Andhra High Court
Arka Vasanth Rao And Others vs Govt. Of A.P. And Others on 23 March, 1995
Equivalent citations: AIR 1995 AP 274, 1995 (1) ALT 600
Bench: M Rao, K S Shrivastav
ORDER

1. Seeking a declaration byTa mandamus that the Andhra Pradesh Pan-chayat Raj Act, 1994 (Act 13 of 1994) (hereinafter referred to as "the Act") is not applicable to the scheduled areas in the State of Andhra Pradesh, as declared by the President of India under the V Schedule to the Constitution of India, and a consequential direction restraining the State of Andhra Pradesh and the State Election Commissioner from holding elections to Mandal Praja Parishads, Mandal Praja Territorial Constituencies and Zilla Parishad Territorial, Constituencies (falling within the scheduled areas), this writ petition was filed by Arka Vasanth Rao, the Vice-President of the Gondwana Sangarsh Samithi and three other' tribals. The writ petition is founded on the plea that after the enactment of the Constitution (73 Amendment) Act, 1992 by Parliament in exercise of its constituent power, inserting Part-IX comprising Arts. 243 and 243-A to 243-O, the legislature of the State of Andhra Pradesh has no power to make a law with respect to Panchayats, extending its operation to scheduled areas in view of the specific constitutional injunction incorporated in Art. 243-M. Inter alia, it is averred in the affidavit filed in support of the writ petition that due to large influx of non-tribals into the scheduled areas, the population of the tribals therein has decreased to a considerable extent resulting in the demographic composition of the scheduled areas undergoing a radical change reducing the tribals to a minority in many parts of the scheduled areas. More than 48% of the agricultural land in the scheduled areas went into the hands of non-tribals in spite of the protected legislation forbidding non-tribals from owning lands in the tribal areas -- 5,913 villages spread over 8 districts -- Adilabad, Warangal, Khammam, West Godavari, East Godavari, Visakhapatnam, Vizianagarani', Srikakulam and Mahaboob-nagar -- in an area of 30,293 sq. kilometres and populated by 33 scheduled tribes. The total population of the scheduled tribes according to 1991 census is 42 lakhs accounting for 6.3% of the total population in the State. The enactment of the Panchayat Raj Act by the State of Andhra Pradesh has resulted in the position, regarding reservation for scheduled tribes in scheduled areas undergoing a substantial change to the detriment of tribal interests compared to the earlier position; the exclusive reservation in favour of the scheduled tribes under the V Schedule to the Constitution has now been limited only to those cases where the entire territorial constituency lies in the scheduled area and also the population of the scheduled tribes in the constituency is more than 50%. This has resulted in many elective positions in the scheduled areas going in favour of non-tribals. Out of the 46 Mandal Praja Parishads in the scheduled areas, only 33 are reserved in favour of the scheduled tribes and the remaining 13 were brought into the open pool as the percentage of the tribal population in them is less than 50%. The object of enacting the V Schedule to the Constitution is to preserve and protect the interests of the scheduled tribes in the defined areas, particularly in regard to land and ensure that no erosion takes place in the tribal domain and in order to achieve this objective, special regulations have been enacted under the V Schedule by the Governor, prohibiting the transfer of all land from tribals to non-tribals, regulation of money-lending etc. This objective has been watered down by the enactment of the Panchayat Raj Act, which has introduced the population norm for the purpose of reservation and this would only lead to the disappearance of the scheduled area itself

over a period of time by influx of non-tribals.

