MADHYA PRADESH PANCHAYAT RAJ EVAM GRAM SWARAJ ADHINIYAM 1993

er s, heis, the ey toss or uz crept M.P. PANCHAYAT RAJ & GRAM SWARAJ Acr, 1993. SUPPLEMENT - MAY, 2015 THE MADHYA PRADESH PANCHAYAT RAJ AVAM GRAM SWARAJ (SANSHODHAN) ACT, 2014 (M.P. Act 23 of 2014) [Pub. in M. P. Gaz. (Ext. Ord.)" , dt. 30-120014, pg. 1280(1). Came into force from 29-10-2014 by M.P. Ordinance 10 of 2014.1 In Section 36, on book page (PA)71 & 72,' in sub-section (1),- (i) after clause (cc), the following clause inserted, namely:- "(cd) has any dues, payable to the Madhya Pradesh State Electricity Board or its successor companies, standing against him name for a period exeeeding six months on the first day of the month in which the election has been notified; or"; (ii) clause (h) shall be omitted. M.P. GRAM PANCHAYAT (REGISTRATION OF COLONIZER, TERMS AND CONDITIONS) RULES, 1999 Given on. book page (PR)459, are repealed by the following new Rules:- MADHYA PRADESH GRAM PANCHAYAT (DEVELOPMENT OF COLONIES) RULES, 2014 CHAPTER - 1 Preliminary Short title, extent, commencement and application

1. Definitions

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14. Depositing of Shelter Fee.IV(ii) 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. M.P. PANCHAYAT RAJ & GRAM SWARAJ ACT. 1993 Sale of Plots Reserved for Economically Weaker Sections and Lower Income Groups. Mechanism for Mortgage of Plots [Dwelling Units. Removal of difficulties in determining guideline rates. General Conditions. Period for completion of the internal development works of the colony. Release of Mortgage. CHAPTER-IV Management of Illegal Colony Management of the colony. Relaxation. Interpretation. Repeal. MADHYA PRADESH GRAM PANCHAYAT (DEVELOPMENT OF COLONIES) RULES, 2014 frc 20 gil Notfn. Ng. F-16-11 / 2013/22 IP-2, dated 24-12-2014, Pub. in M.P. Raj- patra (Asadharan), dated 24-12-20_14, p. 1254(20).-1n of the..: powers conferred-by sub section (1) of section 95 read with section 61-A to 61-E of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj - Ad- hiniyam, 1993 (No. 1 of 1994), the State Government hereby, makes the following rules, the same having been previously published in the Madhya Pradesh Gazette (Extra- ordinary) dated 1st March, 2014 as required by sub-section (3) of section 95 of the said Act, namely:— CHAPTER - 1 Preliminary 1. Short title, extent, commencement and application.--(l) These Rules may •be called' the Madhya Pradesh Gram Panchayat (Development of Colonies) Rules, 2014. (2) They shall extend to the entire State of Madhya Pradesh. (3) They shall come into force with effect from the date of their *Vublication in the Madhya Pradesh Gazette. (4) These Rules shall be applicable to the Gram Panchayat areas of Madhya Pradesh

2. Definitions.-ln these rules, Unless the context otherwise re- quires,— (a) "Act" means -tlféMådhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (No. 1 of 1994); (b) "Additional shelter fee" means the fee levied and collected in lieu of tnaintenance of external development work; (c) "Competent Authority' means in those district, in which constituted Municipal Corporation is existed, the Collector of those district and Sub Divisional Offcer (Revenue) for other districts in their jurisdiction; C d 33 IV(iii) M.P. PANCHAYAT RAJ & GRAM SWARAJ ACT. 1993 Sections and ;es. (d) "Economical Weaker Section" means group of such class of persons who are notified by the state government by a specified gazette notification from time to time. fte Madhya Pradesh Gazette notification dated 15 July 2014 has fixed annual income for EWS as under:— porks of the EWS — Income of Rs. 1,00000 (One Lac) Per family per year. (e) "External development work" means the development work as given below:— (i) (ii) (iii) (iv) Construction of new road between the outer limit of colony and existing road of village (minimum width 3.75 meters carriage way and 6 meter road way for a colony less than 2 hectares in area. For others 7 meters divided carriage way and a shoulder of 1.8 meters on either side of the road). Re-construction and widening of existing road connecting the outer limit of the colony to the main road (minimum width 3.75 meters carriage way and 6 meters road way for a colony less than 2 hectares in area. For others 7 meters divided carriage way and shoulder of 1.8 meters on either side of the road). Laying electric line from the limits of the colony to the existing electrical energy point. Connecting existing underground sewerage, if any with the sewerage System -of the colony: Provided that the execution of the above development work shall be done by the Colonizer in cömpliance with the prescribed standards. :ise of the ion 612A to waraj Ad- makes the te Madhya by (1) These •elopment of their areas of wiÉö *Fe- n Gram n lieu of stituted and Sub 1; (D "Family" means a basic social unit consisting of parents and their minor children, considered as a group, whether dwelling together or separately. (g) "Floor Area Ratio" (FAR) means the quotient obtained by dividing the total covered area (plinth area) on all the floors by the area of the plot; (h) "Form" means forms appended to these rules; (i) "Group Housing" means Housing for more than one dwelling unit, where land is owned jointly (as in the case of co-operative societies or the public agencies, such as local authorities or housing boards, etc.) and the construction is undertaken by one Agency. (i) "Internal development work" means the development work to be done within the limits of the colony as per the prescribed standards as given below:— (i) (ii) (iii) (iv) (v) (vi) Levelling; Démäréätion of the proposed roadé and plots sanctioned in the layout; Construction of proposed roads including widening of the exist: ing road (as per the IRC standards); Construction of culverts fas per the IRC standards); Construction of proposed drains (as per the MPPHE standards); Mandatory constriction of overhead water tank if the area of the colony is more than 2 hectares and construction of sump tank in case the area of the colony is more than 1 hectare but less IV(iv) (vii) (viii) (ix) (x) (xi) M.P. PANCHAYAT RAJ & GRAM SWARAJ ACT. 1993 than 2 hectares; Construction of internal water system (as per the the MPPHE standards); conl Construction of internal sewage line and septic tank if proposed cur: (as per the MPPHE standards); colli Fixation of electric polls etc. under the internal electricity sys- tem (as per the MPEB standards); Laying of cables for internal electrification (as per the MPEB standards); Plantation along the road side, development of children playground with 4.5 feet high boundary wall; vai for: co.: Til (k) "Lower Income Group" means group of such class of persons who are notified by the state government by a specified gazette notification from time to time. The Madhya Pradesh Gazette notification dated 15 july 2014 has fixed annual income for LIG as under :- LIG - Income of Rs. from 1,00001 (Rs. one lac one) to 2,00000 (Rs. two lac) per family per year. (l) "Raw Land" means such Land for which the permission has been issued to the colonizer for development. (m) "Saleable residential area" means the-total area ofresidential plots developed of to bé de+eloped or the total built up area of residential units constructed or to be constructed, for which a Layout has been approved by the Competent Authority; (n) "Shelter Fee" means fee levied and collected in lieu of the reserva- tiöii of land or floor area as the case may be, determined on the basis of the rates notified by the State Government; (o) "Sub-Divisional Officer (Revenue)" means the Sub-Divisional Of. ficer appointed under the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959); (p) "Shelter Fund" means the amount of fund received under the provisions of these rules. CHAPTER - 11 Registration 3. Registration of Colonizer.-(l) Any person who intends to develop a colony in any Gram Panchayat Area shall apply to the Competent Authoritx for in

Form-I appended to these rules accompanied by documents mentioned therein and å copy of the receipt for having deposited the registration fee in concerning district Panchayat-shelter fund. (2) The application for registration shall be decided by the Competent Authority within a period of sixty days. In case the application is rejected, the reasons for such rejection shall be intimated in writing. (3) Any person aggrieved by the rejection of an application made under sub-rule (1) may file an appeal before the Divisional Commissioner within thirty days from the date of such rejection. 993 4 IV(v) M.P. PANCHAYAT RAJ & GRAM SWARAJ Acr,• 1993 (4) The registration certificate shall be issued in Form-2 appended to n (as per th hese rules. The Competent Authority shall have -power to impose other • IGditions with the consultation of the State Government in special cir- Ink looking to the local circumstances, apart from the terms and Cconditions as mentioned in these Rules or.the Act. Aectricity sys-)-er the MPEB , of children persons who notification dated 15 july 000 (Rs. two on has been lential plots ential units ipproved by he reserva- basis of the 'isional Of- , 1959 (No. under the bo develop bmpetent t shelter mpetent rejected, under r within (5) The registration certificate, unless revoked earlier, shall remain valid for a period of five years, thereafter on application, it may be renewed for a further period of 5 years by payment of renewal fees. During the validity of the registration, the Colonizer shall be authorized to develop colonies in accordance with the provisions of the Act or Rules made there under, within any Gram Panchayat Area of the district

4. Registration fee.-The registration fee shall be Rs. 50,000/- (Rupees Fifty Thousand), and renewal fee shall be Rs. 10,000/- (Rupees Ten Thousand), which shall be deposited in the Shelter fund of the conceming Zila Panchayat

5. Disqualification for registration.-No person shall be eligible for registration if: (I) (1) he has been convicted of an offence punishable under— (a) Section 420 of the Indian Penal Code, 1860 (45 of 1860); (b) The Protection of Civil Rights Act, 1955 (No. 22 of 1955); and (c) Prevention of Money Laundering AZt, 2002 (No. 15 of 2003); (2) he has been adjudged to be of unsound mind by a Competent Court. (3) his registration had been earlier revoked under these rules. (4) If he has been adjudged bankrupt/insolvent by a competent Court. (11) No such person as mentioned in sub- rule (1) above, shall be a partner of the firm of a Colonizer or a Director of the Society or a Company, whcMwhich has applied for registration

Form-3 appended to these rules both in omce and online to be put in public domain, wherein the full details of the registration certificate shall be entered together with terms and conditions. The registered colonizer shall intimate the Competent Authority, in the case of any change in material particulars furnished at the time of registration

7. Cancellation of Registration any colonizer • starts the development work of the colony or sells the plots without obtaining .permission under mle 9 or in éf the terms and conditions of permission granted or has furnished incorrect particulars at the üme of ,gegistration has subsequentlyincurredmy, disqualification or violated any provision of the Act or of the Rules, the Competent Äuthority may wilhout prejudice to its lights to take such other legal action as may be considered appropriate in the circumstances of the case, and after recording reasons in writing, cancel the registration ceråficate and communicate the same to the concerned colonizer: Provided that no registration certificate shall be cancelled unless a reasonable opportunity of being heard has been provided to the colonizer. IV(vi) M.P. PANCHAYAT RAJ & GRAM SWARAJ ACT, 1993 8. Appeal.-Anv Colonizer aggrieved by the order of cancellation passed under decticn 7, may prefer an appeal before the Divisional Com. missioner within thirty days from the date of the order. CHAPTER - 111 Permission for Development of Colony 9. Application for the development of the colony and license fee.-(l)• V,mere a registered Colonizer intends to develop any colony and take up development work, he shall submit an application in

Form-4 to the Competent Authority. (2) The fee for the permission of development of the colony shall be payable at the rate of Rs. 10000/- (Rupees Ten Thousand) per hectare. (3) The fee shall be deposited by the Colonizer in the shelter fund of the concerned Zila Panchayat and a photo copy of the receipt shall be enclosed as proof of payment with the application. (4) The Competent Authority may ask applicant to furnish such documents or information, as it may consider necessary keeping in view the facts and circumstances of a particular case. (5) The Competent Authority shall reject the application if the requisite fee is not deposited and required documents are not furnished or are not i in order. (6) The -Competent Authority Shall- decide the application within sixty days from the date of presentation thereof: Provided that the period taken_4 to obtain the additional documents cr information shall be excluded from the pez•iod of sixty days. In the case of reJection, the reasons thereof shall be communicated to the applicant in writing and 90% of the registration fee shall be refunded. (7) Ihe Competent Authority shall, after ensuring the compliance with the provisions of rule 10, 11 and 16 grant the permission in Form-5 to develop colony. The authority may impose such conditions as it may consider appropriate. (8) If the applicant does not receive any information from the Com- petent Authority regarding disposal of the application within the period specified in sub-rule (6) above, he shall bring this fact to notice of the Competent Authority by a letter in writing. In case the Competent Authority does not issue any order within 15 days from the date of receipt of such letter, the permission shall be deemed to have been granted.

IO. Lay out of proposed colony.-(l) Where the proposed colony to be developed, is situated in any Planning Area constituted under the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (No. 29 of 1973), the application undernlle 9 shall be accompanied by an approved layout in Förm-6 appended to these rules as provided in Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (No. 23 of 1973), and Madhya Pradesh Bhoomi Vikas Niyam 2012. (2) Where the land proposed to be developed is situated outside any planning area constituted under the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973, the Sub-Divisional Offcer (Revenue) shall seek the opinion of the Competent Authority of concerned Town and Country or of t) d t) t: c c r '993 of cancellatio 'ivisional Com! ' and license ny colony and Form-4 to the! nony shall be r hectare. er fund of the 11 be enclosed furnish such ping in view f'the requisi- ed or are not within sixty »eriöd taken cluded from hereof shall reøstration bliance with the Com- the period tice of the hmpetent of receipt ated.)lony.to be e 1573), the lay*At. in any ha Gram hall seek Country M.P.•PANCHAYAT RAJ & GRAM SWARAJ ACT, 1993 IV(vfi) Planning authority. Only after receipt of affirmative opinion the diversion order of the said land under section 172 of the Madhya Pradesh Land Revenue Code, 1959 (No. 20 bf 1959) shall be issued. After the approval of layout and issuance of diversion order, the building permission shall be granted by the Offcer having Jurisdiction under clause (B) of sub-rule (5) of rule 2, ofthe•Madhya Pradesh Bhoomi Vikas Niyar.n, 2012

11. Provision of plots or dwelling units for Economically Weaker Income Groups.-(l) Colonizer, in case of developed plots, shall resemze 6% of the saleable area for EWS and LIG (3% each for EWS and 3% for LIG) and in case of dwelling units 6% of the total built up area shall be kept reserve for EWS and LIG (3% for EWS and 3% for LIG). If the total area of a colony is less than 2 hectare, colonizer shall reserve developed plots/dwelling units as the case may be for EWS/LIG in the same colony. However if the total area of colony exceeds 2 hectare, 6% developed plots/ dwelling units may be kept reserved for EWS/LIG within the radius 2 kilometre from the main campus in lieu of reserving them in the sa.me campus. However such permission shall be obtained by the colonizer at the same time of obtaining license for the development of the colony/ construction of the houses. (2)ZThe• area: of developed i)lotk•- built area- of dwelling-unifs reserved for economically weaker sections and lower income groups under this rule,- shall be as under: (i) For economically weaker sections- Developed Plots 35 to 40 Square Meters Dwelling Units 25 to 85 Square Meters (ii) For the lower income groups. Developed Plots 41 to 96 Square Meters - Dwelling Units 36-to 48 Square Meters 12. Shelter Fees.-(l) Where the land use of the area on which colony is being developed, in the applicable development plan prepared under the provision of the Madhya Pradesh Nagar Tatha Gram NiveshAdhiniyam, 1973 (No. 23 of 1973) is such that the plot size prescribed for the economi- cally weaker sections and lower income groups is not perrnissible, the Shelter Fee shall be applicable. (2) Where the development of the colony is on a land which has been leased out to the colonizer by the State Government and the lease condi- . $ionsdo not permit for-construction ofdweliing units or providing plots for economically weaker sections and lower income groups,- the Shelter Fee _ehall_be applicable. (8) In case a colonizer does not reserve plotJbuilt up house for the

economically weaker section/ low income group persons, shall have to deposit shelter fee as under:— (i) In case of a colony is having plots on developed land, such. undeveloped land/raw land as the case may be, a colonizer shall have to deposit shelter fee 6% of raw land as per the Collector guideline rate and Rs. 5000 per square metre for cost of develop- IV(viii) M.P. PANCHAYAT RAJ & GRAM SWARAJ ACT. 1993 ment. (ii) A colonizer shall have to deposit, in case of undeveloped land for dwelling units/raw land, '6% of raw land as per the Collector guideline rate and Rs. 5000 per square metre for development charges and Rs. 10000 per square metre for cost of construction on 6% of total constructed area

