion of Seth Govind Das from the Central Provinces and Berar (Constituent Assembly Debates Vol. VII, PP.523-24) (See Paras 12 to 20).

45. Thereafter, the Court notices that “in other representative democracies of the world committed to a written Constitution and Rule of Law, the principles of self-Government are also part of the Constitutional doctrine.” The Court emphasized that under the 73rd Amendment of the Constitution, Panchayats

become “Institution of self-governance, which was previously a mere unit under Article 40”. It was emphasized that the 73rd Amendment heralded a new era, which is a turning point in the history of local self-governance (Para 22). It was also emphasized that the 73rd Amendment is very powerful “tool of social engineering” (Para 24). We reiterate the opinion of this Court that as 74% of the Indian population live in villages, it is necessary to ensure that the power of governance should vest in the smallest units of the Panchayat having its hierarchy as provided under various Panchayat Acts throughout the country. The judgment analyses the changes introduced by the 73rd Amendment and concludes as follows :

> **“34.** The changes introduced by the Seventy-third Amendment of the Constitution have given Panchayati Raj institutions a constitutional status as a result of which it has become permanent in the Indian political system as a third Government. On a careful reading of this amendment, it appears that under Article 243-B of the Constitution, it has been mandated that there shall be panchayat at the village, intermediate and district levels

> in accordance with the provisions of Part IX of the Constitution."

46. This Court concluded upon examination of the Constitutional scheme introduced by the 73rd Amendment as follows:

> **"39.** Thus, the composition of the panchayat, its function, its election and various other aspects of its administration are now provided in great detail under the Constitution with provisions enabling the State Legislature to enact laws to implement the constitutional mandate. Thus, formation of panchayat and its functioning is now a vital part of the constitutional scheme under Part IX of the Constitution. Obviously, such a system can only thrive on the confidence of the people, on those who comprise the system."

47. In our opinion, the provision for removing an elected representative such as Panchayat Adhyaksha is of fundamental importance to ensure the democratic functioning of the Institution as well as to ensure the transparency and accountability in the functions performed by the elected representatives.

48. We also do not agree with Mr. Bhushan that the issue with regard to the constitutionality of Section 28 of the Act was not considered by this Court in **Bhanumati & Ors. (supra).** The submission made by the counsel for the petitioner therein is noticed as follows:

> **"40.** In the background of these provisions, learned counsel for the appellants argued that the provision of no-confidence, being not in Part IX of the Constitution is contrary to the constitutional scheme of things and would run contrary to the avowed purpose of the constitutional amendment which is meant to lend stability and dignity to Panchayati Raj institutions. It was further argued that reducing the period from "two years" to "one year" before a no-confidence motion can be brought, further unsettles the running of the panchayat. It was further urged that under the impugned amendment that such a no-confidence motion can be carried on the basis of a simple majority instead of two-thirds majority dilutes the concept of stability."

From this it is evident that the provision of No Confidence Motion in Section 28 was challenged on three grounds:

(a) It would be repugnant to the Scheme of the 73rd Amendment.

(b) It would unsettle the running of the Panchayat.

(c) It would dilute the concept of stability.

49. Upon consideration of the relevant provisions contained in various sub-articles of Article 243 and in particular, Article 243C(v), this Court concludes as under:

> "**41.** This Court is not at all persuaded to accept this argument on various grounds discussed below. A Constitution is not to give all details of the provisions contemplated under the scheme of amendment. In the said amendment, under various articles, like Articles 243-A, 243-C(1), (5), 243-D(4), 243-D(6), 243-F(1), (6), 243-G, 243-H, 243-I(2), 243-J, 243-K(2), (4) of the Constitution, the legislature of the State has been empowered to make law to implement the constitutional provisions.
>
> **43.** Therefore, the argument that the provision of no-confidence motion against the Chairman, being not in the Constitution, cannot be provided in the statute, is wholly unacceptable when the Constitution specifically enables the State Legislature to provide the details of election of the Chairperson."

The Court also mentions that the statutory provision of No Confidence Motion against the Chairperson is a pre-constitutional provision and was there in Section 15 of the 1961 Act (Para 44). After taking into consideration Article 243N of the Constitution of India, it is observed as follows:-

> **"45.** It is clear that the provision for no-confidence motion against the Chairperson was never repealed by any competent legislature as being inconsistent with any of the provisions of Part IX. On the other hand by subsequent statutory provisions the said provision of no-confidence has been confirmed with some ancillary changes but the essence of the no-confidence provision was continued. This Court is clearly of the opinion that the provision of no-confidence is not inconsistent with Part IX of the Constitution."