2. The State Government represented by the Chief Secretary is the first respondent and the Union of India represented by the Secretary, Rural Development is the second res- -.-pondent. The State Election Commissioner is -the third respondent in the writ petition. In the counter-affidavit filed by Sri Kothanda-pani, Deputy Secretary to Government, Panchayat Raj and Rural Development Department, it is averred, inter alia, that the State Legislature has power under Entry 5 of List-II of the Seventh Schedule to the Constitution to enact a law with regard to Panchayat Raj administration. The Act contemplates a three tier Panchayat Raj structure -- village, intermediate (Mandal) and district level. The Constitution (73rd Amendment) Act, 1992^ was enacted for the purpose of ushering in an uniform structure of Panchayat Raj bodies and making it mandatory for the State to follow the same. Although sub-clause (b) of clause (4) of Art. 243-M enables Parliament to make a law extending the provisions of Part-IX, inserted by the Constitution (73rd Amendment) Act, to the scheduled areas, the power of the Governor under Part-X read with paragraph 5 of Schedule V to the Constitution to make applicable or inapplicable, by public notification, any enactment made by the State Legislature or Union Parliament to scheduled areas remains unaffected. Accordingly, in exercise of the aforesaid power, a notification was issued in G.O.Ms. No. 123, Panchayat Raj (Rural Development and Relief) Department dated 8-3-1995 making the Act applicable to the scheduled areas. The legislative competence under Entry 5 of List-II is not shut-out by Art. 243-M. "In the case of the scheduled areas, the legislative competence is unfettered in the sense that a structure of Panchayat Raj similar to the one contemplated by the 73rd Amendment or a different structure can be envisaged by the State legislature". It is also stated in the counter-affidavit that unless the Act is extended to the scheduled areas, the scheduled tribes would not get representation in proportion to their population to the total population of the State as envisaged in the Constitution Amendment Act. If it is to be held that the Act has no application to the scheduled areas, there would be no local administration at all in the scheduled areas, which could never be the intention of the Parliament and the scheduled tribes would not be able to get the quantum reservation contemplated under the Constitution (73rd Amendment) Act by Art. 243-D and that the scheduled tribes living in 8 districts of the State, which have sizeable scheduled areas, would live in isolation. The non-applicability of the Act to the scheduled areas would work against the interests of the scheduled tribes and would result in great injustice to them. A Committee of Members of Parliament, headed by Sri Dilip Singh Bhuria, also recommended the extension of the Constitution amendment to the scheduled areas. Only with regard to non-scheduled areas, the legislative power of the State under Entry 5 of the State List is circumscribed by the Constitution (73rd Amendment) Act. The purport of Art. 243-M is that it does not impose a three tier structure on the scheduled areas but at the same time it does not prohibit the State legislature to have a similar structure in the scheduled areas also since the legislative competence under Entry 5 in respect of the scheduled areas before and after the Constitution (73rd Amendment) Act remains unaltered.

3. No counter was filed on behalf of the Union of India, the second respondent, presumably due to the fact that a pure question of law is at issue and no questions of fact are involved. Sri Ravi Chander, the learned Additional Standing Counsel for the Central Government, has submitted that he has been instructed by the Union Law Secretary to adopt the stand of the State Government and

that the Union has no different views other than what are expressed on behalf of the State Government.

4. Adhering to what is stated in the pleadings, arguments have been advanced by Sri K. G. Kannabhiran, learned counsel for the petitioners and Sri S. Ramachander Rao, the learned Advocate-General. The writ petition was filed on 1-3-1995 and it was taken up for admission on 2-3-1995 at the request of the learned Advocate-General, who sought time to obtain instructions. While admitting the writ petition, we passed an interlocutory order, after hearing both sides, to the effect that the respondents may proceed with the elections, complete counting of votes in the 46 Mandal Territorial Constituencies, which are located exclusively in the scheduled areas but the results shall not be published pending further orders. A counter-affidavit sworn to by Sri Kothandapani, Deputy Secretary to Government, Panchayat Raj Department was filed on 10-3-1995. The notification relating to the application of the Act to the scheduled areas was issued in G.O.Ms. No. 123 dt. 8th March, 1995 by which, the Governor of the State of Andhra Pradesh, in exercise of the powers conferred by sub-paragraph (1) of paragraph 5 of the Wth Schedule to the Constitution of India, di-reeled the application of the aforesaid Act to the scheduled areas in the State with retrospective effect from 30th May, 1994.

5. For the petitioners, it was urged by Sri Kannabhiran, learned counsel, that the entire Part-IX of the Constitution of India, which relates to the Panchayats, has no application to the scheduled areas unless a law is enacted by Parliament extending the provisions of Part-IX to the scheduled areas and the tribals as enjoined by sub-clause (b) of clause (4) of Art. 243-M. Admittedly, as no such law was enacted by Parliament, it was not open to the State legislature to enact a law concerning 'panchayats' and extend the same to the scheduled areas in the State. That there will be a vacuum with regard to the local self-Government in the scheduled areas is a matter in the realm of policy with which Parliament alone is concerned and the courts have no role to play is not the function of the courts to legislate in fields which are deliberately omitted by the appropriate law making body. As regards G.O.Ms. No. 123 dated 8-3-1995 issued by the Governor under paragraph 5(1) of the Vth Schedule to the Constitution, the submission of the learned counsel was that it is a colourable exercise of power; it is an attempt on the- part of the executive to "trivialise the Constitution". The power available to the Governor under paragraph 5 of the Vth Schedule cannot extend to matters concerning the 'panchayats' in view of the express bar contained in Art. 243-M(4)(b) of the Constitution and, therefore, G.O.Ms. No. 123 is ultra vires. It is also an admission of fact by the State Government that until the aforesaid G.O., was passed, the Act was not applicable to the scheduled areas. As the notification were issued fixing the schedule of elections -- the date of filing of nominations, scrutiny, withdrawal, date of poll, counting and publication of results -- in accordance with the relevant statutory rules long prior to 8-3-1995, the entire procedure governing the conduct of the elections cannot be validated with retrospective effect. Governance of the scheduled areas is a special responsibility and the tribals inhabiting the areas being accustomed to primitive ways of living are incapable of becoming effective partners in a participatory democracy at the local government level envisaged by the Act and that is the reason why Parliament alone was entrusted with the responsibility to enact a law under Art. 243-M(4}(2) to extend the provisions of .Part-IX of the Constitution concerning Panchayats to the scheduled areas subject to such exceptions and modifications as may be specified in such a law. Therefore, the plea of the State that if the Act was