13. Additional Shelter Every colonizer shall deposit addi- tional shelter fees for the maintenance of external roads, drainage and sewage system.(2) In the case of a plotted colony, the total area of residential plots in square metres and the Product of the total perrnissible floor area ratio at the rate of Rs. 100 per square metre. (3) The Colonizer shall deposit additional shelter fees, in the case of a group housing colony, the product of the total permissible built-up area in square meter at the rate of Rs. 100 per square metre

14. Depositing of Shelter Fee.-(l) The shelter fee prescribed under rule 12 and 13 shall be deposited by the colonizer in the shelter fund of the concerned Zila Panchayat. Every Zila Panchayat' shall maintain separate account for the amount so deposited and however, the State Government may further direct the manner in which the funds may be utilized. (2) For the calculation of shelter fee, the guideline- rate determined by'" Collector shall be the rate prevailing on the date on which a colonizer submits application to the Competent Authority for grant of permission for development of colony

15. Sale of Plots Reserved for Economically Weaker Sections and Lower Income Groups..The plots/dwelling units reserved for the Economically Weaker Sections and Lower Income Groups shall be sold by the colonizer in the following manner:— (1) The Colonizer shall invite applications from persons belonging to - the Economically Weaker Sections and Lower-Income Groups, who do not own any house or residential plot (except the residential plot in the abadi land of village) anywhere in Madhya Pradesh in his name or in the name of any of his family members. (2) The Persons belonging to Economically Weaker Sections/Lower Income Groups interested in such PlotsDwelling units, shall submit ap- plications along with the self declared certificate of having domicile of Madhya Pradesh accompanied by a duly self declaration in Forrn IO appended to these Rules, declaring that neither he nor any member of his family own any house/plot either in his name Or in the name of any of his family member-anywhere in a rural-area of Madhya Pradesh. (3) The Colonizer shall send the name of such eligible Economically Weaker Section/Lower Income Group applicants to Collector for buying plot/dwelling unit under the rules, along with a copy of the documents. The Collector shall give acknowledgement of receipt. The Collector shall scrutinize these applications within 80 days of the receipt thereof and satis& him-self with the eligibility of applicants and shall furnish the final list of persons found eligible for Economically Weaker Section/Lower In- come Group plots/dwelling units to the colonizer. the dw dec ine of: tio ho pil mi fu fu ca ra re -d t] s ped land for te Collector evelopment onstruction addi- ainage and ial plots in •ea ratio at e case of a •up area in bed under und of the separate vernment ed. rmined by colonizer lission for Sections 'd for the sold by onging to ho dO not abadi he name is/Lower bmit ap- nicile of ?orm 10 eM)ffiS ay of,his mically Shall eof and he final wer In- M.P. PANCHAYAT RAJ & GRAM SWARAJ ACT, 1993 IV(ix) (4) In case the Collector does not pass order on the list submitted by the colonizer within 30 days, the colonizer shall be free to sell plots or dwelling units to persons included in the list and execute necessary sale deeds in their- favor. (5) Ifthe colonizer is found to have allotted the plots/ dwelling units to ineligible persons or more than one plot or dwelling unit to the members of same family, the colonizer shall be liable for cancellation of his registra- tion certificate apart from penal aetion

16. Mechanism for Mortgage of Plots [Dwelling Units.-The Colonizer shall mortgage plots with Competent Authority as hereunder: (1) Where the colony has been developed as a plotted colony or group housing or with dwelling units, 25 percent of the total number of developed plots and/or 25 percent of such dwelling units, as the case may be, shall be mortgaged with the concerning District Collector. (2) The documents necessary for executing the mortgage deed shall be fumished by the Colonizer at his own cost and the particulars shall bé fumished to the District Registrar

17. Removal of difficulties in determining guideline rates.-ln case any difficulty arises in determining the cost on the basis of guideline mates meotiqned- in-any -provision-under these referred to the Collector

and his decision thereon shall be final. In areas where guideline rates of residential plots or built upresidential houses are- - not available, the Collector shall prescribe the rates taking into considera- tion the rate of the nearest area

18. General Conditions.-(l) The Colonizer shall hand over external roads, drainage and sewage system to the Gram Panchayat and the Gram Panchayat shall maintain the same. (2) The Competent Authority shall also issue an order in Forrn-9 appended with these rules directing that the colony- be -transferred-imme• diately to the Resident Welfare Association for its maintenance: Provided that when the permission of development has been granted phase-wise, the Completion Certificate shall be issued phase- -wise

19. Period for completion of the internal development works of the colony.-(l) The Colonizer shall complete the internal development within a period of three years from the date of grant of the permission of development of the colony as prescribed ih rule 9. (2)' Ifthe Colonizer does mt completéthe Work of development within .the period specified in sub-rule GI) above, the Competent- Authority who - granted permission -shall -direct-the COIöriiiér to 06mÉlete -the work of development of plots or dwelling units mortgaged under rule 16 may be sold by the Competent Authority by inviting sealed offers/auctions and the amount so obtained may be utilized for completing the works: Provided that no action shall be taken by the Competent Authority, unless the Colonizer so affected has been given a reasonable opportunity of bGng heard

20. Release of Mortgage.-The Colonizer shall submit the report of com- pletim of the development work of the colony to the Competent Authority and w. IV(x) M.P. PANCHAYAT RAJ &.GRAM SWARAJ ACT, 1993 the concerned Gram Panchayat. On of the report of completion of the work, the Competent Authority shall inspect or cause to be inspected of the colony jointly with the representatives of Gram Panchayat within thirty days of receipt of such IV)rt. If on such_inspection it is found that the external and internal development works are completed, Economically Weaker Section and Lower Income Group plots/dwelling units have been developed and allotted, the Competent Authority shall issue a completion certificate in Form- no. 7 appended to these rules and release the mortgaged property in respect of the plots or the dwelling units by issuing the order in

Form-8 appended to these Rules. CHAPTER-IV Management of Illegal Colony 21. Management of the Colony.-(l) If the fact of transfer or agree- ment to Otransfer plots made by the Colonizer in an area or illegal diver- Sion or illegal colonization comes to the notice of the Competent Authority, he shall immediately take over the management of such land and issue notice and publish the same in at least two daily Hindi news papers circulated in the jurisdiction of the district under which the Gram Panchayat falls and call upon all the persons interested in the said land to show cause within such period, as may be specified therein, as to why the management of the said colony should not be taken over by the Competent Authority. (2) On the expiry of the period specified in the notice, the Competent Authority shall consider the objections or suggestions, if any, received with reference to the notice and if he considers necessary, require any such person who has raised any objection, to appear either in person or through authorized representative with all the relevant documents for hearing. (3) rn•le Competent Authority after hearing the parties, may make such further inquiry in the matter, which he may think proper and may,— (i) drop the proceedings if he is satisfied that the -land is not subjected to illegal diversion or illegal colonization; (ii) takeover the management of the land, if he finds any illegal diversion or illegal colonization thereon; and where the management of land is taken over in the manner prescribed above, the Competent Authority shall prepare a scheme for the develop- ment and delivery of such land to the plot holders, if any, and the scheme so prepared shall be published for the infolination of general public in such a manner, as he may deem fit. (4) The expenses incurred by the Competent Authority on the manage- ment ofthe land shall be included in the development charges ofthe land and Shall be recoverable on pro-rata or on any fair basis from the persons to whom the plots have been allotted under the scheme. (5) Competent Authority shall take action against employees under section 61-E and 61-EA of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (No. 1 of 1994)

22. Relaxation.-Nothing in these rules shall be construed to limit or abridge the power of the State Government to deal with any case to which these favoul 29 these the D final. Colon repea respo. [For 1254(2015, NEVI 1. patrt patr' 1 patr(1 ca date C(s nmpletion of be inspected Hayat within s found that @conomically s have been completion release the s by issuing er or agree, legal diver- Authority, and issue ms papers the Gram ;aid land to to why the Competent Competent :eived with any such or throuÉh hearing. make such nd iS not my illegal)rescribed develop- ne scheme lic in such manage- land and to i*hom mployees ayat Raj) limit or to which M.P. PANCHAYAT RAJ & GRAM SWARAJ ACT, 1993 IV(xi) these rules apply in 51.1Ch a mariner, as may eppear to be just and equitable: Provided that the case shall not be dealt within any manner less favourable than those provided in these rules

23. Interpretation.-lf any question arises as to the interpretation of these rules, the same shall be referred to the Government. The decision of the Department of Panchayat and Rural Development thereon, shall be final

24. Repeal.-The Madhya Pradesh Gram Panchayat (Registration of Colonizer, Terms and Conditions) Rules, 1999. shall stand repealed: Provided that anything done or any action taken under the rules so repealed, shall be deemed to have been done or taken under the cor- responding provisions of these rules. Forms not reproduced. [For text of forms, see M.P. Gaz. (Asadharan), dated. 24-12-2014, p. NEW RULES — MADHYA PRADESH GR.AMN NAL JAL PRADAY YOJANA SANCHALAN EVAMSANDHARAN NIYAM, 2014 For neo-Rüies, see Notfn. Nb. •F-16-2>oiD-m1-P.9, dated 2ö-i-2015, Pub. in M.P_. Rajpatra (Asadharan), dated 20-1-2015, p. 56(3). NEW AMENDMENTS IN RULES — MADHYA PRADESH PANCHAYAT NIRVACHAN NIYAM, 1995 As arnended subsequently by following new amending notifications:- [Notfn. No. F. 2E10014-,w11-P2, dated- 11-9-2014, Pub. in ME-RaF patra (Asadharan), dated 11-9-2014, p. 845.] [Notfn. No. F-16-1-2015-nJ1-P-2, dated 23-1-2015, Pub. in M.P. Raj- patra (Asadharan), dated 23-1-2015, p. 80(1)]. Notfn. No. F 2-1-2015-XXII-P-I, dated 19-2-2015, Pub. in M.P. Raj- patra (Asadharan), dated 190-2015, p. 152(1). In rule 31-A, on book page (PR)50, after sub-rule(3), new sub-rule (8-a) inserted [Notfn. dated 19-2-2015] :- go-a) The Candidate Shall algo Submit a copy of "No dues Certifi- gate" ,issued by the Panchayat •in the form prescribed by the -State b•.EIection-CommissiOn- alöngwith the nominatio-n paper"; .1n rule 77, on book page (PR)76, sub-rule (2) substituted [Notfn. dated 23-1-2015]:- "(2) After the counting of votes in respect ofa polling station has been completed, the Returning Offcer or such other officer authorized by him :shall 'make the entries in part-one of

form 16, 17, 18 and 19 of the result [asheet for Panch, Sarpanch, members of Janpad Panchayat and Zila rePanchayat respectively and announce the total number or votes polled IV(xii) M.P. PANCHAYAT RAJ & GRAM SWARAJ ACT, 1993 by each candidate." In rule 80, on book page (PR)79, sub-rule (8) substituted (Nötfn. dated 23-1-20151:- "(8) The Returning Offcer, on receipt of result. sheets under sub-rule (7) shall enter or cause to be entered the total number of votes polled by each candidate contesting for a seat of Panch, Sarpanch, member of Janpad Panchayat or member of Zila Panchayat at each polling station of the concerned constituency in subsequent part or parts of form 16, 17, 18 and 19 respectively and complete and sign the result sheet."; In rule 81, in sub-rule (1) [Notfn. dated 19-2-2015 1,- (i) In clause (a), on book page (PR)81, for "Form 20", the words "Form 20 or Form 20-Alt substituted and for "Form 16", the words "Form 16 or Form 16-A" substituted; (ii) In clause (b), on book page (PR)81, for "Form 21", the words "Form 21 or Form 21-A" substituted and for "Form 17", the words "Form 17 or Form 17-A" substituted; (iii) In clause (c), on book page (PR)81, for "Form 22", the words "Form 22 or Form 22-A" substituted and for "Form 18", the words 'Torm 18 or Form 18-A" substituted; (iv) In clause (d), on book page (PR)81, for "Form 23", the words "Form 23 or Form 23-A'E substituted and for Torm 19", the words "Form 19 or•Form 19-A" substituted. In rule 82, on book page (PR)81 [Notfn. dated 19-2-2015 1, for "Form 20, 21, 22 or 23" the words "Form 20 or 20-A, 21 or 21-A, 22 or 22-A or 23 or 23-A" substituted. In rule 84, on book page (PR)84 [Notfn. dated 19-2-2015 1,- (i) In sub-rule (1), for " Form 16, 17, 18 or 19" the words "Form 16 or 16-A, 17 or 17- A, 18 or 18-A or 19 or 19-A" substituted and for "Form 20, 21, 22 or 23" the words "Form 20 or 20-A, 21 or 21-A, 22 or 22-A or 23 or 23-A" substituted; (ii) In sub•rule (2), for " Form 20, 21, 22 or 23", the words "Form 20 or 20-A, 21 or 21-A, 22 or 22-A, or 23 or 23-AN substituted; (iii) sub-rule (3) substituted:- "(3) Nothing in sub-rule (1) shall confer any power or authority upon the District Election offcer to open any envelope containing counted ballot papers or to direct recounting of votes or recounting of votes by detachable memory module (DMM).". In rule 86, on book page (PR)83 (Notfn. dated 19-2-2015 1, for "Rules 67 and 68", the words "Rules 67, 72-P, 86 and 72-RII substituted; In rule 88, on book page (PR)83 [Notfn. dated 19-2-2015 1, for "Rule 87" the words "Rule 87 and 72-R" substituted; In Rule 88, on book page (PR)83, after sub-rule (2), sub-rule (3) inserted fNotfn. dated 11-9-20141:- "(3) After conduct of election by Electronic Voting Machine (E.V.M.), the Detachable Memory Module (DMM) and all necessary material relating to election shall be retaméd for such period, as the commission sh s: 3 ated [Notfn. der sub-rule es polled by member of ling station form 16, 17, et."; , the words 'Ords "Form the words ords "Form , the words ordg "Form the words 3rds "Form 2015 1, for n-A, 22 or l,- ?orm 16 or "Form 20, A or 23 or "Form 20 ority upon g counted f votes by bstituted; '015 b-rule (3) (E.V.M.), material mmission M.P. PANCHAYAT RAJ & GRAM SWARAJ ACT. 1993 IV(4i) may, by general or special order, direct." Amendments in Forms - Not reproduced, See amending notifications dated 11-9-2014; dated 23-1-2015; & dated 19-2-2015 respectively. MADHYA PRADESH PANCHAYAT (UP SARPANCH, PRESI- DENT AND VICE- PRESIDENT) NIRVACHAN NIYAM, 1995 [Notfn. No. F-16-2-2014-m1-P-2, dated 5-12-2014, Pub. in M.P..Raj- patra (Asadharan), dated 5-12-2014, p. 1118.] In rule 3, (1) On book page (PR)279, For suk-rule (3), the following sub-rule shall be substituted namely:- "(3) (a) The post of Chairman in the first election, shall be reserved in descending order for the Schedule Caste/Schedule Tribe in those districts where the population of such Schedule Caste/Schedule Tribe, as the case may be, is more in percentage with respect to their total population in those districts, thereafter in subsequent elections, the post shall be reserved by rotation for SC/ST in those districts, as the case may be, where such population of SC/ST is not less than one lakh. After the authorized latest publication of census data every .yea% the reserva:. tion shall be made Afresh -in for Schédule Caste/Schedule Tribe in such above manner: Provided that in Scheduled Areas, the offce of Chairperson for Scheduled Tribes shall be reserved in accordance with the provisions of Section 129-E: Provided frrther that the Zila Panchayat or Janpad Panchayat; as the case may be, where there is no reservation of seats for Scheduled Castes or Scheduled Tribes or Other Backward Classes as the case may be, or of women belonging to any of these categories, shall be excluded. froüi •drawing OflotS for the-FéSerVation of Offce of Chairperson for such Scheduled Castes or Scheduled Tribes or Other Backward Classes or of women belonging to any of these categories as the case may be. (b) The seats shall be reserved for other Backward Classes by rotation by drawing of lots; (c) The seats are to be reserved in Zila Panchayat for Categories of Scheduled Castes, Scheduled Tribes and Other Backward Classes and ip each category Alongwith general seat, half ofthe total number of seats shall be reserved by Qtlots.tl ; (2) on