50. In the face of these findings, it would not be possible to accept the submission of Mr. Bhushan that the judgment in **Bhanumati & Ors. (supra)** is either *per incuriam* or requires reconsideration.

51. Under Article 243N, any provision of law relating to Panchayats in force immediately before the 73rd

Amendment, which is inconsistent with Part IX continues to be enforced until amended or repealed. In the absence of such amendment or repeal, the inconsistent provision will continue until the expiration of one year from the commencement of the Constitution (73rd Amendment) Act, 1993. It is a matter of record that the State of Uttar Pradesh enacted U.P. Panchayat Law (Amendment) Act, 1994 on 22nd April, 1994 to give effect to the provisions of Part IX of the Constitution. The pre-existing provision of No Confidence was not repealed. It was amended subsequently by the Amendment Act of 1998 (U.P. Act No. 20 of 1998). There was a further amendment by the Amendment Act of 2007 (U.P. Act No. 4 of 2007). By this amendment, the period for moving a No Confidence Motion was reduced from two years to one year. Furthermore the requirement that for a Motion of No Confidence to be carried, it had to be supported by a majority of "not less than two third" was reduced to "more than half". It was these amendment changes

brought about by the Amendment Act of 2007, which was challenged by the petitioners in the case of **Bhanumati & Ors. (supra)**. The continuous of the provision of No Confidence Motion was not even challenged. In spite of the fact that the challenge was limited only to the amendment, this Court examined the question as to whether provision for bringing a Motion of No Confidence in Section 28 of the 1961 Act was repugnant or inconsistent with Part IX of the Constitution of India. Ultimately, in Paragraph 51, this Court records the following opinion:-

> **"51.** Many issues in our constitutional jurisprudence evolved out of this doctrine of silence. The basic structure doctrine vis-à-vis Article 368 of the Constitution emerged out of this concept of silence in the Constitution. A Constitution which professes to be democratic and republican in character and which brings about a revolutionary change by the Seventy-third Constitutional Amendment by making detailed provision for democratic decentralisation and self-government on the principle of grass-root democracy cannot be interpreted to exclude the provision of no-confidence motion in respect of the office of the Chairperson of the panchayat just because of its silence on that aspect."

We are in respectful agreement with the aforesaid opinion.

52. The Court thereafter notices the submission that the position of Panchayat Adhyaksha is comparable with that of the President of India. On this analogy, it was submitted that the office of Chairperson, i.e. Panchayat Adhyaksha should have the same immunity. This Court rejected the submission with the observation that "this is an argument of desperation and has been advanced, with respect, without any regard to the vast difference in constitutional status and position between the two posts." Mr. Bhushan has made the same submission before us. We would like to add here, that even by stretching the imagination beyond all reasonable bounds, we are unable to accept the submission of Mr. Bhushan that Chairman of a District Panchayat should be put on the same *pedestal* as the President of India.

53. Mr. Shanti Bhushan had also submitted that since

the issues raised herein pertained to the interpretation of the Constitution of India, the matter needs to be referred to the five Judges as provided in Article 145(3) of the Constitution of India read with Order VII Rule 2 of the Supreme Court Rules, 1966.

54. We are of the opinion that no substantial question of law arises as envisaged under Article 145(3) of the Constitution of India as to the interpretation of the Constitution of India, in the facts and circumstances of this case. The entire issue has been elaborately, and with erudition, dilated upon by this Court in **Bhanumati & Ors. (supra).** We also do not find any force in the submission of Mr. Bhushan that there is any occasion for reconsideration of the judgment of this Court in **Bhanumati & Ors. (supra).**

55. Mr. Bhushan has relied on numerous judgments of this Court in support of his submissions. Let us now consider the same.

56. On the issue of repugnancy, Mr. Bhushan has cited

following judgments:

(1) **I.R.Coelho** vs**. Union of India (supra)** –

In our opinion, the reliance on the aforesaid judgment is wholly misplaced as the *right to choose* of the constituents is not curtailed by Section 28 of the Act. It is only the right of an elected Chairman/Adhyaksha to continue, who has lost the confidence of the electorate that has been curtailed.