not made applicable to the scheduled areas, the inhabitants would be deprived of a democratic form of Government at the local level should not be accepted.

6. Controverting these contentions, it was argued by the learned Advocate-General that a legislature never contemplates any vacuum. Schedule V read with Art. 244 of the Constitution incorporates special provisions for protection of weaker sections inhabiting the schedule areas and that being a special law, will have over-riding effect vis-a-vis the general law relating to Panchayats contained in Part-IX of the Constitution inserted by the Constitution (73rd Amendment) Act. There is no conflict between the purport and purposes of Art. 244 read with Schedule V on the one hand and Part-IX of the Constitution on the other hand. Nonetheless, if a conflict is discernible the same must be resolved harmoniously; until a law is made by Parliament under Art. 243-M(4)(2), the State law must be allowed to hold the field. The substantive power of the State Legislature to enact a law with respect to Panchayats for the entire State including the scheduled areas is traceable'to Entry 5 of the State List, which, inter alia, speaks of local self government and village administration. The Act cannot be made ineffective in its application to the scheduled areas in view of the directive contained in Art. 40 of the Constitution enjoining the Stale to take steps to organise village Panchayats and endow them with necessary powers and authority to enable them to function as units of self government.

7. The question for determination is: whether the Act has no application to the schedule areas in the State of Andhra Pradtsh in view of the provisions of clause(l) and sub-clause (b) of clause (4) of Art. 243-M of the Constitution of India?

8. By the Constitution (73rd Amendment) Act, 1992, Part-IX, which bears the heading "The Panchayats", was inserted in the Constitution and it came into force with effect from 20th April, 1993. It contains sixteen Articles -- Articles 243 and 243-A to 243-0. Article 243-B enjoins that there shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of that part. The legislature of a State is empowered to make a law with respect to the composition of Panchayats subject to the provisions of Part-IX (Vide Art. 243-C). Reservation of seats in favour of the Scheduled castes and Scheduled tribes in the Panchayat Raj institutions shall be in accordance with the provisions of Art. 243-D. Article 243-Edeals with thedura-tion of the- Panchayats. Qualifications for membership, powers, authority and responsibilities of the Panchayats, the powers of Panchayats to impose taxes and the funds of the institutions are dealt by Articles 243-F, G and H respectively. The Governor is empowered to constitute a Finance Commission to review the financial position of the Panchayats under Art. 243-1. Article 243-J concerns with audit of accounts of the Panchayats. The superintendence, direction and control of the preparation of electoral rolls and the conduct of elections to the panchayats are vested in a State Election Commission appointed by the Governor under Art. 243-K. Article 243-L deals with the application of Part-IX of the Constitution to the Union territories. Article 243-M enjoins that Part-IX shall not apply to certain areas. It reads.,:

"243-M. Part not to apply to certain areas. (1) Nothing in this part shall apply to the scheduled areas referred to in Cl. (1), and the tribal areas referred to in Cl. (2) of Art. 244.

(2) Nothing in this Part shall apply to-

a) the States of Nagaland, Meghalaya and Mizoram;

b) the Hill area in the State of Manipur for which District Councils exist under any law for the time being in force.

(3) Nothing in this part-

a) relating to Panchayats at the district level shall apply to the Hill areas of the district of Darjeeling in the State of West Bengal for which Darjeeling Gorkha Hill Council exists under any law for the time being in force;

b) shall be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under such law.

(4) Notwithstanding anything in this Constitution-

a) the Legislature of a State referred to in sub-clause (a) of Cl. (2) may, by law, extend this Part to the State, except the areas, if any, referred to in Cl.(l), if the Legislative Assembly of that State passes a resolution to that effect by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting;

b) Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas referred to in Cl. (1) subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of Art. 368."