book page (PR)280, for sub-rule (6), the following sub-rule shall be 9ubstituged, In subsequent general election, the Zila Panchayats previously reserved shall be excluded from drawing lots, for that particular categories." IV(x1v) M.P. PANCHAYAT RAJ & GRAM SWARAJ Acn 1993 MADHYA PRADESH PANCHAYAT SAMVDA SHALA SHIKSHAK (EMPLOYMENT AND CONDITIONS OF CONTRACT) RULES, 2005 [Notfn. No. F. 2-01-2013-n11.P-2, dated 24-92014, Pub. in M.P. Raj- patra (Asadharan), dated 24-9-2014, p. 902.] In rule 6, on book page (PR)475, for sub-rule (2), the following sub-rule substituted namely:- "(2) 'Samvida Shala Shikshak Eligibility Examination', hereinafter referred to as 'Eligibility Examination', as prescribed shall be conducted for the employment of Samvida Shala Shikshak. The eligibility ex- amination shall be conducted by an agency prescribed by the Govern- mpnt. The validity of the eligibility examination shall be for two years after declaration of result or next eligibility examination to be held, which will be earlier." Cor c .Contents MADHYA PRADESH PANCHAYAT RAJ • MANUAL MADHYA PRADESH PANCHAYAT RAJ MANUAL General Contents MADHYA PRADESH PANCHAYAT RAJ AVAM GRAM SWARAJ ADHINIYAM. 1993 (No. 1 of 1994) Act Sectionwise consolidated outline of amendments .... Detaile&GpptenVs of_Sections List of Amending Acts .... Act with M. P. Panchayat Nirvachan Yachika Pratibhuti Nikshep (Vidhimanyakaran) Adhiniyam, 1996 (No. 9 of 1996) .... Notifications Contents of Notifications with Page Nos. .... Notifications issued under the Act .... Rules Alphabetic List of Rules with Page Nos. ChronolOgiOal LiSt-Of Rules With Page NOS. Rules made under the Act..... Bye-läws Alphabetic List of Model Bye-laws with Page Nos. .... •MModel•Bye-laws -made -under-the Act... ...'.....l..... Other Allied Acts & Rules List of Act & Rules with Page Nos. .... M. P. Zila Yojana Samiti Adhiniyam, 1995 (No. 19 of 1995) with Rules .....::.... (PA)I (PA)13 (PA)14-190 (PA)191 (PN)1-27 (PR)28-913 (PR)914-36 (PR)937 MADHYA PRADESH PANCHAYAT RAJ MANUAL Rashtriya Grunin Rojgar Guarantee 'Adhiniyam, 2005 (Cent. Act 42 of 2005) Contents —Mahatma Gandhi National Rural Employrnent Guarantee (Appointment, ... the Ombudsman) M.P. Rules, 2013 .. —M.P. Social Audit Rules, 2013 . —Gramin Rojgar Guarantee Yojna, 2005 (Hindi) .... (PR)956 (PR)964 (PR)969 Gram Nyayalayas Act, 2008 (Central Act 4 of 2009) with M.P. Rules (PR)984 of 2013 .... LIST OF NOTIFICATIONS (Alphabetically) UNDER ACT G Contents of The Notifications :— Collector appointed Administrators of fund of Zila Panchayats. Collector to hear cases u/Ss. 3,125,126 & 129-B. Commissioners of Divisions authorised for purposes of s.33-A. Delegation of powers u]Ss.23 & 30 to Collectors. Delegation of power by State Government u]s.39(2). . Delegation of power by State Government u/s.62. Districts and Zila Panchayats. .... Division of State into Districts; bldéks and blöck head- quarters. . Enforcement of amending Acts. .... Ex-Officio Chief Executive Officers of certain Zila Panchayats. . Ex-Officio Additional Chief Executive Officers of certain Janpad & Zila Panchayats. . Independent Panchayat Raj Sancha!analaya Introduced. ..... Officer nominated for s.85(2). Officer or authority discharged the functions of the prescribed authority u/s

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19 of 1997. M.P. Act No. 43 of 1997, w.e.f. 5-12-1997. M.P. Act No. 28 of 1998, w.e.f. 4-8-1998. M.P. Act No. 5 of 1999, w.e.f. 5-4-1999. (PA)14 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20

21. Note.PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 Notfn. F. 1-8-97-XX11-P-2.-Dated 20th March 1999, Pub.in Rajpatra Ext. dated 24th March 1999, p. 334, amending S. 129-E(I) in its application to the Scheduled Area. M.P.Act No. 14 of 2000, w.e.f.26-1-2001. M.P. Act No.3 of 2001, w.e.f. 26-1-2001. M.P. Act No.23 of 2001, w.e.f. 10-10-2001. M.P. Act No. 16 of 2004, w.e.f. 1-1-2005 (except the amend- ments made in S.36. which came into force on 15-12-2004). M.P. Act No.8 of 2005, w.e.f. 12-4-2005. M.P. Act No.20 of 2005, w.e.f. 30-8-2005. M.P. Act 27 of 2006, w.e.f. 1-9-2006. M.P. Act 18 of 2007, w.e.f. 25-5-2007. M.P. Act 26 of 2011, w.e.f. 10-8-2011. M.P. Act 26 of 2012, w.e.f. 23-5-2012. M.P. Act 21 of 2013, w.e.f. 24-4-2013. M.P. Act 29 of 2013, w.e.f. 10-9-2013. '-The Provisions of the Madhya Pradesh Panchayat Raj (San- shodhan) Adhiniyam, 2001 shall not apply to the Scheduled areas so far as they are inconsistent with the provisions of Chapter-XIV-A of the Act and the provisions of "The Panchayats (Extension to the Scheduled Areas) Act, 1996 (No. 40 of 1996)". An Act to coriSolidäte and a-mend the law relating-to -estab- lishment of Panchayats with a view to ensure effective involvement of the Panchayati Raj Institutions in the local administration and development activities COMMENTARY 1. Intention of the Government.-lt would be clear from the Preamble that the intention of the Government was to consolidate and amend the law relating to establishment of the Panchayats and the laudable was to ensure effective involvement of the Panchayat Raj Institution- -in- the Local Ad- ministration and Development Activities. Ajay Tripathi v. State of M.P., 2009(1) 75 - 2009 (1) JIJ 257 2008 (5) MPHT 195 (D.B.)

2. Purpose.-The enactment is for the purpose of acquiring welfare of citizens. Kamal Kishore v. Janpad Panchayat, Naikheda, 2000 (1) 309 = 1999 (2) MPI.J 470 = 2000 (1) = 212 = 1999 (2) JIJ 370

3. Principles of Interpretation of Statutes.-[ll "lhe law in the Court's keeping is just not a system of logical abstraction. Nor it is a bucket of readymade answers deterrnined by any general formula or principle in advance. In a famous passage Mr. Justice Holmes said: "All' rights tend to declare themselves absolute to their logical extreme. Yet all in fact are limited by the neighbourhood of principles of policy which are other than those on which the particular right is founded, and which becomes strong enough to hold their own when a certain point is reached. The boundary at which the conflicting inter- ests balance cannot be determined by any general formula in advance, (PA)15 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 but points in the line are helping to establish it, are fixed by decisions that th)s or that concrete case falls on the nearer or further side." Hudson County Water co. v. Macrter, (1907) 209 US 349, (355-356). [2] It is true when a word has been defined in the interpretation clause, prima facie that definition governs wherever that word is used in the body of the statute unless the context requires otherwise. "The context" as pointed out in the book Cross- Statutory Interpretation (2nd Ed. 43) "is both internal and external". The internal context requires the interpreter to situate the disputed words within the section of which they are part and in relation to the rest of the Act. The external context involve determining the meaning from ordinary linguistic usage (in- cluding any special technical meanings) from the purpose for which the provision was passed, and from the place of the provisions within the general scheme of statutory and common law rules and principles. [31 To place a reasonable construction on any particular statutory provision it will be the duty of the Court not only to read the provision first literally to construe it on its plain language but in order to clear doubts to read it also in its context and setting in conjunction with other cognate or collateral provision of the same enactment. This course is verily mandated by the superior and progressive norm of 'purposive interpretation' to advance and promote effectively the legis- lative intent and object. Lest social welfare legislations may lose their force, efficacy and relevance upsetting the constitutional order. Lal- taprasad u. Ramcharan, •1989 MPLJ 233. • 14] If the words used are capable of one construction only, then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with alleged objects and policy of the Act. Shivrqj v. Ashalata, 1989 MPI.J 202. [51 A decision cannot be applied as a precedent when there is a difference in language of the provision. Ghanshyamdas Gupta v. Devilal, 1989 P.QRCJ 173 (SC)

4. Legislative intent.-[I-I-Great artistry on the Bench as elsewhere is, therefore, needed before we accept, reject or modify any theory or principle. Law as creative response should be so interpreted to meet the

different fact situations coming before the Court. For, Acts of Parliament were not drafted with divine prescience and perfect clarity. It is not possible for the legislatures to foresee the manifold sets of facts and controversies which may arise while giving effect to a particular provision. Indeed, the legislatures do not deal with the specific con- troversies. When conflicting interests arise or defect appears from the *language of the statute, the Court-by consideration of the legislative • intent must supplement the•wfitten -word With "force and life". See, the observation of Lord Denning in Seaford Estate Ltd. v. Asher, (1949) 2 481 at p

498. Pushpa Devi v. Milkhi AIR 1990 SC 808. [21 Where the language of the statute is clear, plain and unambiguous, it is the plain duty of the Court to give effect to it. No amount of hardship would call for not faithfully implementing the mandate of the Legisla- turp.Bihari v. State of Bihar, 1984 UJ (SC) 619. (PA)16 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 [31 It is a settled principle that the interpretation of the provisions of a statute should conforrn to the legislative intent as far as possible and the Courts should not take a narrpw or restricted view which will defeat the purpose of the Act. Vatanmal v. Kailashnath, 1989 MPRCJ 198. [4] Presumption is that a legislature _ never uses surplusage of words. The meaning of statute which leads to manifest contradiction, or to some inconvenience or absurdity, hardship, injustice or that may do violence to legislative intent is to be avoided. Interpretation of statutes should be reasonable and sensible. Shriniwas v. Keshrichand, 1985 RAJ LR 57

5. Legislative drafting.-Legislative drafting will reach its peak of glory when perfection is attained in demonstrably manifesting the legislative intent by unequivocal language. But it is equally undeniable that language at its best is a very imperfect vehicle df conveying the intent of the speaker. Legislature speaks through legislation and tries its utmost to convey what it intends to do by the legislation but even best of draftsmen cannot claim to attain perfection. State of Karnataka v. Hansa Corporation, AIR 1981 SC 463

6. Marginal Note.-The marginal note to a section cannot be referred to for the purpose of construing the section but it can certainly be relied upon as indicating the drift of the section or, to use the words of Collins MR in Bushel v. Hammond, (1904) 2 KB 563, to show what the section is dealing with. It cannot control the interpretation of-thc words of a section particularly when the language of the section is cle, I I and unambiguous but, being part of the statute,it prima facie lur- nishes some clue as to the meaning and purpose of the section. Bengat (1955) 2 SCR Irnmunity Co. Ltd v. State of Bihar, AIR 1955 SC 661 603 Ref. K.P. Varghese v. I.T. Officer, Ernakulam, AIR 1981 SC 1922

7. Retrospective operation.-The rule of construction of statutes is that no statute, unless it be a statute dealing with procedure only, should be construed to have a retrospective operation unless it so provides either expressly or by necessary implication or intendment and a statute is not be construed to have greater retrospective opera- tion than its language renders necessary. When a statute deprives a person of his right to sue or affects that right. its retrospective character must be clearly expressed. Goku[das Pagaria v. Parmanand, AIR 1967 MP 265=1967 JIJ 581=1967 MPLJ 564. Be it enacted by the Madhya Pradesh L.egislature in the Forty- Fourth Year of the Republic of India as follows:- CHAPTER I-PRELINUNARY 1. Short title, extent and cornmencement.-(l) This Act may be called the Madhya Pradesh IIPanchayat Raj Avam Gram Swaraj] Adhiniyam, 1993 1 Subs. by M.P. Act 3 of 2001. w.e.f.26-1-2001. .1 vill of ay of of he Ile es iy Is It 11 s O t PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (2) It extends to the whole of Madhya Pradesh: (PA)17 l[Provided that j.t extends to the Scheduled Areas subject to the exceptions and modifications as are provided in Chapter XN-A.) (3) It shall come into force at once

2. Definitions.-ln this Act. unless the context otherwise re- quires:— (i) "block" means such area in a district as the Governor may specify to be a block under sub-section (2) of Section IO; 2 [(i-a) 'Committee of Gram Sabha' means standing committee, ad Kc committee or any other committee of members of Gram Sabha]; (ii) "Cooperative Society" shall håve the same meaning assigned to it in the Madhya Pradesh Cooperative Societies Act, 1960 (No. 17 of 1961); 3 [(ii-a) 'Development Commissioner' shall have the same. meaning as assigned to it in clause (h) of Section 2 of the Special Economic Zones Act, 2005 (28 of 2005)]; 4 [(iii) 'District' means a district notified by the State Government to be a district for the purposes of this Act, and includes one or more revenue districts so modified). 5 [(iv) "Election" means an election fill a seat or seats in a Panchayat and includes election of Sarpanch of Gr_am.Panchayat. *'Election Proceedings" means the proceedings commencing from the issue of the notice for election and ending with the declaration of results of such election.) (vi) "factory" shall have the same meaning as assigned to it in

the Factories Act, 1948 (LXIII of 1948); (vii) "Gram Panchayat" means a Gram Panchayat established under sub-section (1) of Section IO; 6 [(viii) 'Gram Sabha' means a body consisting of persons registered in the electoral rolls relating to a revenue-village or-forest village• comprised within the area of the Gram Panchayat-I. COMMENTARY Gram Sabha.-[l) In the Constitution (Seventy Third Amendment) Act, 1992 [20-4-19931, the term 'Gram Sabha' has been defined thus- "Gram Sabha" means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level." .121.Clause 2 defines Similarly-bysaying-that it is a body conEiéting OT persons registered in the electoral rolls relating to a revenue 1 2 3 4 5 6 Ins. by MP 43 of 1997 15-12-19971. Ins. by MP Act 18 of 2007 [25-5-20071. Ins. by MP Act 18 of 2007 125-5-20071. Subs. by MP Act 28 of 1998 (4-9-19981. Cie. (iV) and (v) subS. by M.P. 26 of 1994 [30.5.941. Subs. by M.P.Act 5 of 1999 [5-4-19991. (PA)18 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 village or a forest village comprised within the area of the Gram Panchayat. [3] The definition clearly means that Gram Sabha shall be the lowest unit comprising of one or more 'gaons'. There may byone or more 'gaons' in a Gram which shall be specified by the Governor by public notification. There will be one Gram Sabha for each Gram, specified by the Governor. (ix) "Janpad Panchayat" means a Janpad Panchayat established under sub-section (2) of Section 10; (x) "Local Authority" shall have the same meaning as assigned to it in the Madhya Pradesh General Clauses Act, 1957 (No. 3 of 1958); (xi) "Member" means a panch of a Gram Panchayat, a member of a Janpad Panchayat or a member of a Zila Panchayat. as the case may be; (xii)"offensive matters" include animal carcasses, dung, dirt, sewage or putrid substances or filth of any kind; (xiii) "Office bearer" means a panch, sarpanch or upsarpanch of a gram panchayat, a member, President or vice-president of a Janpad Panchayat or a member, or president or vice-president of Zila Panchayat, as the case may be; (xiv) "Other Backward Classes" mean category of persons belong- ing to backward classes as notified by the State Government; (w) "Owner" when used with reference to any- land or building includes the person receiving the rent of the land or building or of any part of the land or building, whether on his own account or as agent or trustee for any person or society or as a receiver; (xvi) "Panch" means a panch of a Gram Panchayat; (xvii) "Panchayat" means a Gram Panchayat, a Janpad Panchayat or a Zila Panchayat, as the case may be; (xviii) "Panchayat Area" means the territorial area of a Panchayat establishment under this Act; (xix) "Population" means the-population as ascertained at the last preceding census of which the relevant figures have been published; (xx) "President" and "Vice-President" means the President and Vice-President respectively of a [Gram Nirman Samiti or Gram Vikas Samiti or Janpad Panchayat] or Zila Panchayat, as the case may be; (xxi) "Prescribed Authority" in any provision of this Act means such officer or authority as the State Government may, by notification, direct to discharge the functions of a prescribed authority under that provision; COMMENTARY Prescribed Authority. -The members of Janpad Panchayat submitted a No Confidence Motion to the Addl. Collector who convened the meeting of Janpad Panchayat and petitioner challenged the legality of the order to I Subs. for the words "J anpad Panchayat" by M.P. Act 16 of 2004; w.e.f. I-I -2005 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)19 convene meeting. Held that the Collector .alone ought to have exercised the power under S. 28(2) of the Adhiniyam and not the Addl. Collector. The initiative taken by the Addl. Collector is, therefore liable to be condemned as the one without authority of law and in violation of the mandatory provision of S. 28(2) of the Adhiniyam. Ayodhya v. State of C. G. and Shankar Prasad v. State 0fC.G., 2006(2) CGLJ 247 (xxiB "Public Market" or "Public Mela" means a market or mela, as the case may be, notified under the proviso to Section 58; (xxiii) "Public Place" means any place, building •or structure not being private property, which is open to use of the public, whether such place, building or structure is vested in a Panchayat or not; (xxiv) "Public Street" mea_ns any street, footway, road, square, alley or passage, used by the public whether permanently or temporarily; '(xxiv-a) "Resolution" means subject to the provisions of this Act, the resolution passed in the meeting of-the Panchayats and has been mentioned in proceeding register; (xxiv-b) "Secretary" means Secretary or Assistant Secretary of the Gram Panchayat, Gram Sabha or any Committee of Gram Panchayat or Gram Sabha, as the case may be; (xxiv-c) "Social audit" means opinion of the members of Gram Sabhä relating to experiditlir•e in respeet• quality of cömriiunity wörk and beneficiary oriented work executed ih the Gram Sabha area;] (xx-v) "Sarpanch" and "Up-Sarpanch" means the Sarpanch and up- Sarpanch respectively of a Gram Panchäyat, as the case may be; ((*xv-a) "Scheduled Areas" means the Scheduléd Areas referred to in clause (1) of Article 244 of the Constitution of India;] 3 [(xxv-b) 'Special Economic Zone' shall have the same meaning as assigned to