(2) **Deep Chand** vs**. State of U.P. (supra) –**

In this case, this Court culled out the law pertaining to the rule of repugnancy. The three tests of inconsistency or repugnancy as formulated by Nicholas in his Australian Constitution 2nd Edition have been noticed which are as under:

> "(*1*) There may be inconsistency in the actual terms of the competing statutes;
>
> (*2*) Though there may be no direct conflict, a State law may be inoperative because the Commonwealth law, or the award of the Commonwealth Court, is intended to be a complete exhaustive code; and

> (*3*) Even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise their powers over the same subject-matter."

57. The aforesaid three rules have been accepted by this Court in **Ch. Tika Ramji** Vs. **State of U.P.**[17]. Similar test was laid down by this Court in, **Zaverbhai Amaidas** Vs. **State of Bombay (supra)** as follows:

> "(*1*) Whether there is direct conflict between the two provisions;
>
> (*2*) Whether Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State Legislature and
>
> (3) Whether the law made by Parliament and the law made by the State Legislature occupy the same field.

58. In our opinion, the provision contained in Section 28 can not be said to be repugnant to the 73rd Amendment on the basis of the aforesaid tests laid down by this Court.

59. On the issue of *per incuriam*, Mr. Bhushan has

[17] (1956) SCR 393

cited following judgments:

(1) **N. Bhargawan Pillai** Vs. **State of Kerala (supra)** –

Mr. Bhushan had relied on observations made by this Court in Paragraph 14 of the judgment. It was held that the judgment in the case of **Bore Gowda** Vs. **State of Karnataka**[18] was *per incuriam* as it did not consider the impact of Section 18 of the Probation of Offenders Act, 1958.

In **Bhanumati & Ors. (supra)**, it can not be said that any relevant provision of the Constitution or the Act had not been taken into consideration.

(2) **State of U.P.** Vs. **Synthetics and Chemicals Ltd. (supra)**

The observations made in Paragraph 86 in the earlier judgment of **Synthetics and Chemicals Ltd. & Ors.** Vs. **State of U.P. & Ors.**[19] were found to be *per*

[18] (2000) 10 SCC 620
[19] (1990 1 SCC 109

incuriam. The aforesaid observations would not be applicable in the present case as no such legitimate criticism can be made against the judgment of this Court in **Bhanumati & Ors. (supra)**.

(3) **Babu Parasu Kaikadi** Vs. **Babu (supra)**

This judgment also reiterated the well known principle of *per incuriam*. It was held that the judgment in **Dhondiram Tatoba Kadam** Vs. **Ramchandra Balwantrao Dubal (since deceased) by His LRs. & Anr.**[20] was *per incuriam* as it had not noticed the earlier binding precedent of a coordinate Bench and also having not considered the mandatory provisions as contained in Sections 15 and 29 of the Bombay Tenancy and Agricultural Lands Act, 1948 (67 of 1948). The well known principle with regard to a judgment not being a binding precedent as stated in Halsbury's Laws of England, 4th Edn., Vol. 26 is as under:-

> "A decision is given *per incuriam* when the court has acted in ignorance of a previous

[20] (1994) 3 SCC 366

> decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow; or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force."

The same principle has been reiterated by this Court in **State of U.P.** Vs. **Synthetics and Chemicals Ltd. (supra):-**

> "*40*. 'Incuria' literally means 'carelessness'. In practice *per incuriam* appears to mean *per ignoratium*. English courts have developed this principle in relaxation of the rule of *stare decisis*. The 'quotable in law' is avoided and ignored if it is rendered, '*in ignoratium of a statute or other binding authority*'. (*Young* v. *Bristol Aeroplane Co. Ltd.*) Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law."
>
> (emphasis supplied)

In our opinion, the judgment in **Bhanumati & Ors. (supra)** can not be said *per incuriam* on the applicability of the aforesaid tests. _

(4) **Zee Telefilms Ltd.** Vs. **Union of India (supra)**

In this case, again this Court reiterated that a decision is an authority for the question of law determined by it and that it should not be read as a statute. A decision is not an authority for the proposition which did not call for its consideration. These observations again are of no assistance to the petitioner.

(5) **Nirmaljeet Kaur** Vs. **State of M.P.**

In this case also, this Court has reiterated the principles earlier enunciated. Thus, this judgment is again of no help to the petitioner.

60. On the submission with regard to the Validity/Legality of a Legislative Act, reliance was placed upon:

D.S.Nakara vs. Union of India[21]**; Union of India vs. G.Ganayutham**[22]; **Bharat Petroleum Corporation Ltd. vs. Maddula Ratnavalli**[23] and

[21] (1983) 1 SCC 305
[22] (1997) 7 SCC 463
[23] (2007) 6 SCC 81

State of A.P. v/s McDowell & Co.[24]. In our opinion, all these judgments are inapplicable to the facts of this case.