Any law concerning the Panchayats but inconsistent with the provisions of Part-IX shall continue to remain in force until the same is amended or repealed or until the expiration of one year from the commencement of Part-IX, whichever is earlier, (vide Art. 243-N).'Article 243-0 bars the jurisdiction of Courts in electoral matters.

9. Chapter 1 of Part-XI of the Constitution -- consisting of Arts. 245 to 255 -- deals with distribution of legislative powers between the Union and the States. Subject to the provisions of the Constitution, Parliament is empowered to make laws for the whole or any part of the territory of India and likewise, the legislature of a State has power to make laws for the whole or any part of the State. By Cl. (1) of Art. 246, Parliament has exclusive power to make laws with respect to matters enumerated in List I in the Seventh Schedule to the Constitution. The legislature of a State, by Cl. (3), is empowered to make laws with respect to any of the matters enumerated in List II in the Seventh Schedule. With respect to matters enumerated in List III, Parliament and the State Legislature have power to enact laws by virtue of Cl. (2). By Art. 248, exclusive power is conferred on Parliament to enact any law with respect to any matter not enumerated in the concurrent list or the State List. Entry 5 of List II (State List) reads:

"5. Local Government, that is to say, the Constitution and powers of Municipal Corporations, Improvement Trusts, District Boards, mining settlement authorities and other local authorities for the purpose of local self-Government or village administration."

So far as Panchayat Raj institutions are concerned, in exercise of its power under Art. 246(3) and Entry 5 List II, the State of Andhra Pradesh had in the past enacted three laws -- Andhra Pradesh Gram Panchayats Act, 1964, The Andhra Pradesh Manda! Praja Parishads, Zilla Praja Parishads and Zilla Pranalika and Abivrudhi Sameeksha Mandals Act, 1986 and the Andhra Pradesh Local Bodies Electoral Reforms Act, 1989. The aforesaid three enactments stood repealed by virtue of-S. 276 of the Act. The 1994 Act was enacted for the purpose of giving effect to the provisions of Part-IX of the Constitution. The power of the State Legislature to make laws with respect to the Panchayat Raj institutions is subject to the provisions of Part-IX, it is specifically ordained so by Art. 243-C of the Constitution. The structure of the Panchayat Raj institutions, their supervision and funding as provided in Part-IX of the Constitution being a new development, the existing laws in the States which are inconsistent with Part-IX were allowed to continue in force for a maximum period of one year by Art. 243-N. It is, therefore, clear that by virtue of the mandate of Part-IX of the Constitution, every State was obligated to enact legislation with respect to Panchayats in conformity with the provisions of Part-IX.

10. The Andhra Pradesh State Legislature, in compliance with the constitutional mandate contained in Part-IX of the Constitution, enacted the 1994 Act, which received the assent of the President of India on 21-4-1994. By sub-sec. (2) of S. 1, its area of operation was extended to the whole of the State except the Municipal Corporations, Municipalities, notified areas, mining settlements and cantonments. The statement of objects and reasons of the 1994 Act clearly acknowledges this self-evident fact. A cabinet sub-committee considered the reports of the Expert Committee headed by an I.A.S. Officer appointed prior to the Constitution (73rd Amendment) Act and after taking into account the provisions of Part-IX of the Constitution, submitted a report, which was accepted by the Government. The Act has brought into being, a three tier Panchayat Raj system as enjoined by Art. 243-B of the Constitution. Part-II of the Act deals with the panchayat system at the village level -- Gram Panchayat; Part-III of the Act concerns with the Constitution, incorporation, composition, powers and functions of Mandal Pari-shads -- intermediate level; and Part-IV, likewise, concerns with district level institutions -- Zilla Parishads. Elections have been notified for the Mandal Parishads and Zilla Parishads -- intermediate and district level. At all the three levels, seats are reserved in favour of the Scheduled Castes and Scheduled Tribes in accordance with the mandate contained in Art. 243-D of the Constitution. At the village level, the Sarpanch is elected by the persons whose names appear in the elec-i, toral roll for the Gram Panchayat. (vide Sec. 14). Section 149 of the Act contains provisions regarding the composition of Mandal Parishad -- intermediate level body. It consists of five categories of members. Each mandal is divided into several territorial constituencies by S. 150. Each mandal is a territorial constituency for the purpose of electing members to the Zilla Parishad, the district level body.