it in clause (za) of Section 2 of the Special Economic Zones Act, 2005 (28 of 2005)]; (xxvi) "Standing Committee" means a Standing Committee of a Panchayat, a'Janpad Panchayat or å Zila Panchayat constituted under the provisions of this Act, as the •case may be: (xxvii) "State Election Commission" means State Election Commis- Sion constituted by the Government under Article 243 k (l) of the Constitution; (xxviii) 'Tax" includes a tax, cess, rateof fee leviable under this Act; (xxix) "Village" means a village specified by the Governor by public to be yillage for the•.purposes ofvthis Act..and includes-a group of villages so specified; 1 2 3 Explanation.-Term village includes revenue village and forest vil- Clauses (x.<v-a to c) inserted vide M.P. Act No. 16 of 2012 [23-5-20121. Ins. by MP 43 of 1997 [5-12-19971. Ins. by MP 18 of 2007 {25-5-20071. (PA)20 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (xxx) "Zila Panchayat" means a Zila Panchayat established under sub-section (3) of Section 10

CHAPTER LI-GRAM SABHA 3. Notification of village.-The Governor shall by public notifica- tion specify a village or group of villages to be a village for the purpose of this Act. COMMENTARY 1. Exclusion of certain village from a certain erstwhile Gram Panchayat.-See comments under S. 125 and M.P. Panchayat (Alteration of limits, Disestablishment or Change of Headquarters) Rules (1994), R.3. Laisingh v. State of M.P., 2005 (1) MPL-J 348=2005 (2) MPHT 346=AIR 2005 NOC 250 (MP)

2. Constitution of Gram Panchayat with head quarter at a par- ticular place by State Government cannot be interfered with.- A preliminary notification creating a unit of local Government described as "village" grouping certain vi41ages, when published, the decision of the Authorities in constituting a Gram Panchayat by a particular name was perfectly in accordance with law. The High Court will not sit over judgment on such decision as a court of appeal and would not substitute its own views. The notifications having been issued in exercise of powers which were legislative in character, were in accordance with law and the decision called for no interference. AIR 1990 SC 261 Foil., 1993 MPLJ 767=1991 JIJ 715 Rel. Rajdhar Singh v. State 0fM.P., 1995 MPLJ 152

3. Village:-A 'village' has a different meaning under this Act than what we understand in the natural course. The definition given in clause (xxix) of Section 2 read with the provisions of this section makes it clear that a 'village' under the Act may be one or group of more than one villages as specified by the Governor

4. List of voters of a village.-For every village specified urider Section 3 there shall be a list of voters which shall be prepared in accordance with the provisions of this Act and rules made thereunder

5. Registration of voters of a village.-Every person who - is qualified to be registered in the Assembly roll relatable to a village or whose name is entered therein and is ordinarily resident within the village shall be entitled to be registered in the list of voters of that village: &Provided that— (a) no person shall be entitled to be registered in the list of voters •for more than one village; (b) no person shall be entitled to be, registered in the list Of voters if he is registered in the electoral roll velating to any other local authority. Exp!analion.- PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)21 (1) The expression "ordinarily resident" shall have the meaning assigned to it in Section 20 of the Representation of the People Act, 1950 (No. 43 of 1950Ysubject to the modification that reference to "Constituency" therein will be construed as a reference to "village". (2) A person shall be disqualified for registration in the list of voters of a village if he Is disqualified for registration In the Assembly roll. COMMENTARY 1. Registration in the voter's list.-'fl] NWhere a person is registered in the electoral roll of any other local authority, he is not entitled to-be registered in the list of voter of a village. Uttamchand v. State Election Commissioner of M.P., 2005 (1) MP LJ 168. [21 A bare perusal of Section 5 nowhere provides for its vice- versa position. It means that by virtue of the provision of S.5, a person is not prevented from getting his name entered in the electoral roll of Municipal Council, if his name is already registered in the electoral roll of the village. It is not contemplated under law that a person entered in the name of voter list of village, is disqualified from contesting the election of councillor in due manner. Rajaram Ahirwar v State of M.P., 2008 (3) MPLJ 185

2. General.-[l] Section 4 makes provision for preparing a list of voters for each and-every-village tcbe- preparéd in accordanée-with-the •ruléS inådé under this Act. This section makes provision for persons whose name shall be registered in the list of voters of a village: The following persons shall be entitled to get themselves registered in the aforesaid list:- (i) Every person who is qualified to be registered in the list

of voters prepared for thé legislative assembly relating to that village; (ii) Every person whose name is already entered in the Assembly roll relatable to that village; Both the above mentioned kind of persons shall be entitled to- be so registered; provided •they- ordinarily resident Of that village. -It Simply means that whatever may be reasons for their inclusion in the list of Assembly poll, this additional qualification should also be there that they are ordinarily resident of that village. Not only this there are other conditions too laid down in the proviso attached to this section as under:- (a) No person shall be entitled to be registered in the roll of more than one village; and (b) If a person is registered in any other local authority, meaning any munifipaliCy• or Hagar panchayat. etc., then lié ;hall not be registered in the preparedför that Silla•ge.-" [2] It is also specifically provided in the Explanation attached to the Section that a persåri Whö i' 'diéqüålifiéd to be irilcuded in the list of voters of the Assembly relating to that village, he shall also not be registered in the list of voters prepared for that village under this Act. (PA)22 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 S. 5-A [5-A. Constitution and incorporation of Gram Sabha. - There shall be a Gram Sabha for every village. The Gram Sabha shall be a body corporate by the name spebified- therefor having perpetual succession and a common seal and shäll by the said name sue and be sued and shall subject to the this Act and the rules made there- under have power to acqUire, hold and dispose of any property mov- .able or immovable, to enter into contract and to do all other things necessary for the purpose of this Act. COMMENTARY 1. Legislative changes.-lt iS a new- section inserted by M.P.Act 3 of 2001, w.e.f. 26-1-2001

2. Gram Sabha.-[l] This section declares that there shall be a Gram Sabha for each and every village and as per definition of 'village' given in clause (xxix) of section 2, 'Village' shall mean that which is so specified by the Governor. [2] The section further states that each and every Gram Sabha shall be a •body Coriorate by the name specified therefor and shall have perpetual succession and all other characters of a body Corporate shall apply to it. Under the provisions of this Act and the rules made thereunder, it shall be competent to acquire, hold and dispose of any property, movable or immov- able. It shall ålso be competent to enter into any contract and to do all things necessary for the purposes of discharging i_ts functions and obligations mention under thé Aét- and thé Rules

3. Constitution of Gram Sabha.-The provisions of M.P.Panchayat Raj (Sänshodhan) Adhiniyam (No.3 of 2001) inserting section 5-A, providing for constitution of Gram Sabha is constitutionally valid. Jankidas Bairagi v. State 0fM.P., 2001 (2) MPLJ 477=2001 (2) MPHT 229(DB). 2[6. Meeting of Gram Sabha. The meetings of Gram Sabha shall be held at least in January, April, July and October, and besides this Gram Sabha may convene additional meeting, if required, and the Collector of the district shall nominate a Government Officer or employee for suitable arrangement of such meetings who shall ensure the circulation of the agenda and notice of the date, time and place o.f meeting to be served within time and shall also ensure the due conduction of the proceedings of the meeting.] ins. by M.P. Act 3 of 2001. w.e.f.26-1-2001. 2 Subs. by M.P. Act 3 of 2001. w.e.f.26-1-2001. 3 Sub-sec. subs. by M.P. Act 16 of 2004. w.e.f. 1-1-2005. 1 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)23 The quorum of every meeting of Gram Sabha shall not be less than one-tenth of the total number of members of the Gram Sabha or five hundred members of the Gram Sabha, whichever is less.] (3) The meeting of the Gram Sabha shall be presided over by Sarpanch or in the absence of Sarpanch by Up-Sarpanch. In the event of both Sarpanch and Up-Sarpanch being absent, the meeting of the Gram Sabha shall be presided over by a Panch to be elected for the purpose by the members present in the meeting. (4) If any dispute arises as to whether a person is entitled to attend a meeting of the Gram Sabha, the same shall be decided by the person presiding regard being had to the entry in the list of voters of the Gram Sabha area and his decision shall be final. m (5) Any dispute arising between Gram Sabha or any matter con- cerning more than one Gram Sabha comprised within the area of Gram Panchayat and all matters contained in sub-section (2) of Section 7 shall be brought before a joint meeting of all Gram Sabhas of that Gram Panchayat. (6) The decision taken at the joint meeting under sub-section (5) shall be deemed to be the decision taken by each of the Gram Sabha.] COMMENTARY 1. Legislative changes.-lt is a new section which has replaced the old section 6 vide M.P.Act 3 of 2001, w.e.f.26-10001

2. Cohstitutional validity of the amendment- Sub-section (2). Quorum for holding a meeting of Grain Panchayat-Second Part of S.6(2) introduced by M.P.Panchayat Raj (Sanshodhan) Ahiniyam, 3 of 2001 - The provision is a reservation into reservation, it frustrates the purpose of the Act and is ultrayires the Constitution.-[ll Pronouncing a provision to be ultra vires.- We have referred to the aforesaid

pronouncements to apprise ourselves that a provision is not declared ultra vires on abstract grounds or in vacuum. The real test has to be applied. To elaborate; if reading of the provision appears to be ex facie and manifestly, unreasonable for arbitrary indubitably, the same can be declared as ultra vires. If the provision has an object to achieve but it actually does not so achieve, there can be no iota of doubt, it defeats the scheme of the Act and thereby can be regarded as ultra vires. Than Singh v. State of M.P., AIR 2005 170=2005 (2) MPIJ 353=2005 (2) 127=2005 (2) JIJ 178 (F.B.). Does not apply to the new sub-sec. (2). [2] Classification of reservation.-Reservation for women is permis- Sible and classification is permissible and classification is primarily depend- ent on the Legislature but the classificatiop has to rest and founded on a' åmended •by up." Act sdbs. by M.P. Act 20 of 2005, w.e.f. 30-8-2005 was as under:— "(2) Not less than one-fifth or one thousand. whichever Is less of the total ilumber of members of the Gram Sabha shall form a quorum for a meeting of Gram Sabha, out of which not less than one third shall be women members and members of Scheduléd Castes and Scheduled Tribes shall be represented in proportion to their population in the Gram Sabha. guorum shall be necessary for every meeting of the Gram Sabha.-n (PA)24 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 reasonable criteria. It cannot be carried to such a point which would subvert and submerge the precious guarantee of equality clause. The case at hand has a different scenario to fresco. Chapter IX of the Constitution has made provisions for Panchayat. It has made provision for reservation of seats for Scheduled Castes, Scheduled Tiibes and women. As far as this reservation is concerned, it is the mandate of the Constitution and that has to be followed by the State Legislature. While providing the quorum for holding of a meeting of Cham Sabha the Legislature has couched it in a different way. On a scanning of the anatomy of the provision two limbs emerge. One lays a requisite postulate as regard the number and the other a prescription of the percentage of members for a quorum. Than Singh v. State of M.P., AIR 2005 MP 170=2005 (2) MPLJ 353-2005 (2) MPHT 127=2005 (2) JIJ 178 [31 Protective discrimination.-There is subtle and fine distinction between protective discrimination and a protective discrimination that destroys a larger public interest or social interest and also defeats the fundamental requirement of the body polity. The proponement that the said provision is in consonance with Articles 15(3) and 15(4), in our considered opinion, is neither correct nor sound inasmuch as the concept of reservation to that extent would not be within the ambit and sweep of protective or affirmative discrimination. We are disposed to think so as there is reserva- tion in respect of seats and a further reservation would tantamount to reservation within reservation. We may hasten to clarify that on the first flush the provision may not-appear to be reseyation because it has been grafted and woven into the concept of quorum but on an deeper probe and keener scrutiny it becomes patent that there is reservation in the quorum inasmuch as without the presence of the reserv.ed categories of persons the 'Gram Sabha' becomes non- functional. It is so, as no alternative has been provided under the Act. [41 Purpose of quorum.-lt is to be borne in mind, the purpose of the quorum is to ensure that there is proper transaction of business and the decision taken epitomises the representative character. In the instant provision the representative character of _the degision is likely to be caged. It is not out of place to state that concept of quorum is basically a safeguard against the apprehension that a minuscule persons or members may boast of having taken a decision on behalf of the body even through the large body of members are unaware or not parties to the decision. The quintessentiality ofquorum is on the number and not on the Constitution of the number which in the ultimate eventuality destroys the rationality, the reasonableness and ushers in arbitrariness. It has to be appreciated that all members who are members of the Gram Sabha are such persons without any distinction or colour attached to them and they participate in the meeting of the body without any kind of distinction. There can be no differentiation in individual characteristic of a member and a member of the Scheduled Caste and Scheduled Tribe for the purpose of a quorum in a meeting since quorum is only a guarantee of persons of minimum number of persons from amongst the effective body of which has the same homogenous character qua such members. A provision like the present one unmistakably makes a distinction between two similar members. It is worth noting after an election is held in PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)25 respect of the Panchayat and the elected members constitute a homogenous group and no dist inetion is formed or infroduced which is dependent upon the constituency Or source of membership. They are all treated as equals but the, present provision while laying down that the quorum would have one third women, and such proportionate members of the Scheduled Castes, Scheduled Tribes to constitute mandatorily the one-fifth of members treats equals as unequals violating the mandate of Article 14 of the Constitution. In fact, such members