61. On the submission with regard to Arbitrary/discretionary/unguided power to executive authority, Mr. Bhushan relied upon following judgments: **Senior Superintendent of Post Offices vs. Izhar Hussain**[25], **Khoday Distilleries Ltd. vs. State of Karnataka**[26], **Maganlal Chhagalal (P) Ltd. vs. Municipal Corporation of Greater Bombay**[27]— **Director of Industries vs. Deep Chand Agarwal**[28]. In our opinion, these judgments have no application whatsoever either to the legal issue or to the facts of this case.

62. We have no hesitation in accepting the submission of Mr. Bhushan that the High Court or this Court, in

[24] (1996) 3 SCC 709
[25] (1989) 4 SCC 318
[26] (1996) 10 SCC 304
[27] (1974) 2 SCC 402
[28] (1980) 2 SCC 332

exercise of its powers of review can reopen the case and rehear the entire matter. But we must hasten to add that whilst exercising such power the court cannot be oblivious of the provisions contained in Order 47 Rule 1 of CPC as well as the rules framed by the High Courts and this Court. The limits within which the Courts can exercise the powers of review have been well settled in a catena of judgments. All the judgments have in fact been considered by the High Court in Pages 16 to 23. The High Court has also considered the judgment in **S. Nagaraj & Ors.** Vs. **State of Karnataka & Anr. (supra)**, which reiterates the principle that

> **"19.** Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its

> order the courts culled out such power to avoid abuse of process or miscarriage of justice……."

63. These principles are far too well entrenched in the Indian jurisprudence, to warrant reiteration. However, for the sake of completion, we may notice that Mr. Bhushan had relied upon **Board of Control for Cricket in India v/s Netaji Cricket Club** (supra), and **Green View Tea & Industries** (supra). It would be useful to reiterate the following excerpts:

In the case of **Board of Control for Cricket in India (supra),** it was observed that:

> **"90.** Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefore. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words "sufficient reason" in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine "*actus curiae neminem gravabit*".
>
> This court in **Green View Tea & Industries**

(supra) reiterated the view adopted by it in **S. Nagaraj & Ors (supra)**. Therefore, the ratio of **Green View Tea** is not applicable in this case.

64. In view of the observations made in the aforesaid judgments, this Court would not be justified in holding that the High Court has erred in law in not reviewing its earlier judgment.

65. This apart, we have examined the entire issue threadbare ourselves as the issue with regard to the adverse impact on the candidates belonging to the reserves categories has not been raised before the High Court nor considered by it. In the earlier round, the issue was also neither raised nor considered by this Court. When the order dated 19th February, 2013 was passed, the issue with regard to reservation was also not canvassed. But now that the issue had been raised, we thought it appropriate to examine the issue to put an end to the litigation between the parties.

66. In view of the above, the appeal is accordingly dismissed.

Contempt Petition No.287 of 2013 in CIVIL APPEAL NO…… OF 2014 (Arising out of SLP (C) No.22035 of 2013)

67. This Petition was filed by the Petitioner/Appellant, seeking initiation of contempt proceedings against alleged contemnors/respondent for disobeying the order of status quo dated 12th July, 2013 passed by this Court in the aforesaid Civil Appeal.

68. In view of the judgment passed by this Court in Civil Appeal No…… of 2014 (Arising out of SLP (C) No.22035 of 2013), this Petition is dismissed as having become infructuous.

CIVIL APPEAL NO……OF 2014 (Arising out of SLP(C) No.29740 of 2013

69. This Civil Appeal was filed by Smt. Rukmini Devi,

challenging final order and judgment dated 19th August, 2013 passed by the High Court of Judicature at Allahabad, Lucknow Bench in Writ Petition No. (MB) 5999 of 2013.

70. The issues raised in this civil appeal are identical to those that we have examined in Civil Appeal No..... of 2014 (Arising out of SLP (C) No.22035 of 2013). Therefore, in view of the judgment in the Civil Appeal No..... of 2014 (Arising out of SLP (C) No.22035 of 2013), this appeal is also dismissed.

.....J.
[Surinder Singh Nijjar]

.....J.
[Fakkir Mohamed Ibrahim Kalifulla]

New Delhi;
March 28, 2014.