11. By Cl. (1) of Art. 244, the provisions of the V Schedule to the Constitution shall apply to "the administration and control of the scheduled areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram." The V Schedule consists of four Parts A, B, C

and D. Paragraph 2 of Part-A says that subject to the provisions of the V Schedule, the executive power of a State extends to the scheduled areas therein. The Governor of each State, having scheduled areas therein, is enjoined to submit a report to the President of India annually or whenever so required by the President regarding the administration of the scheduled areas in the State and the executive power of the Union extends to giving directions to the State as to the administration of the scheduled areas. Part-B consists of two paragraphs 4 and 5. In every State, where there are scheduled areas, it is laid down by sub-paragraph (1) of paragraph 4, a Tribes Advisory Council shall be established. In other States where there are Scheduled Tribes but no scheduled areas, a similar council also may be set up-if the President so directs. It is the duty of the Council to tender advice on matters pertaining to the welfare and advancement of the Scheduled Tribes as may be referred to it by the Governor, (vide S. 4(2)). Sub-paragraph 3 confers power on the Governor to make rules regarding the number of members of the council, the mode of appointment, the manner of conduct of its meetings and procedure. Paragraph 5, which is relevant for our purpose, is in the following terms:

"5. Law applicable to Scheduled Areas--(1) Notwithstanding anything in this Constitution, the Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Sheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he' may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.

(2) The Governor may make regulations for the peace and good Government of any area in a State which is for the time being a Scheduled Area.

In particular and without prejudice to the generality of the foregoing power, such regulations may-

a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;

b) regulate the allotment of land to members of the Scheduled Tribes in such area;

c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

(3) In making any such regulations as it referred to in sub-paragraph (2) of this paragraph, the Governor may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.

(4) All regulations made under this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.

(5) No regulation shall be made under this paragraph unless the Government making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council."

Paragraph 5 confers power on the Governor-to apply or not to apply any law made by the Union Parliament or the State Legislature to a scheduled area or any part thereof. It also confers power on the Governor to make regulations for peace and good Government of any scheduled area. In making the regulations, the Governor is empowered to repeal or amend any Act of Parliament or of the Legislature of the State or of the existing law. Part C contains only one paragraph -- paragraph 6. Sub-paragraph (1) of paragraph 6 says that the expression "scheduled areas" means such areas as the President may, by order, declare to be scheduled areas. Sub-paragraph (2) confers power on the President to abolish a scheduled area, increase or decrease the area of a scheduled area in a State. Part D comprising paragraph 7 concerns with amendment of the schedule. It confers power on Parliament, by law, to amend any of the provisions of the V Schedule and such law shall not be construed as an amendment to the Constitution for the purposes of Art. 368. Hidayatullah, J. (as he then was) in Edwingson v. State of Assam, had neatly summarised the provisions of the V Schedule:

".....Under the Fifth Schedule, the Governor is the sole legislature for the Scheduled Areas and the Scheduled Tribes. He makes the regulations after consulting the Tribes Advisory Council and submits them to the President for the latter's assent. The executive authority of the State extends to the Scheduled areas but the executive authority of the Union extends to giving of directions to the State as to the administration of such areas. These areas are determined by the President by an order and may be altered from time to time by the President by another order but the President-cannot alter an order made under sub-paragraph (1) except as laid down in Cls. (a), (b) and (c) of the second sub-paragraph. Any amendment of the Schedule must be done by Parliament."

In exercise of the power under paragraph 6 of the V Schedule, the President of India notified the Scheduled Areas (Part A States) Order, 1950, which, inter alia, mentions the areas of East Godavari, West Godavari and Visakhapatnam agencies of the erstwhile Madras State. The Scheduled Areas (Part B Certain areas in the Visakhapatnam and East Godavari agencies were deleted from the list of Scheduled areas by the Andhra Scheduled Areas (Cesser) Order, 1955.'

12. The treatment of tribals is one of the greatest tragedies of Indian history. Taking advantage of their primitive ways of living and social structure, the other sections of the society exploited them in the pursuit of wealth and power. They were deprived of their lands and their livelihood to a great extent. More than 120 years ago, the British Government felt that special measures were needed to protect the triabls. Even in 1870, a legislation was enacted empowering the Governor General-in-Council to deal separately with matters concerning special areas. The Act was applicable to specified areas. The Scheduled Districts Act, 1874 declared that "in certain specified districts, the normal legislation and jurisdiction were in force only in part or with modifications," The situation was described by Arthur Berriedale Keith.