become more important members than other members without a rational basis and have the effect potentially to take the majority to ransom as a consequence of which the majority decision paves the path ofmarginalization and in a way, extinction. The representative character of the decision becomes' an anathema to its basic concept. Judged from these spectrums there can be no iota of doubt, the second limb öfthe provision is not rested on reasonableness and in fact, smacks of arbitrariness in its conceptual eventuality. "Quorum" denotes the minimum number of members of anybody of persons whose presence is necessary in order to enable that body to transact its business validity so that its acts may be lawful. The fixation of quorum for the meetings of a committee does not preclude all the members of the Committee from attending the meetings. By the quorum, a minimum number of members of the committee must be present in order that its proceedings may be lawful but that does not mean that more than the minimum are denied an opportünity to participate in the deliberations and the decisions of the committee. Whenever, a committee is scheduled to meet, due notice of the meeting has to go to all the rhembers of the committee and it is left to each individual member whether or not to attend a particular meeting. Every member has thus the choice and the opportunity to attend every meeting of the committee. If any member considers the determined in a particular meeting as of such importance that he must make his voice heard and cast his vote, it is open to him and indeed he is entitled to attend the meeting and make his presence felt. Thus the basic and fundamental principle inhered in the term 'quorum' is presence of minimum number of members to transact business with the avowed purpose to make it lawful.-Panjab University, Chandigarh v. Vijay Singh Lamba etc., AIR 1976 SC 1441 Foil'. Than Singh v. state of M.P., AIR 2005 MP 170=2005 (2) MPLJ 353 -2005 (2) MPHT 127=2005 (2) JLJ 178 (F.B.). [5] Effect of the provision of second limb of the term quorum.-lt is well settled concept that democracy is nothing but the rule of majority, though it may assume certain Shades of adjustability and suitability to match.certain circumstances; the second linib of NefigiLign.Qf quorum is ällÖWeat 16 släfid 'répräentativé chara•cter: of the decision of the Gram Sabha is likely to be destroyed and the majority would be in the hands of an absolute -min-uscule -minority and wÖuld be controlled by it. The possibility of microcosm totally ruling the macrocosm cannot be brushed aside. In fact, the said facet is inherent in providing the constituent in a quorum. Than Singh v. State of M.P., AIR 2005 MP 170=2005 (2) MPLJ 353=2005 (2) MPHT 127=2005 (2) JIJ 178 (F.B.). (PA)26 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 [6] Why provision is ultra vires.-Both limbs of the provision are distinct and separate and after striking out what is invalid what remains is in itself a complete provision independent of the rest and can be upheld notwithstanding the rest is constitutionally invalid. We are also of the opinion, the concept of quorum is the basic scheme when one-fifth of the members of Gram Sabha are taken into consideration and the constituents do not really form a part of an inseparable singular scheme. They are different in substance and ifthe invalid provision is expunged the other part of the provision is workable, enforceable and have its own existence in a legitimate manner. Our view gets reinforced by the decision rendered in the case of R.M.D. Chamarbaugwalla and anothér v. Union of India and another, AIR 1957 SC 628. The second limb of section 6 (2).of the Act intending that 'out of which not less than one third shall be women members and members of Scheduled Castes and Scheduled Tribes •Éhall be represented in proportion to their population in the 'Gram Sabha' is unconstitutional on the gTound,which we proceed to state in seriatim. (a) There is no constitutional mandate under Articles 243, 243-A, 243-B, 243-D, 243-G and 243-H that provide constituent of quorum pertaining to the mandatory presence of specific women members and members of the Scheduled Castes and Scheduled Tribes. (b) The argument that the constitution of quorum as has been envisaged by the State Legislature is inferentially permissible from the aforesaid Articles is-fallaCiöUS and:döeg not withstand-close-scrutiny. (c) The second limb of the provision is not saved by the conception of affirmative o-r irotééti+e 'disci•iniinätiön as Conceptually inhered under Articles 15 (3) and 15 (4) of the Constitution of India. (d) The classification that has been made in the quorum does not stand the test of equality clause as enshrined under Article 14 of the Constitution. (e) The provision also is hit by the principle of reasonability and smacks of arbitrariness. (f) It does not subserve the purpose of the Act but in a way, subverts the same and hence, it is not in consonance with the scheme a-nd SpiÉit Of the- Act. (g) The purpose of quorum always lays emphasis ofa particular num ber of members for transacting business but in the case at hand -when- the- constituents have become the paramount and governing factors it basically runs counter to the idea of quorum, as a consequence of which the repre- sentative character of the decision melts into oblivion. (h) The provision on a deeper penetl?tipq a9d pregnant probing allows 'Ae

deeis@nqpfthe ,muority in way .and Cheré6YusKers potentiality to dominate over the macrocosm which is an anathema or betenoire to the basic feature of democracy which is a part of the philosophy of the Constitu- tion, a compassionate one. (i) the provision is not saved even if the doctrine of social balancing is applied. Than Singh v. State of M.P., AIR 2005 MP 170=2005 (2) MPLJ PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 353=2005 (2) MPHT 127=2005 (2) JIJ 178 (F.B.). (PA)27 [71 Provision declared ultra vires.-Ex consequenti, we declare that the second part of sub-section (2) of section 6 of the Act which postulates that 'out of which not less than one third shall be women members and members of Scheduled Castes and Scheduled Tribes shall be represented in proportion to their population in the Gram Sabha' is ultra vires the Con- stitution. Than Singh v. State of-M.P., AIR 2005 MP 170=2005 (2) MPLJ 353=2005 (2) rvWHT 127=2005 (2) JIJ 178 (F.B.). [8] Result.- The result of the above declaration is that the quorum for holding a meeting of the Gram Sabha now shall be held with a quorum of one-fifth of the total number of members of the Gram Sabha, but see new sub-sec. (2)

3. Meeting of Gram- Sabha.-[l] This section makes provision for holding of meetings of Gram Sabha. [2] It is made imperative that at least one meeting of Gram Sabha shall be held every month which shall be called by the Secretary of the Gram Sabha. [3] Although meeting ofa Gram Sabha is to be called by the Secretary, still date, time and place for the first meeting of a Gram Sabha shall be fixed by the Sarpanch. It also means that there must exist a validly constituted Gram Panchayat consisting ofa Sarpanch. It must be remebered that there will be no separate Saipanch of a Gram Sabha. The Sarpanch of a Gram Panchayat shall be deemed to be the Sarpanch of that Gram Sabha. [3] The Sarpanéh shall fix the date, time and place for holding the first meeting of a Gram Sabha while subsequent meetings shall be held as decided by the Gram Sabha. [4] Quoram.-Section 5 has already made provision for preparing the list of voters of a Gram Sabha. Accordingly in every meeting held, there should be a quoram and that is fixed to be one fifth. The provisi01i says that there should be an attendance ofat least 1/5th members. * [This 115th should contain at least 1/3rd women, meaning thereby that one-third of this number should consist of women members. Not only this, representation of members of the Scheduled Castes and Scheduled Tribes shall be in proportion to their population. It may be clearly understood that representation here should mean, representation in the quoram, since every person of any caste and creéd, if registered, shall be entitled to attend the meeting of a Gram Sabha.] It is also specifically stated in sub-section (2) that quoram shall be necessary for each and every meeting of a Gram Sabha. *According to the decision of the Full Bench of the High Court given in the case of Than Singh, the portion above given in 2 is now not necessary since certain portion of sub-section (2) is declared to be ultra vires. [5] Presiding of meeting.-Every meeting of a Gram Sabha shall be presided Over by thé SüPähOYi äfid his¯åbsen-ce by the Up: Safpåném. In a case where both of them are absent then it shall be presided over by a person elected for the purpose by the members present in the meeting. [6] Right to attend meeting.-As already observed, every person who is registered in the list of voters of a Gram Sabha under section 5, shall be a member of a Gram Sabha and he shall be entitled to attend the meeting of Gram Sabha. But, in a case where any dispute arises as to whether a (PA)28 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 S. 6.A person is entitled to attend the meeting of Gram Sabha, the same shall be decided by th9 person presiding with reference to the list of voters. His decision in the matter shall be final. [71 Sub-sections (5) and (6) are ambiguous and contradictory.- The sub-section (5) is not happily worded. It is-ambiguous and contradictory. It speaks of more than one Gram Sabha comprised within the area of Gram Panchayat which is not possible. Section 5-A in clear terms says that there shall be a Gram Sabha for each village and village here cannot mean 'gaon'. Looking tb provisions of other sections too, there cannot be more than one Gram Sabha in a Panchayat area. If it is not so interpreted, different provisions for functioning and powers of Gram Sabha and the Gram Panchayat shall become impossible. Therefore, sub-sections (5) and (6) should be held to be ambiguous, contradictory and in the result, ultra vires. [8] Joint meeting of Gram Sabhas.-Since there cannot be more than one Gram Sabha in a'Panchayat area, the question of holding joint meeting does not arise at all

4. Scheduled Area Gram Sabha-Applicability.- Special provisions for Panchayats in the Scheduled Area are made in Chapter IV-A of the Adhiniyam. This Chapter overrides the provisions of Chapter 2 which includes S.6(2). Therefore, S.6(2) does not apply to Scheduled Area Gram Sabhas. Rajkumar v. State of M.P., 2003 (4) MPLJ 354=2003 (3) MPHT 108 (DB)

5. Rules:- 'Ihe State Government has made the following rules.in exercise of the powers conferred by this section. These Rules shall be found under Rules given separately. "Procedure of Meetings Rules, 1994" 116-A. Special Meeting of Gram Sabha.-lf the Sarpanch, or more than ten per cent. of the members or fifty members of the Gram Sabha whichever is less. give requisition in writing for a special meeting of the Gram Sabha, the Secretary shall call such a meeting within seven days of the receipt of such requisition. COMMENTARY 1. Legislative changes.-lt is a new section inserted by M.P.3 of-2001. Special Meeting.-[ll The section makes provision for calling special meeting ofa Gram Sabha. Special meeting of the Gi•am Sabha shall be called as under:- (i) the SarVånch, or (ii) more than 10 per cent of the members of Gram Sabha or fifty members of Gram Sabha, whichever is less, give in writing a requisition for calling a special meeting of Gram Sabha, to the Secretary, the Secretary shall call such a meeting ofGram Sabha •within seven days of the receipt of such requisition. 1 Ss.6-A to 6-C ins. by M.P. Act 3 of 2001. w.e.f.26-1-2001. S. 6-C PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)29 6-B. Secretary of Gram Sabha. -The Secretary of the Gram Panchayat shall also be the Secretary of the Gram Sabha. The Secretao•' shall be under the control of the Gram Sabha and perform such duties as assigned to him by the Gram Sabha. COMMENTARY 1. Legislative changes.- 2. The Secretary of the Gram Panchayat shall also act as a secretary of the Gram Sabha and the secretary shall work under the control of the Gram Sabha and he shall perform the duties which are assigned to him by the Gram Sabha. 6-C. Decision by Gram Sabha.-(l) All matters brought before any meeting of Gram Sabha shall be decided, as far as possible, unani- mously failing which by general consensus of the members present: Provided that where there is difference of opinion on any issue such matter shall be brought before the next meeting. If a decision is not taken unanimously or by general consensus in successive two deferred meetings then such matter shall be decided by majority of members present thereat by secret voting. In the case of equality of votes, the person presiding over the meeting shall have a second or casting vote. A(2y-1f-äi1YidiSPüté •arises -as to WhethSf pérso-n is entifléd to-vdte, the same shall be decided by the person presiding regard being had to - - -the entry in the list of voters of the Gram Sabha area and-his decision shall be final.] COMMENTARY Gram Sabha decision.-[l] In order to promote better understanding, develop love and co-operation between the residents of a village, it is provided in this section that all matters -which äi•e bföüght-beföre a Gram Sabha shall be decided unanimously, failing which by general consensus. The question arises as to what this term 'general consensus' mean. It simply means_a minor or negligible opposition which does not_include substantial opposition. Where it appears that there is a difference of opinion the matter should be left over undecided, to be decided in the next meeting. [2] It is also provided in the proviso to sub-section (1) that in case of a matter which cannot be decided unanimously or by general consensus even inthe two adjourned meetings then, such a matter shall be put to vote and decided -by-xn4jQrity, svqting secretly:-lf the_eotes are equal, -the presiding person shall have a second casting vote, meaning thereby that the president will vote firstly any other member and where the result is found to be equal number of votes then, the president shall have the second vote. It further means that in such a situation, the matter shall be decided as per the Casting vote of the president. [3] Although the ultimate procedure provided is ofsecret voting, but that stage is tried to be avoided as far as possible. Every scope for creating better (PA)30 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 understanding and remove any difference of opinion has been created. The Legislature has advised village people to keep patience and try to under- stand the point of view of the other side. The provision aims at development of the village without hurting the self respect of another. I [7. Powers and functions and Annual Meeting of Gram Sabha. -(1) Subject to the rules, which the State Government may make in this behalf, and subject to the general or special orders, as may be issued by the State Government from time to time, the Gram Sabha shall have the following powers and functions, namely:- (a) to lay down the principles for identification of schemes and their priority for economic development of the village; (b) to apprové all plans including Annual Plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Gram Panchayat; (c) to consider the Annual Budget of the Gram Panchayat, and make recommendations thereon: (d) to consider the report o_f audit and accounts of the Gram Panchayat; (e) to ascertain and certify the proper utilization by the Grarn Panchayat of the funds for plans, programmes and projects referred to in clause (b); (f) to identify and select persons as beneficiaries under the poverty alleviation and other programmes; (g) to ensure proper utilization and disbursement of funds are assets to the beneficiaries; (h) to mobilize people for

community welfare programmes; (i) to ensure active participation of people in implementation, maintenance and equitable distribution of benefits of development schemes in the village; (j) to promote general awareness amongst the people; and [(j-i) to exercise control over institutions and functionaries in 2 social sectors transferred to or appointed by Gram Panchayat through that Panchayat; (j-ii) to manage natural resources including land, water, forests within the area of the village in accordance with provisions of the Constitution and other relevant laws for the time being in force; (j-iii) to advise the Gram Panchayat in the regulation and use of minor water bodies; (j-iv) .to control local plans, resources and expenditure for such plans;] Subs. by MP 43 of 1997 [5-12-19971. 2 Ins. by M.P.Act 5 of 1999 [5-449991. PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)91 1 sanitation, conservancy and prevention and .abatement of nuisance; (I) construction repair and maintenance of public wells, ponds and tanks and supply of water for domestic use; (m) construction and maintenance of sources of water for bathing and washing and supply of water for domestic animal; (n) construction and maintenance of village roads, culverts, bridges, bunds and other works and building of public utility; (o) construction, maintenance and clearing of public streets, latrines, drains, tanks, wells arid other public places; (p) filling in of disused wells, unsanitary ponds, Pools ditche& and pits and conversion of step wells into sanitary wells; (q) lighting of village streets and other public places: (r) removing of obstructions and projections in public streets and places and sites not being private property or which are open to use of public. whether such sites are vested in the Panchayat or belongs to the State Government; (s) regulating and control over entertainment shows, shops, eating houses and vendors of drinks, sweet meats, fruits, milk and of other similar articles; (t) regulating the construction of house, latrines, urinals, drains and -water clese(s; (u) management of public land and management, extension and development of village site; (v) (i) regulating places for disposal of dead bodies, carcasses and other offensive matters; (ii) disposal of unclaimed corpses and carcasses; (w) earmarking places for dumping refuse; (x) regulation of sale and preservation of meat; (y) maintenance of Gram Sabha property; (z) establishment and management of cattle ponds an-d main- tenähce of records relating to cattle; (aa) maintenance of ancient and historical mönuments other than those-declared by or under law made- by-Parliament to be of national importance, grazing lands and other lands vesting in or under the control of the Gram Sabha; (bb) maintenance of records of births, deaths and marriages; (cc) rendering assistance in the eensüs operation and in the surveys conduåied by. the Si.åte Governfrnent qr Central Government or authority-lawfully constitutéd;- (dd) rendering assistance in prevention of contagious diseases; (ee) renäérifig assistance in inoculation and Vaécination and enfor- cement of other preventive measures for safety of human being and cattle prescribed by Government Department concerned; CIS. (k) Io subs.'for cl.(k) by M.P. Act of 2001, w.e.f.26-1-2001. (PA)32 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (ft) rendering assistance to the disabled and destitutes; (gg) promotion of youth welfare, family welfare and sports; (hh) establishment of Raksha Samiti for: (a) safety of life and property; (b) prevention of fire and extinguishing fire and safety of property during outbreak of such fires; (ii) plantation and preservation of Village forest; (jj) removal of social evils like dowry; (kk) granting loans for the purposes of— (i) providing medical assistance to indigent persons in serious and emergency cases; (ii) disposal of dead body of an indigent person or any member of his family; or (iii) any other purpose for the benefit of an indigent person as may be notified by the State Government from time to time subject to such terms and conditions as may be prescribed; (11) (i) carrying out the directions or orders given or issued by the State Government, the Collector or any other Officer authorised by the State Government in this behalf with respect to the measures for amelioration of the Conditiön of the Scheduled Castes and Scheduled Tribes and other backward classes and in particular in regard to the removal of untouchability; (ii) perform such functions as may be entrusted to ft by Zilla Panchayat or Janpad Panchayat by general or special order; (iii) to exercise and perform such powers and functions as the State Government may confer on or entrust to under this Act or any other law for the time being in force in the State; (iv) with prior approval of Janpad Panchayat. may also perform other functions as it may desire to perform: Provided that where any such function is entrusted to the Gram Sabha, it shall act as an agent of the State Government, Zilla Panchayat, as the case may be, and necessary funds and other assistance for the purpose shall be provided to it by the State Govern- ment, Zilla Panchayat or Janpad Panchayat, as the case may be; (rnm) plan and manage basic amenities; (nn) select beneficiaries under various programmes; (00) implement, execute and supervise development schemes and construction work within the Gram Sabha area; (pp) control and monitor beneficiary oriented schemes and

programmes; (rr) organise voluntary labour and contribution for community work and promote the concept of community ownership: (ss) to plan, own and manage minor water bodies upto a specified water area situated within its territorial jurisdiction; (tt) to lease out any minor water body upto a specified area for the purpose of fishing and other commercial purposes; if s s e e a s. n n a d d. d (PA)33 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (uu) to regulate the use of water of rivers, streams. minor water bodies for, irrigation purposes; (vv) to exercise control over institutions and functionaries in all social sectors transferred to or appointed by the Gram Sabha.] (2) The annual meeting of the Gram Sabha shall be held not less than three months prior to the commencement of the next financial year, and the Gram Panchayat shall place before such meeting:- (a) the annual statement of accounts; (b) the report of administration of the preceding financial year; (c) the development and other programme of the works proposed for the next financial.year; (d) the last audit note and replies, if any, thereto: and 1 [(e) the Annual Budget and Annual Plan for the next financial year of the Gram Panchayat]. 2 [(2-A) The Gram Panchayat Shall place such matters before the Gram Sabha which' the Uanpad Panchayat. the Zila Panchayat, the Collector or any Officer authorised in this behalf may require to be placed before such meeting.) (3) The Gram Panchayat shall carry out the recommendations, if any, made by the Gram Sabha - in regard to the matters before it under this section). COMMENTARY Powers and functions.-Sub-section (1) •gives a list of powers and functions of a Gram Sabha. But all these powers and functions are subject to the rules made by the State Government on these subjects and also subject to the general or special orders issued by the State Government from time to time. Formerly there were only 15 clauses defining such powers and functions. With the passing of Act 3 of 2001, 37 more clauses to this effect are added. Without caring for the education of the persons living there, so many functions and_powers are assigned to them by sub, section. (1). One fails to understand how far this will be successful. Annual Meeting.-[ll It is provided in sub-section (2) that the Gram Sabha shall hold its annual meeting not less than 3 mcAths before the commencement of the next financial year. A financial year commences on 1st of April every year. According to this provision, annual general meeting of a Grani Sabha should be held before the 1st of January, i.e. by 31st of Decembe •ry year. 12} it is algo provided that the Gram Panchayat shall place befbre such annual mepting ot the, Grpar. $akha.th? [3] As far as annual statement of accounts is concerned, since the meeting will be held before 3 months of the expiry of the current financial year, it will relate to the previous year and similar would be the case with 1 subs. by M.P.Act 5 of 1999 [5-4-19991. 2 Ins. by M.P.Act 5 of 1999 [5-4-19991. (PA)34 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 S. 7-A the report of administration. Recommendations of Gram Sabha.-Looking to the provisions of sub- section (3), it appears quite clear th9t Gram Sabha is a general body and the Gram Panchayat is an executive body. The executive has to perform its duties as per directions given by the general body. Appeal-Provision is made under section 7-H for preferring an appeal against the decision of Gram Sabha. This aipeal shall be made to a Committee which would consist of (i) President of Janpad Panchayat, a member of Janpad Panchayat from the area and the Sub-Divisional Officer (Revenue). How this committee shall be constituted and how this appeal shall be preferred, shall be provided in the rules to be made by the State Government. I [7-A. Standing Committee and Adhoc Committee of Gram me Gram Panchayat shall, for discharging its functions and duties, cons(jtute the follouring standing committees of Gram Sabha, narnely : (i) Gram Nirman Samiti, and (ii) Gram Vikas Samiti.l (2) In addition to the Standing Committees mentioned in sub- section (l) the Gram Sabha may constitute one or more such Adhoc Cornmittees as it may deem necessary for the implementation of any time-bound work. The Committee shall comprise of members who are stake-holders of work assigned to the committee. committee shall cease to exist after submit- ting the completion report and evaluation of the Work by the Gram Sabha. (3) The Committees which are already functioning within the area of jurisdiction of the Gram Sabha shall continue to function with the approval of the Gram Sabha. (4) The number of members. reservation of seats, term of office, procedure for resignation and removal, conduct or. business eligibility for becoming a member. meeting. mode of filling of vacäncies and procedure of standing Committees and adhoc committees shall be such as may be prescribed. Rules:-The State Government has made the following rules in exercise of the powers conferred by this section

1. Gram Sabha Swasth Gram Tadarth Samiti (Gathan, Karbar Sanchalan Tatha Batthak) Niyam, 2010

2. Gram Sabha (Constitution of Standing Cornmittees, Procedure for Conduct of Bussiness and Allied Matters) Rules, 2012.3 [7-B. Composition and functions of standing committees. -(1) The. Gram

Nirman Samiti Shall, Act as an agency Of Gram Panchayat and shall execute all construction works and other works entrusted by the Gram Panchayat or Gram Sabha, upto five peeg: Ins. by M.P. Act 3 of 2001. w.e.f.26- 1-2001. 2 Sub-sec. (1) subs. by M.P. Act 16 of 2004. w.e.f. 1-1-2005 3 S. 7-B subs. by,M.P. Act 16 of 2004, w.e.f. 1-1-2005 S. 7-G PANCHAYAT RAJ AVAM GRAM SWARAJADHI., 1993 (PA)35 Sarpanch of Gram Panchayat shall be the ex- officio President of the Gram Nirn;.an Samiti and Gram Vikas Samiti.l (4) The composition and functions of Gram Vikas Samiti shall be such as may be prescribed. (5) The members of the Gram Nirman Samiti shall be included in the Gram Vikas Samiti in such manner as may be prescribed.] [(6) All disputes relating to constitution and election of Standing Committees shall be dealt with the provisions of Section 122 and the rules made thereunder]. 7-c. 40K x x] 7-D. Powers, functions and duties of Committees.-The powers, functions and duties of the committee shall be such as may be entrusted to it by the Gram Sabha from time to time, Every committee shall be responsible and accountable to the Grain Sabha and shall work under its control and supervision. 7-E. RemovA1 of member.-The Gram Sabha shall have power to remove any member of the Cbmmittee at any time for the reasons to \ be recorded in writing. 5 [7-F. P_owers and duties of -Gram NirmanSamiti and Gram-Vikas SåiHiti-.--Thé Gi-am Nirman Samiti and Gram Vikas Samiti shall jointly prepare a plan _for overall development of village and-submit it for the approval of the Gram Sabha.] 6 7-G. Secretary of standing Committees.-The Secretary of Gram Panchayat shall also be the ex-officio Secretary of the Gram Nirman Samiti and Gram Vikas Samiti.l 2 3 4 .5 6 Sub-sec. (2) subs. by M.P. Act 16 of 2004, of 2005, w.e.f. -30-8-2005.-- Sub-sec. (3) subs. by M.P. Act 16 of 2004, then omitted by M.P. Act 20 Of 2005, w.e.f. 30-8-2005. The omitted sub-section was as under "(3) The term of office of the.president shall be two and half years and after the expiration of the term, -election shall be again conducted by the Gram Sabha and the previous president. if he is not disqualified under the provisions of the Act. shall be qualified fOF re-election." Ins. by M.P. Act 18 of 2007 [25-5-20071. S.7-C omitted by M.P. Act 16 of 2004, w.e.f. 1-1-2005. Subs. by M.P. Act 16 of 2004, w.e.f. 1-1-2005. Subs. by M.P. Act 16 of 2604, then again sGbS. by M.P. Act 20 of 2005. w.e.f. "7-G. Secretary of standing committee.-(l) me Secretary of Gram Panchayat shall be the Secretary of Gram Nirman Samiti. . (2) The Gram Vikas Samitf shall élect from amongst the members of the Gram Sabha. a Secretarv by majority of members of the Gram Sabha: Provided that a person shall not hold Charge of a Secretary, if such person happens Io be a relative of any member of the•commitéee. Explanation:-For Lhe purpose of this sub-section. the expression "relative" shall mean father. mother. brother. sfster, husband. wife, son, daughter, father-in- law. mother-in-law. brother-in- law, sister-in-law, son-in-law and daughter-in-law.' (PA)36 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 S. 7-GA [7-GA. Preparing of long term developmen!t plan of Gram Sabha. l) The Gram Sabha shall evaluate next ten fears approximate fund to be received, and make a ten year's long term plan for village development, with the help of experts and approve the same. (2) The plan under sub-section (l) shall be prepared keeping in view the 'land use plan and requirement of basic amenities of Gram Sabha, on priority basis of long term plan through a yearly plan based on the financial resources to be received per year to the Gram Kosh of a Gram Sabha. 7-GB. Disciplinary action against president and members of the Gram Nirman Samiti and Gram Vikas.-The president and every member of the Gram Nirman Samiti and Gram Vikas Samiti shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code, 1860 (45 of 1860) for taking any disciplinary action again-t them.] 7-H. Appeal in a Committee against the decision of Gram 'Sabha.-An appeal against the decision of a Gram Sabha shall lie to a committee consisting of the President of Janpad Panchayat, a member of Janpad Panchayat of that area and the Sub-Divisional Officer (Revenue) in such manner as may be prescribed. COMMENTARY S.D.O. alone has no jurisdiction to hear an appeal.-Section 7-H with Rule 3 of M.P. Gram Sabha (Appeal) Rules, 2001 provides specific forum of appeal by which S.D.O. alone had no juriSdiction to decide an objection/appeal preferred by respondent No.4. Held, Rule 3 empowers an Appeal. Committee to decide the appeal and the S.D.O. (Revenue) is merely one of the constituents of .the Appeal Committee. This being the position, the S.D .0. alone could not have usurped the powers of the entire Committee. Prathmik Om Sai Gramin Mahila Bahuddeshiya Sahkari Samiti Maryadit, v. Sub-Divisional. Officer, Baihar, AIR 2009 (NOC) 533 MP = 2008 (3) MPLJ 617 = 2008(2) MPWN 99. 7-1. Budget. -Every Gram Sabha shall prepare annually. in such form and in such manner and by such date as may be prescribed, budget estimates of its receipt and expenditure for the next financial year. 7-J. Grain Kosh.-Every Gram Sabha shall establish a fund to be called the Gram Kosh consisting of

following sour parts:- (i) Anna Kosh, (ii) Shram Kosh (iii) Vastu Kosh (iv) Nagad Kosh and there shall be credited thereto — 1 ss. 7-GA and 7-GB ins. by M.P. Act 16 of 2004. w.e.f. 1-1-2005 (PA)92 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI, 1993 s. 41 Rule 3(a) of the M.P./C.G. Panchayats (Appeal and Revision) Rules, 1995, the Collector has full jurisdiction to entertain an appeal against the order passed by the S.D.Ö. and the Collector has exercised that jurisdiction, but has registered the case under the head of revision and by that action only it can not be said that the order passed by the Collector would be thrown away holding it to be withoutjurisdiction because no jurisdictional error has been committed except the nomenclature which has been quoted as revision in place of appeal. Manjeet Ram Kewat v. State of C.G. , 2006(2) CGLJ 396 = 2006(4) MPHT (CG) 76

12. Jurisdiction of Additional Collector.-Where the Collector was the offcer who could hear an appeal or revision, on being authorised by the Collector, the Additional Collector could exercise the powers of Collector by virtue ofS.17 of the M.P.Land Revenue Code, 1959. 1999 (1) MPLJ 455 Foll. Smt. Johra Dayal v. State ofM.P., 2001 (1) MPHT 154

13. Removal of President of Janpad Panchayat.-Materials col- lected against petitioner not supplied to him and sufficient opportunity to produce his evidence to rebut allegations made against him, not granted. Order of removed passed by prescribed authority and affirmed by Appellate Authority are vulnerable being violative of principles of natural justice. Orders quashed. Rqja Rajsingh v. State of M.P., 2001 (4) MPIJ 364

14. Relative.-The meaning of the term 'relative' in both sections 40(1) and 69(1) in the absence of specific definition, refers refers only to father, mother,.brother; Sister, husband, wife, Sön,-däughtei•, mothei'-in-law-, father- in-law, sister-in-law, son- in-law and daughter-in-law but does not include uncle-in-law and co-sister of mother-in-law. Jamna Bai Mehra v. State of M.P., 2004 (4) MPLJ 274=2004 (4) 471=2005 (1) MPWN 46 (DB)

41. Bar to hold more than one office.-(1) A persoil who is elected to more than one office of Panchayats, may by notice in writing signed by him and delivered to the prescribed authority within IO days from the date on which he is elected, or the later dates, .if he is--eleéted On different dates, intimate in which of the Panchayats he wished to serve as an office bearer and thereupon his seat in other Panchayats in which he does not wish to sewe shall become vacant. (2) In default of such intimation within the aforesaid period he shall be deemed to have opted for only one of the offices in the following order of preference:— (a) a member of Zila Panchayat. (b) a member of Janpad Panchayat. (c) a Sarpanch of Gram Panchayat. _(d) . a Panch of Gram Panchayat: Provided that if such a person has attended a meeting of a Panchayat before delivering the notice he shall be deemed to have opted for the office in the said Panchayat. 1 Subs. by M.P. 26 of 1994 {30.5.941. s. 40 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)91 It may also be borne in mind that a removal ofa Sarpanch who is directly elected is a serious matter and a person who is removed is further diG- qualified for a period of six years to be elected under the Act. Ilt is not sufficient to give a mere lip-service to the requirement of law. It is true that it is not specifically provided in Section 40 that principles of natural justice should be followed while holding an enquiry but it is implicit in this provision that the office bearer who is sought to be removed will be given a fair hearing. Railashkumar v. State of M.P., 1999 (2) MPLJ 722=2000 (1) rvW1--1T 143=1999 (2) JIJ 280

8. Opportunity to show cause.-The opportunity to show cause should be real opportunity. The person proceeded against must not only be told the allegations of misconduct, but he must also be informed of the materials which is sought to be used against him in support of charges so that he may offer his explanation in respect of that material. A person who holds office as a member or as President has a right to continue in the office until the expiry of the term. The order of removal which is passed under the section affects this valuable right and the finding of misconduct on which such an order is based casts a stigma in the public life of the person. Having regard to these consequences, the power of removal is quasi-judicial in nature. The Supreme Court in AIR 1972 SC 1571 observed that the order contemplated by the provision removing a member was quasi-judicial in nature and that it was not only desirable but also essential that the authority passing the order should give reasons. It -waszf-üither- pointed oüt-that•åll• the inatéi•ial -should 'be disclosed to the person concerned so that he may give an effective answer not only to-the averments contained in the show cause notice but also to the materials on the basis of which the show

cause notice was issued. Bansmani v. State of M.P., 1980 JIJ 60. Followed in Raja Raj Singh v. State of M.P., 2000 (1) ryæHT 490=2000 (2) JIJ 242

9. Meaning of "as far as possible".-ln proviso of S.40(1) the phrase used like 'as far as possible' by the legislature without giving consequence on its failure has got a great significance. That means it does not mandate that the proceedings must be completed within-a period of-90 days failing which it should be dropped. Manjeet Ram Kewat v. State of C.G., 2006(2) CGI.J 396 = 2006(4) MPHT (CG) 76

10. Suspension of Sarpanch.-Show cause notice should be accom- panied with charge sheet detailing all allegations against him. All materials which substantiate allegations in the notice should be supplied. An oppor- tunity to furnish reply should be real one and not a farce. Sarita Mabre v. State 0fM.P., 1998 (1) JIJ 420

11. Jurisdiction.-Sub-Divisional Officer dropped the proceeding hold- ing that mbre than 90 days' time hag •elabséd fröm thé date of issuance of show cause notice. Complainants filed revision before the Collector who th*é Vetitioher Sarpanch u/s. 40(1) of the Act giving finding that petitioner was guilty of misconduct. Held, that Collector was •not justified in passing an order on merits and instead of doing so, he should remanded the matter to the prescribed authority for a decision on merits as many statutory requirements to be followed by the prescribed authority before passing an order u/s. 40(1). Fui•thermore under s. 40 (PA)90 PANCHAYAT RAJ AVAM GRAM SWARAJ ÄDHI., 1993 to fix the date: time and place for the meetings ofthe Gram Sabha and,lapses in this regard are not lapses on the part of Secretary. In case meetings are not convened as provided, section 44(7) will apply and the Sarpanch can be removed for the said misconduct in exerciSe of the powers under this section-. Bharatiaz Yadav v. state 0fM.P., 1999 (2) MPLJ 510. [2] Provisions of S.40 shows that an office bearer of the Panchayat can be removed on two conditiöns, i.e. either he is found guilty of misconduct in discharging of his duties or his continuance iii officé is undesirable in the interest of the public. But where no such conditions was established and it was not a case of gross negligence therefore the Addl. Commr. rightly set aside the order of removal in revision. Kishore v. State of M.P., 2008(3) MPHT 29 = 2008(2) MPWN 98 [DB]