"There are in the provinces in greater or less degree areas which, under the imperial legisla tion of 1870 or the Indian legislation of 1874, are exempt from the ordinary laws and often subject to special judicial arrangements, which are usually based on combining judicial and executive functions. The history of India proves that with primitive peoples any other system is certain to work the greatest in justice.

Chapter 5 of the Government of India Act, 1935 comprising Ss. 91 and 92 contains special provisions for administration of areas inhabited by the Scheduled Tribes. The areas were classified as excluded and partially excluded areas. The Simon Commission in 1930 reported that:

"There were two dangers to which subjection to normal laws would have specially exposed these peoples, and both arose out of the fact that they were primitive people, simple, unsophisticated and frequently improvident. There was a risk of their agricultural land passing to the more civilized section of the population, and the occupation of the tribals was for the most part agricultural; and, secondly they were likely to get into the "wiles of the money-lender." The primary aim of Government policy then was to protect them from these two dangers and preserve their tribal customs; and this was achieved by prescribing special procedures applicable to these backward areas."

During the framing of India's Constitution, various sub-committees were set up by the Advisor on fundamental rights and minorities to study the position of the excluded and partially excluded areas. The Committee which studied the position of the Scheduled Tribes in East and West Godavari agency areas expressed the view:

"The Tribes inhabiting these tracts are Koya, Koya Dora, Hill Reddy, Dombo, Kondh and others. The tribes are pretty backward on the whole and do podu (shifting cultivation) largely. Except manual labour, they have no non-agricultural occupations worth mentioning. There are special agency rules and save for certain sections, the Civil Procedure Code does not apply. Crime is scarce and the aboriginals are simple and truthful. The mechanism of justice therefore needs to be a simple one.

There are no local self-governing bodies and Tribal Panchayats do not seem to be fit for work other than the decision of petty disputes. The toddy palm plays a large part in the life of aboriginals. They have suffered in the past through exploitation by money-lenders and landlords and incidents like the Rampa rebellion have occurred in the areas. Licensing of money-lenders, as agreed by the Collector of West Godavari, is probably a definite need of these parts in addition to the prevention of acquisition of land by non-aborigines."

In the Constituent Assembly, when the provisions relating to the administration and control of the scheduled areas and Scheduled Tribes were taken up for consideration, Dr. K. M. Munshi, a member of the Drafting Committee, in his reply said:

"We want that the Scheduled Tribes in the whole country should be protected from the destructive compact of races possessing a higher and more aggressive culture and should be encouraged to develop their own autonomous life; at the same time, we want them to take a larger part in the life of the country adopted. They should not be isolated communities or little republics to be perpetuated for ever."

13. Adverting to the question as to the application of laws enacted by Parliament and the State Legislature to the scheduled areas, Dr. Munshi said :

".....an Act of the Parliament or an Act of the State Legislature would straightway apply to the scheduled area, but if the Governor thinks that in the interests of the tribals, certain sections of such an Act should not apply, he should be free to decide."

14. In the exercise of his discretion, the Governor, according to Dr. Munshi, is bound by the advice of the Council of Ministers. The debate was> closed by Dr. Ambedkar, the Chairman of the Drafting Committee, observing:

"Mr. Munshi has said everything that was needed to be said and I do not think I can usefully add anything."

15. From a conspectus of the provisions concerning the scheduled areas and the legislative history, it is fairly clear that for over 125 years the scheduled areas have been treated differently. The tribals inhabiting the scheduled areas needed special protection. Their way of life, their social structure and primitive living made them unfit to be governed by ordinary laws to a great extent.

But at the same time, it was not intended that for ever these scheduled areas should remain permanent isolated tracts cut-off from the mainstream.

16. The 1994 Act, at the time of its enactment, was made applicable to the entire State of Andhra Pradesh except the local areas referred to in Cls. (a) to (e) of subsection (2) of S. 1. The scheduled areas were not excluded from its operation. Therefore, the question of extending that enactment without any modifications once again to the scheduled areas by the Governor under paragraph 5(1) of the V Schedule would not arise. An Act of Parliament or of the State Legislature can be extended to a scheduled area by the Governor under paragraph 5 (1) of the V Schedule by public notification "subject to such exceptions and modifications as he may specify in the notification." In its entirety, if an Act is to be made applicable to the scheduled areas, there is no necessity for the Governor to issue a notification under paragraph 5(1). The intention of the Constitution makers as explained by Dr. K. M. Munshi in the Constituent Assembly is that when an Act is made by Parliament or the Legislature of a State, it would straightway apply to the scheduled areas but if the Governor thinks that in the interests of the tribals, certain parts of the Act should not be "made applicable, he should be free so to decide. Viewed from this perspective, the notification issued by the Governor in G.O.Ms. No. 123 dated 8-3-1995 under sub-paragraph (1) of paragraph 5 of the V Schedule extending the application of the 1994 Act to the scheduled areas without any modifications with retrospective effect from 30th May, 1994 is of no consequence at all.

17. Although, the substantive power of the State Legislature to enact a law with respect to the Panchayats is traceable to Art. 246 read with Entry 5 of List II of the Seventh Schedule to the Constitution, that power has no overriding effect vis-a-vis the provisions of Part-DC of the Constitution. As already noticed, by virtue of the mandate contained in Part-IX of the Constitution, the Andhra Pradesh State Legislature enacted the 1994 Act. Practically, the whole gamut of the Panchayat Raj structure is covered by Part-IX. No State law, which is inconsistent with any of the provisions of Part-IX can survive for more than a maximum period of one year. So far as the scheduled areas are concerned, there is a specific injunction by Cl. (1) of Art. 243-M that nothing in

Part-IX shall apply to the scheduled areas. It necessarily means that no law concerning the Panchayat Raj institutions as articulated by Part-IX of the Constitution can apply to the scheduled areas. The only exception to this embargo is if Parliament, by law, extends the provisions of Part-IX to the scheduled areas and this is made explicit by sub-clause (b) of Cl. (4) of Art. 243-M.

17A. The contention advanced for the State that until Parliament enacts a law under Art. 243-M(4)(b), the State Act must hold the field does not merit acceptance in the face of the clear and unambiguous prohibition contained in Art. 243-N(l) and 4(b). This is not a case where the doctrine of occupied field comes into play -- that principle applies only when there is a clash between Union legislation and provincial legislation within the area of common path. Abstinence of Union Parliament from legislating under Art. 243-M(4)(b) could not have the effect of transferring to the Andhra Pradesh State Legislature, the legislative power assigned to Union Parliament by Art. 243-M(4)(b). There cannot be anything like inter-delegation of legislative power between Union Parliament and State Legislatures, and no contention, even remotely suggestive of a situation leading to such a consequence can be countenanced.

18. There is no question of operating incompatibility between a State law and Union law in the present context. The Union has not made any law under Art. 243-M(4)(b) extending the operation of Part-IX to the scheduled areas and there is clear prohibition in regard to the application of Part-IX to the scheduled areas in Art. 243-M(I).

19. The Constitution being the paramount law and the mechanism under which laws are made, the validity of the laws must necessarily be tested on the touch-stone of the Constitution. The well known speech of Lord Selborne in the Privy Council in R.V. Burah (1878) 3 AC 889 is worth noting in this context:

"The established Courts of Justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly do so, is by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which, negatively, they are restricted."

This principle still holds the field. The cardinal rule of interpretation as ruled by the Supreme Court in Navinchandra v. Commr. of I.-T., Bombay, is:

".....words should be read in their ordinary, natural and grammatical meaning subject to this rider that in construing words in a constitutional enactment conferring legislative power, the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude."

20. The learned Advocate-General has strongly relied upon the ruling of the Supreme Court in Chief Justice, A.P. v. L. V. A. Dikshitulu, in support of his contention that the power of the Governor under paragraph 5(1) of the V Schedule will prevail vis-a-vis Part-IX of the Constitution. We do not agree. Paragraph 5(1) of the V Schedule begins with a non obstante clause -- the power of the Governor to extend, by notification, any Act of the Union or State to the scheduled area is

notwithstanding anything in the Constitution. This provision relating to the power of the Governor to apply an enactment to a scheduled area cannot have overriding effect vis-a-vis the express injunction contained in Article 243-M(1). While the Prohibition with regard to the application of Part-IX to the scheduled areas is explicit in Art. 243-M(1), the power of Parliament to extend, by law, the provisions of Part-IX to the scheduled areas is notwithstanding anything in the Constitution. Reading injuxtaposition, the provisions of Article 243-M(l) and (4) with sub-para-graph (1) of paragraph 5 of the V Schedule we are inclined to hold that in respect of matters other than those covered by Part-IX of the Constitution, the power of the Governor under paragraph 5(1) of the V Schedule remains in tact; so far as the matters covered by Part-IX are concerned, the Governor has no power to act under paragraph 5(1) of the V Schedule.

21. Apart from being a harmonious construction, this interpretation also accords with one of the accepted canons of statutory interpretation later law prevails over the earlier. Part-IX being later in point of time, speaks of the last intention of the constituent power of the Union Parliament.