7. Principle of naturaljustice to be followed.- [1] In the instant case, the petitioner was Sarpanch ofa Gram Panchayat. A show cause notice was issued to him in which 15 charges were levelled against him. He submitted his reply to the show cause notice giving his explanation on each charge. He also requested for time to produce some more documents and adduce oral evidence. No witness was examined. by the S.D.O. in support of the charges nor the petitioner was permitted to examine any witness. The _impugned order of removal showed that reply to the show cause notice was considered in light of the report of the preliminary enquiry submitted by the B.D.O.No copy of this report or any othér document -was Supplied -to-the petitioner: There was denial of fair hearing resulting in serious prejudice to the petitioner. The action of removal and disqualification has to bé struCk doWri as there had been failure of justice. The order of removal was not sus- tainable. It may, however, be noted that removal and disqualification of an office bearer of a Panchayat under this section on the ground of misconduct is not less injurious and stigmatic as the removal of a civil servant under Art.311 of the Constitution of India or a workman under the Industrial law. Art. 311 also envisages an 'inquiry' in which the delinquent employee is informed of the charges against him and given a reasonable opportunity_ of being heard in respect of those charges. The celebrated rule of audi partem has been incorporated therein. What principles of natural justice should be applied depends upon the facts and circumstances of each case. AIR 1957 SC 882, AIR 1958 SC 300, (1987) AC 625, (1962) AC 322, 1996 SC 1669, AIR 1991 SC 101 Rel. Kailashkumar v. State 0fM.P., 1999 (2) MPLJ 722-2000 (1) MPHT 143=1999 (2) JIJ 280. [21 The words in sub-section (1), "after such inquiry as it may deem fit to make" would mean an inquiry which is held in the presence of the office-bearer and not behind his back. He should be allowed to inspect the documents which are to be relied upon against him and he should have the right to adduce his own evidence. These are the important facets of an inquiry to be held in conformity with the principles of natural justice. It is not the subjective choice of the prescribed authority to get an inquiry held of any kind. It does not envisage a secret inquiry or a preliminary inquiry alone. That is made only for collection of evidence and at that stage there iS no participation of the person against whom the action is sought to be taken. The words "as it may deem fit" have to be construed objectively and would mean an inquiry depending upon the facts and circumstances of each case. s. 40 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)89 granted till disposal of appeal. AmritZal Jaiswal v.

State of M.P., 2008(111) 108. [8] Removal of office bearer of Panchayat.-(a) If at all any action is to be taken in view of this section for the purpose of removal of offce bearer of Panchayat, the prescribed authority will have to hold firstly an inquiry for the purpose of finding out whether the delinquent happens to be guilty of things described by the provisions of sub-clauses (a) and (b) or the proviso of sub-section (1) of section 40. Further, the prescribed authority will have to point out that the conduct ofthe delinquent was falling under the category of 'misconduct' as indicated by the explanation provided to sub-section (1). The offcer working as prescribed authority has to keep in mind that proposed action is likely to dislodge a person who has been duly elected by members of the public and that too for the purpose of holding the office as indicated by the Act for performance of the duties indicated by the post or various posts of such panchayats. There should be compliance of the neces- sary provisions of the Act when a person is to be punished legally. Where the person concerned is not proved to have committed any 'misconduct' he cannot be removed from the office he is holding. Kamal Kishore v. Janpad Panchayat, Naikheda, 2000 (1) ryW1-J 309-1999 (2) 470=2000 (1) (2) JLJ 370. (b) Removal of office bearer- Giving of opportunity to show cause is material and not the form. -The underlying principle under sub- section (-1) is that- an- officer bearer;-beforehe isremovedfröm-office inüst-kn6W•thé-• misconduct committed by him and is given an opportunity to show cause before his removal. It is providing an opportunity to show cause which is relevant and not its form. No particular form or mode having been prescribed it is left to the discretion of the State or the preseribed authority, either to indicate the act of misconduct or undesirability of continuance in• office in the show cause noti0e itself or separately. The mandate is that an opportunity to show cause is to be given before passing the order of remove from omce. Harishankar Patel v. State 0fM.P., 1999 (1) 16 (DB)

3. Form for-giving show cause notice.-Section 40 -of the-Act does not- prescribe any particular form in which show cause notice is to be given or the misconduct has to be enumerated. Harishankar Patel v. State of M.P., 1999 (1) MPLJ 16 (DB). 4. Ex-parte order.-Petitioner submitted his reply on notice but failed to appear on date fixed so SDO passed an ex-parte order. Held, the said order is not given in violation of natural justice but is appealable under Rule 3 of Panchayat (Appeal and Revision) Rules, 1995. Pratap Singh Yadav v. State 0fM.P., 2007(2) ryæwN 59

5. Difference of proceedings under Ss.40 and 92.-Proceedings under section 92 are quite different than that of section 40. No action of .removal of a -Sarpanch of, the. Gram. Panchayat can be taken by the prescribed authority in the proceedings initiated under section 92. Maya Choudhary v. State 0fM.P. , 2012(2) 90 - 2012(5) 240

6. Misconduct and removal of Sarpanch.-Under the provisions of the Act a Sarpanch is required to convene periodical meetings of the Gram Sabha and the resolutions are to be passed therein. It is for the Sarpanch (PA)88 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 s. 40 basis of which the proceedings are started. The order ofremoval of an elected office bearer is also a penal provision contained in section 40 of the-Act, and dn elected office bearer of Panchayat elected by people is not to be branded unceremoniously. The show cause notice required to be issued under the said proceedings is to reflect the charges on the basis of which the proceed- ings are started under section 40 of the Act. Only after completing the proceeding in this manner for the purposes of reaching to definite findings, whether any misconduct or other contingency mentioned in the provisions of section 40 of the Act is made out or not, the order can be passed by the prescribed authority. If it is not done, the proceedings under section 40 of the Act would be vitiated. Since such impugned order has been passed in a proceedings initiated on the complaint made by the petitioner under section 92 of the Act and the power under section 40 of the Act have been exercised by the SDO, the order impugned cannot be sustained. Maya Choudhary v. State 0fM.P. , 2012(2) MPI.J 90 2012(5) MPHT 240. [7] Removal of Sarpanch.-(a) Removal of the petitioner from the post of Sarpanch. No proper enquiry was conducted by the SDO before ordering removal. Case remitted to the SDO to conduct enquiry in accordance with law. Manito Jaiwar v. State 0fM.P. , 2009(3) MPI.J 370 = 2009(2) JIJ 333 = 2009(3) MPHT 70. (b) A Sarpanch was removed Sub-Divisional Officer after considering an enquiry report submitted by three member committee. The petitioner was not given copy of enquiry. report to s.ubmit his objections or. explanations.... Principles of natural justice violated. Order of removal set aside and thc Sub- Divisional Officer ordered to proceed after supplying a copy of such report to the petitioner. Rajendra Singh Raghuvanshi v. State of M.P., 2004 (4) MPI.J 6=2004 (3) 373. (c) Procedure.- In proceedings for removal of a Sarpanch, witnesses must be examined and the

Sarpanch should be given an opportunity to cross-examine those witnesses. Babita Lilahare v. Surendra Rana, 2004 (1) MPIJ 27=2004 (5) nn'l--l'l' 79. see also Kailashchandra Jain v. state of M.P., 2003 (3) 260=2002 (5) 523, Faiz Mohd Faiz v. state of M.P., 2004 (4) MPHT 393. (d) Defective Enquin'.-Prescribed Authority though aware of the fact that the officers who prepared the enquiry report did not appear for cross- examination, yet proceeded to hold the petitioner guilty of charges on the basis of same enquiry report. It is not fair trial. An order of removal/dis- qualification based on such defective enquiry cannot be given the stamp of approval. Smt. Phool Bai v. State 0fMadhyå Pradesh, 2009(2) MPHT68 2009(1) JIJ 437. (e) Secret enquiry or preliminary enquiry alone is not enough. S.D.O. should hold enquiry according to law. Mangobai v. State of M.P., 2003 (2) MPLJ 112. (f) Grant of stay.-When an appeal is pending for hearing against the removal order of a Sarpanch and if the Sarpanch filed an application for interim relief for staying the operation of the removal order, it cannot be refused because the holding of a democratic offce and removal therefrom, under the Constitution of India, cannot be treated lightly. Stay should be 10 n n s. 40 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)87 ha$o.be enumerated. The mode followed for taking action under section 40 , if held to be valid, it cannot be said to be invalid for action of suspension under the said clause (b) only on the ground that the charge sheet and notice to show cause were composite. Harishankar Patel v. State of M.P., 1999 (1) MPLJ 16 (DB)

2. Removal of Sarpanch and/or Officer Bearers.-[l] Bar of con- tinuing inquiry-Specified Period For.-(l) The proviso to S.40(1)(c) of the Adhiniyam,1998 prescribes a bar of continuing inquiry beyond a particular period. The object of the proviso is that if an office bearer of the Panchayat has committed misconduct, then it is necessary for the prescribed authority to complete the inquiry within a period of 90 days and beyond the aforesaid period, he has to take permission from his senior officer in writing and request-extension of time and time shall not be extended more than 30 days. The words which are used are that "such extension of time shall not be more than 30 days". It means that even the higher officer is not competent to grant more than 30 days time to complete the inquiry. It is in consonance with the object that if there are allegations of misconduct against the office bearer of a Panchayat, on which he could be removed, the inquiry must be completed within specified time and if it is held that this is a procedural requirement and on this ground the inquiry would not be vitiated, then the prescribed authority may take indefinite time to conclude the inquiry, it would be against the intention and specific unambiguous intention of the statute. It is not only auocedural law but it is a substantive _law because it gives power of-removal to the- breéefibed•-aüthöfity to reihöVé •the-Offéé thé Panchayat. Dhanwanti v. State 0TM.P., 2013(1) MPI.J 549 (DB) 2013(2) MPHT 254 (DB). [2] Procedure.-The authority on a complaint under S.40 of the Act had issued notices to petitioner in response to which the petitioner. had filed an application under S. 11 of-the CPC but the S.D.O., 'instead of passing any order thereon, proceeded to remöVethe•pet it ionér from the post of Sarpanch under S.40 of the Act. The authority:was-reqaired-. to give an opportunity to the petitioner to file a reply •and thereafter -.pass a detailed order after following the-procedure prescribed: by the law under-S.40 -of -the Act.- Gyanmati Basore. v. State of M.P.., 2013(2) MPLJ 200 = 2013(3) NQ1--1T 320. [31 Prescribed authority has no jurisdiction to pass order of removal-of Sarpanch beyond period of 120 days. Proviso to Section 4()(1)(c) is manda tory in nature. 2013('2) JIJ 84 Relied on. San-tosh Raghuvgnshi v. State of .W.P., 2013(2) 28(DB). [41 Complaints, -Complaints against petitioner regarding non-pay m e n t of wages to workers is a serious matter. Conector directed to take action against the petitioner.Kusuma Yadav v. State ofM.P., 2013(2) MP WN 109. [5]. It elleggd of >.yybanfl was unlayvful. Sarpahchæ.eifioner éould Be disquafifiéd on this ground and cannot be remoted from the post of Sarpanch. 2012(2) SCC 407 Poll. Guddi Devi v. state 0fM.P., 2013(2) rvTWN 117. [6] Removal of omce bearer of Panchayat.-Show cause notice re- quired to be issued under the proceedings must reflect the charges on the s. 40 (PA)86 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 ing any pecuniary benefits to any relative, such as giving out any type of lease, getting any work done through them in the Panchayat by an office bearer of Panchayat. Explanations-For the purpose of this clause the expression •relative' shall mean father, mother, •brother, sister, husband, wife, son. daughter, mother-in-law, father-in-law, brother-in- law, sister-in- law, son-in-law or daughter-in-law:] I [Provided further that the final order in the inquiry shall be passed within 90 days from the date of issue of •show cause notice to the concerned office bearer and where the pending case is not decided within 90 days, the prescribed authority shall inform all facts to his next senior officer in writing and request extension of time for disposal of the inquiry but such extension of time shall not be more than 30 days.] (2) A person who

has been removed under sub-section (1) shall forthwith cease to be a member of any other Panchayat of which he is a member, such P%rson shall also be disqualified Ibr a period of six years to be elected (x x x I under this Act. l. 2. 3. 4. 5. 6. 7. 8. 9. IO. 11. 12. 13

14. COMMENTARY SYNOPSIS Requirements of clause (b) of sub:sect.ion (-1). Removal of Sarpanch and/or Officer Bearers. Form for giving show cause notice. Ex-parte order. Difference of proceedings under Ss. 40 and 92 Misconduct and removal of Sarpanch. Principle of natural justice to be followed. ()pportunity to show cause. Meaning of "as far as possible". Suspension of Sarpanch. Jurisdiction. Jurisdiction of Additional Collector. Removal of President of Janpad Panchayat. Relative 1. Requirements of clause (b) of sub-section (1).-What is required under clause (b) of sub-section (1) is that the office bearer is given a show cause notice for removal and he is served the charge-sheet. Once those twin conditions are fulfilled the prescribed authority get the jurisdiction to suspend the office bearer. The word 'alongwhth' in clause (b) of sub-section (l)•cannot be read to mean that notice to show cause for remove and charge sheet have to be separately given. Section 40 of the Act does not prescribe any particular

form in which show cause is to be given or the misconduct 1 2 Subs. by M.P. Act 20 of 2005, w;e.f. 30-8-2005 for the-following "Provided that the final order in the inquiry shall as far as possible be passed within 90 days from the date of issue of show cause notice to the concerned officer bearer." Omitted, by M.P. 26 of 1994 130.5.941,the words "co-opted or appointed". 9 s. 40 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)85 vacated. Kedar Singh v. State 0fM.P., 1996 (1) MPWN 125

4. Delegation of power under sub-section (2) by State Govern- ment to 'Collector'- 'Collector' includes 'Additional Collector'.-The State Government delegated its power under section 39(2) to confirm suspension of 'Sarpanch', to the 'Collector' vide notification issued under section 93. By virtue of the provisions of Ss.15, 16 and 17 of the M.P.Land Revenue Code, the term 'Collector' includes "Additional Collector". Kaushal Prasad Kashyap v. State 0fM.P., 1999 (1) MPI.J 455

5. Sub-section (2)- Order of suspension of a Sarpanch of Gram Panchayat not confirmed by State Government within stipulated time- Effect.-An order of suspension of a Sarpanch of a Gram Panchayat has to be forwarded to the State Government and the State Government is obliged to pass some order one way or the other within 90 days . In case no order is passed within a period of ninety days from the date of its receipt then the order of suspension is deemed to have been vacated. Kedar Singh v. State 0fM.P., 1996 MPLJ 372

6. Effect of amending Act 43 of 1997-Suspension under clause (b).- Where a Sarpanch was suspended under clause (b) of sub- section (1), the same clause having been omitted by amending Act 43 of 1997, the suspension of the said Sarpanch also goes away on 5-12-1997, when the said Act came into force. Asha Dwivedi v. Sub-Divisional Officer, Deosar, 1999 (2) MPLJ 76

40. RemOVal of -office bearers of' The State Government or the prescribed authority may after such enquiry as it may deem fit to make at any time, remove an office bearer—(a) if he has been guilty of misconduct in the discharge of his duties; or (b) if his continuance in office is undesirable in the interest of the public: Provided thät-riö persOn-shållbéFemåved üriiéés-he fias béén given an opportunity to show cause why he should not be removed from his office. Explanation. -For the -purpose • of this sub-section "Misconduct" shall include— (a) any action adversely affecting- (i) the sovereignty, unity and integrity of India; or (ii) the harmony and the spirit of common brotherhood arnqngst all the people of State transcending religious, lin- guistic, regional, caste or sectional diversities; or (iii) -the dignity. of women; or (b) gross negligence in the discharge of the duties under this Act. [(c) the use of position or influence directly or indirectly to secure employment for any relative in the Panchayat or any action for extend- Ins. by MP 2 of 1997 17-1-19971. (PA)84 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 s. 39 rigour of S.39(1)(a) will not come in his way, merely because the appeal against acquittal has been admitted by High Court. True, it is that on appeal being admitted for hearing while exercising the powers of appeal; the judgment of acquittal can be reversed and the person acquitted can be convicted, but the fact remains that there exist a judgment of acquittal, which is operative in his favour and, therefore, he cannot be deprived to enjoy the fruits of the same, merely because appeal against the same has been admitted. Ramesh v. State of M.P., 2013(1) MPLJ 229 = 2013(1) MPWN 102 = ILR 2013 74 (DB)