22. The precedent cited -- Dikshitulu's 9ase (supra) -- bears no -analogy to the question at issue. In Dikshitulu's case (supra), interpreting Art. 371-D of the Constitution and the Andhra Pradesh Administrative Tribunal Order, 1975, the Supreme Court held that the phrase "Civil Services of the State" when construed in its strict narrow sense in harmony with the basic constitutional scheme concerning the independence of the judiciary and the control of the High Court over subordinate judiciary, will not take in the High Court staff and the subordinate judiciary. Speaking for the Constitution Bench, Sarkaria, J., restated the well accepted canon of interpretation:

"If the language or the phraseology employed by the legislation is precise and plain and thus by itself proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean, or evocative or can reasonably bear meaning more than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent."

23. The learned Advocate-General has endeavoured to impress upon us that the tribals livingin the scheduled areas should not be deprived of the benefits of the Panchayat Raj system -- functioning of democracy at the grass-roots -- and so this Court should not make the 1994 Act inapplicable to the scheduled areas. How a public purpose should be promoted and by what means and methods are all matters for legislative determination. As observed by Cooley:

"The judiciary can only arrest the execution of a statute when it conflicts with the Constitution. It cannot run a race of opinions upon points of right, reason and expediency with the law-making power, nor can it consider the motive which inspired the passage of a statute in determining the question of its validity."

What is not expressed in the Constitution cannot be brought in by judicial intelpreta-tion in the name of public good or the spirit of the Constitution. "The organic law is not a mirror in which one sees what one wants to see..... Reading things out of the Constitution in order to bring the document into line with a theory seems no more defensible than reading things into the Constitution for the

same reason."

24. Judicial legislation for supporting any particular theory or philosophy in order to perpetuate a state of affairs, which, according to the perceptions of the Judges would be in public interest, but without foundation in the Constitution, is plainly forbidden. When we say this, we are conscious of the fact that judges do and must legislate but they could do so only interstitially; they are confined from molar to molecular motions. "

25. It was urged, lastly, by the learned Advocate-General that even the Committee of Members of Parliament headed by Sri Dilip Singh Bhuria has recommended that the pattern contained in the Constitution (73rd Amendment) Act should be adopted for districts and scheduled areas and, therefore, the 1994 State Act must be allowed to operate in the scheduled areas. We do not agree. In the adjudication of the question at issue, the recommendations of the Committee have no bearing even otherwise, judging from a factual point of view, the contention does not appear to be correct. The Ministry of Rural Development, Government of India constituted a Committee to "make recommendations on the salient features of the law for extending the provisions of Part-IX of the Constitution to the scheduled areas." The Committee has expressed the view, inter alia, that most of the tribal societies in India have been practising democracy and "cognizance has to be taken of their indigenous-institutions and ethos while considering democratic decentralisation in tribal areas." (vide page 26 of the Report). The Tribes Advisory Council envisaged by the V Schedule as a consultative body at the State level, it was recommended by the Committee, "needs to be reformed to make it an effective and functional organisation." What is more important is that the Committee in clearer terms held :

"The concept of a Panchayat at village level may fit in well for non-tribal areas, since villages there are generally large. But in tribal areas, with mostly hilly topography, the villages are usually scattered and population-wise small. These small villages or hamlets are known as 'Tolas' in some areas. But a small village or group of hamlets or habitations may have its own Gram Sabha. The Gram Sabhas should be allowed to exercise their customary traditional role unhindered."

The District level Panchayat, the Committee recommended, may be called the 'autonomous District Council' on the pattern of the autonomous District Councils contained in the VI Schedule to the Constitution in the States of Assam, Meghalaya, Mizoram and Tripura. The Committee expressed satisfaction, that the provisions of the VI Schedule have fulfilled the ethnic aspirations of the tribal communities. What we have referred to illustratively as the recommendations of the Committee of Members of Parliament, are sufficient to hold that the pattern of the future law to be enacted by Parliament as recommended by the Committee of. Members of Parliament is, to a large extent, at variance with the pattern contained in Part-IX ot the Constitution.

26. For these reasons we hold that the application of the Andhra Pradesh Panchayat Raj Act, 1994 (Act 13 of 1994) to the scheduled areas in the State is clearly unconstitutional. Accordingly, allowing the writ petition, we declare that the Andhra Pradesh Panchayat Raj Act, 1994 (Act 13 of 1994) has no application to the scheduled areas in the State of Andhra Pradesh and consequently, elections under the said Act could not be held in the scheduled areas. A writ will issue accordingly. No costs.

27. Order accordingly.