2. Suspension.-[l] There is no provision under the Act for sust)ending a Sarpanch only on the ground that the FIR is lodged against him. Section 39(1) specifically lays down that a Sarpanch can be suspended on framing ofa charge in a criminal case. Admittedly no charge has been framed against the present petitioner. Hence, impugned order cannot be sustained. Hukiya Bai v. State 0fM.P., 2007(11) MPWN 86. [2] No notice needed-The section does not require any show cause notice for suspension. This show cause notice for removal from the office is contemplated under section 4() of the Act while section 39(1)(b) only says about issuance of notice alongwith a charge-sheet to show cause Why the person be nor removed from office. Harishankar Patel v. State of M.P., 1999 (1) MPLJ 217=1999 (1) JIJ 255. [3] Service of confirmation not necessary-Under sub-section (2) service of confirmation of order of suspension is not obligatory on the part of the State Government•as a report is madeto the State Govemment--and the State Government is supposed to act on the report and to pass the order within 90 days from the date of receipt of the report, if the State Government for reason whatsoever fails to confirm the order of suspension within 90 days from the date of receipt of the report, then the fiction to come into play and the fiction is that in that event the order of suspension shall be deemed to have been vacated. Harishankar Patel v. State of M.P., 1999 (1) MPLJ 217=1999 (1) JIJ 255. [4] Suspension of Sarpanch-Show cause notice should be

accompanied with charge sheet detailing all allegations against him. All materials which- substantiate allegations in the notice should be supplied. An opportunity to furnish reply should be real one and not a farce. Sarita Mabre v. State of M.P., 1998 (1) JIJ 420. [51 Power to suspend withdrawn on 2-10-1997 by Ordinance. Action taken prior to that date does not come to an end. Goverdhani Bai v. State of M.P., 1998 (11) MPWN 49

3. Scope and effect of sub-section No consequence is men- tioned in the Act where there is failure in reporting of suspension to the State Government within IO days. The provision is obligatory. But where such suspension is not so reported, the order of suspension would not stand vacated automatically. Second part of the provision in the sub-section regarding confirmation of suspension order within 90 days is mandatory. Arjunlal Gupta v. State 0fM.P., 1998 (1) 128. [2] Where an order suspending the Sarpanch is not confirmed by the State Government within 90 days, suspension is deemed to have been 9 d s. 39 I-A. 2. 3. 4. 5

6. PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)83 COMMENTARY SYNOPSIS . General interpretatiöfi. Appeal against acquittal has been admitted by High Court-Effect. Suspension. Scope and effect of sub-section (2). Delegation of power under sub-section (2) by State Government' to 'Collector' -'Collector' includes 'Additional Collector'. Sub-section (2)-Order of suspension of_a Sarpanch of Gram Panchayat not confirmed by State Government within stipulated time-Effect. Effect of amending Act 43 of 1997

1. General interpretation.-(ll The section provides for suspension of an offce-bearer, namely, the Sarpanch, Up-Sarpanch or a panch of a Gram Panchayat and President, Vice-President and member of a Janpad Panchayat or Zila Panchayat. [2] Powers are vested in the prescribed Officer to suspend any of the above under the circumstances mentioned in clause (a) of sub- section (1). [3] Clause (a) enumeratés the list of offences and it says further that if criminal proceedings have been initiated against any office-bearer and charges have been framed against such offce-bearer in such proceeding then, the concerned offiCé• - bearer inay--be -suspended by the: preSctibed Authority. [4] It is then provided in sub-section (2) 'that the ofder of suspension shall be reported (intimated) to the State Government within ten days of the passing of the order. The matter then rests with the State Government to deal with it and pass necessary order thereon. The only other provision made in this sub-section is that if the order of suspension is not confirmed by the State Government within ninety days of the receipt of report then, the order of suspension will automatically lapse. [5] Provision is made in-sub-section-(3) for election of-officiating-Sar--- panch, or President in a special meeting called by the Secretary or the Chief Executive Offcer, as the case may be. Such officiating Sarpanch or Presi- dent shall continue in office during the period of suspension. [61 Sub-section (3) also provides that where the offce of Sarpanch or President was a reserve oge for member of a Scheduled caste or Scheduled Tribe or a woman, the omciating Sarpanch or President shall also be elected from the same caste or sex as the case may be. I-A. Appeal against acquittal has been admitted by High Court- Effect.- In Section 39(1)(a) and (2) of the Adhihiyam, 1993 the Prescribed Authority has power to suspend from office any offce bearer against whom charges -have been framed in. any criminal proceedings for the offences mentioned in sub-clause _(a). The order of suspension passed under sub- clause (l) is required to be reported to the State Government within the prescribed period of 10 days and Shall be subject to such orders as the State Government may deem fit to pass. The petitioner having been acquitted by the Competent Criminal Court, of the charges framed against him, the (PA)82 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 [x x xl s. 39 2 1(2) The order of suspension under sub-section (l) shall be reported to the Sl ate Government or authorised officer within a period of ten days and shall be subject to such orders as the State Govern- ment or the authorised officer may deem fit. If the order of suspension is not confirmed by the State Government or authorised officer within ninety days from the date of receipt of such report, it shall be deemed to have revoked.l In the event that the Sarpanch of Gram Panchayat, Presi- dent of Janpad Panchayat or Zila Panchayat, as the case may be is suspended under sub-section (1), the Secretary or the Chief Execu- tive Officer of the concerned Panchayat shall cause to be called a special meeting of the Panchayat immediately, but not later than fifteen days from the date of receipt of infornlation from prescribed authority and the members shall elect from amongst themselves, a person to hold the office of Sarpanch or President temporarily, s the case may be, and such officiating Sarpanch or President shall perform all the, duties and exercise all the powers of Sarpanch or President as the case may be, during the period for which such suspension continues: Provided

that if the office of the Sarpanch or President is reserved for the member of Scheduled Castes or Scheduled Tribes or other Backward Classes orfqr a woman. the officiating Sarpanch Or Presi- dent shall be elected from amongst the mgmbers belonging to the same category: Provided further that where the office of Sarpanch or President is reserved for a woman belonging to Scheduled Castes or Scheduled Tribes or other Backward Classes and there is no other woman member of the Panchayat belonging to that category who can be elected to officiate as Sarpanch or President, as the case may be, any other woman member belonging to the other reselV_ed categories, may be elected to officiate as Sarpanch or President as the case may be]. (4) A person who has been suspended under sub-section (1) shall also forthwith stand suspended from the office of member or office bearer of any other Panchayat of which he is a member or office bearer. Such person shall also be disqualified for being elected x XJ under the Act during his suspension. 2 3 4 Cl.(b) omitted by MP 43 of 1997 (2-10-19971. Subs. by M.P. Act 26 of 2012 [23-5-20121. before substitution it was as follows:- "(2) 'me order of suspension under sub-section (I) shall be reported to the State Government within a period of ten days and shall be subject to such orders as the State Government may deem fit to pass. If the order of suspension is not confirmed by the State Government within 90 days from the date of receipt of such report it shall be deemed to have vacated." Subs. by MP 43 of 1997 15-12-19971. Omitted, by M.P. 26 of 1994 [30.5.941. the words "co-opted or appointed". -38 re- of al ys ty st e s. 39 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)81 [2] Where a casual vacancy occurs in the office of the Sarpanch of a Gram Panchayat, the Secretaiy ofthé Gram Panchayat shall call* to be called a special meeting of the Panchayat as soon as possible but not later than 15 days from the date of receipt of notice of vacancy from the Prescribed Authority. In the meeting so called, the members shall elect a new Sarpanch from amongst themselves temporarily till a new Sarpanch is -elected in accordance with the provisions of the Act and the rules. Where the post of casual vacancy was reserved for any of the communities or for woman then it will be filled by the member of same community or a woman. In case no other woman of the reserved class is available then a woman of any other category may be elected temporarily. [31 It is very important to note that the secretary has not to rush for calling the aforesaid meeting unless he is intimated by the prescribed authority that a vacancy is caused. The reason is that a resignation may also be withdrawn, therefore, the secretary should wait till he receives intimation of vacation from the aforesaid authority

3. Handing over of charge.-Where the outgoing office-bearer fails to hand over any record, article, money or property of the panchayat, the prescribed authority may direct him to do so and if he fails to comply his direction then, steps under section 92 may be taken against him and he may also be prosecuted under section 98. [4] The temporary' filling up of the post of a Saypanch under glause (b) of Sub-section-(1) of Section 98 does not' create ä -right in fävöUf Of -such- officiating Sarpanch to claim that no election can be held under clause (a) of Sub-section (1) of Séction 38 till the entire tefm expires. Phoola Bdöv. The state, 2009(2) rvNHT 75 2009(11) r•tWWN 21

39. Suspension of office bearer of Panchayat.-(l) The prescribed authority may suspend from office any office bearer— (a) against whom charqes have been framed in any criminal 1 2 proceedings under- - iChä-pter- V-A, - VI," IXI,- -DC-A, -X, - XII. Section .302, 303, 304-B, 305, 306, 312 to 318, 366-A, 366-B, 373 to 377 of Chapter WI, Section 395 to 398, 408, .409, 458 to 460 of Chapter XVII and Chapter XVIII of the Indian Penal Code, 1860 (XLV of 1860) or under any Law for the time being in force for the prevention of adulteration of food stuff and drugs, [suppression of immoral traffic in women and children, protectiori of civil rights and Preven- tion of Corruption]: or Subs. by M.P.Act 5 of 1999 [5-4-1999]. Subs. by M.R.Act 5 of 1999 [5-4-19991. (PA)80 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 S. 38 accordance with the provisions of the Act and the rules made there- under; 1 ((b) in the event of occurrence of a casual vacancy in the office of' the Sarpanch of a Gram Panchayat, the Secretary of the Gram Panchayat, as the case may be, shall cause to be called a special meeting of the Panchayat immediately, but not later than fifteen days from the date of receipt of information from the prescribed authority regarding the vacancy and the members shall elect from amongst themselves a person to hold the_offlce temporarily till a new Sarpanch. as the case may be, is elected in accordance with the provisions of this Act and the rules made thereunder and such omciating Sarpanch, as the case may be, shall perform all the • duties and exercise all the powers of Sarpanch, during the pendency of election: Provided that if the office of the Sarpanch is reserved for the member of Scheduled Castes or Scheduled Tribes or other Backward Classes or for a woman, the offiaiating Sarpanch shall be elected from amongst the members

belonging to the same category: Provided further that where the office of Sarpanch iS reserved for a woman belonging to Scheduled Castes or Scheduled Tribes or other Backward classes, and there is no other woman belonging to that category who can be elected to officiate as Sarpanch, any other woman belonging to the other reserved categories may be elected to officiate as Sarpanch during the casual yacancyl. (c) If the out-going office - beai•er fails to hand over any record, article, money or property of the Panchayat forthwith to his successor the prescribed authority may by order in writing direct him to do so and on his failure to comply with such direction the prescribed authority may proceed against him in accordance with Section 92 and take necessary steps to prosecute him under Section 98.1 2iOmittedl COMMENTARY 1. Casual vacancy.-lf before expiry of the term, a casual vacancy in the offce of any office-bearer may occur due to following reasons:- (i) When such an office bearer expires; (ii) Yvmen such an office bearer resigns from his office; (iii) When a no-confidence motion is passed against him; (iv) When he is removed from his offce; and (v) When he becomes member of State Legislative Assembly or either House of Parliament

2. Filling of casual vacancy.-[ll Where a casual vacancy in the offce of an office-bearer occurs, it has got to be filled as soon as possible in accordance with the provisions of this Act and the RuleS made thereunder. 1 subs. by MP 43 of 1997 [5-12-19971. 2 Omitted by MP 43 of 1997 15-12-19971. s. 38 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)79 a person conceals his real caste and contests election on a seat reserved for Scheduled Caste or Scheduled Tribe and gets elected, his election can be challenged either under section 122 of the Panchayat Act or under section 36(2) of the same Act. Roshånlal Maravi v. Shambhoo Singh, 2005 (1) MPLJ 467-2005 (1) 309 (DB)

37. Resignation by offiCer bearer of Panchayat.-(1) A panch of a Gram Panchayat or a member of Janpad Panchayat or a member of Zila Panchayat may resign his office by giving notice in writing to that effect to the Sarpanch or President as the case may be. (2) "Ihe Sarpanch or Up2Sarpanch of a Gram Panchayat or the President or Vice-President of a Janpad Panchayat or Zila Panchayat may resign his office by giving notice in writing to the prescribed authority. (3) The manner of giving notice and procedure for tendering resig- nation and its becoming effective shall be as may be prescribed: Provided that a person tendering resignation may withdraw his resignation before it becomes effective. COMMENTARY Acceptance of, resignation, order-- Validity- of-.-_Under S.37-_-the resignation could not be accepted without affording him an opportunity to reconsider the decision, the Rules have been framed under Section 37 namely the M.P. Panchayat (Resignation by Office bearers) Rules 1995 and according Co its Rules 3 & 4, the resignation could be accepted under sub-rule (4) of•Rule 4 only after a full and complete compliance with the provisions of preceding two sub-rules of Rule 4, contemplating consideration thereon by Panchayat at its next meeting under notice to the petitioner. A bare perusal of the record would reveal that the resignation has been accepted by circumventing the procedure prescribed therefor, hence non-compliance with the mandatory-provisions -of sub-rules (3) is suffeient -to hold that the resignation was not validly accepted. Bihari Das v. State of M.P., 2014(1) MPLJ 148 = 2013(4) rw)1--1T 542 = ILR 2013 1069. Rules:- The State Government has made the following rules in exercise - of the powers conferred by this section. These Rules shall be found under Rules given separately. "PANCHAYAT (RESIGNATION BY OFFICE BEARER) RULES, 1995 38. Filling up of (a) In kthe event' of death, resig- nation, no confidence motion, or removal of an Office bearer of a • - his betörnlhg ä member of State LégiSlätі€e- Assenibly or a member of either House of Parliament before the expiry of his term, a casual vacancy shall be deemed to have occurred in his office and such vacancy shall be filled as soon as may be by election in 1 Subs. by M.P. 26 of 1994 [30.5.941. (PA)78 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 s. 36 contests the election after concealing the disqualification or no person who has become disqualified after the elections are over is continued as an offce bearer in the Panchayat. Not only this, the Collector also has to see that whether the disqualification is removable an if yes, but not removed then in such a case the Collector may declare that the office has became vacant. Bhuvaneshwar Prasad v. State of M.P., 2009(1) Nn'1.J 434 (DB) = AIR 2009 (NOC) 242 MP (DB) = 2008(5) MPHT 72 (DB) = 2008(3) JIJ 295

13. Incompetent proceedings.-lf incompetent proceedings were sub mitted before the S.D.O. then the question "questioned and decided by an election petition" would not come up as a bar because w question can be raised and decided in a validly constituted election petition. Bhuvaneshwar Prasad v. State of M.P., 2009(1) MPI.J 434 (DB) - AIR 2009 (NOC) 242 MP (DB) = 2008(5) MPHT 72 (DB) = 2008(3) JIJ 293

14. Procedure to be followed by S.D.O..-When an election petition was not duly constituted is filed before the S.D.O. and the S.D.O. finds that the question raised in the petition can be conveniently decided by a higher officer in exercise of the powers under S.36 then a reference certainly could be made by him because S.36(3) clearly provides that the Collector may give his decision either on an application made to him by any person or on his own motion. Bhuvaneshwar Prasad v. State of M.P., 2009(1) MPLJ 434 (DB) = AIR 2009 (NOC) 242 (DB) 2008(5) MPHT 72 (DB) - 2008(3) JIJ 293

15. Appeal against deéision of competent authority.-[l] Provision is made ili sub-géctiöi•i (4) for pi•éferrifig- an appeal against -the decision: of the competent authority by the person aggrieved. Where such decision is given by a Collector, the appeal would lie to the Commissioner and where the decision is given by the Commissioner the appeal would lie to the Board of Revenue. [2] Limitation for such appeal is provided as 30 days from the date of order

16. Quo Warranto Writ.-Can be issued by the Court when a person in a public office has been appointed in violation of statutory provisions. Virendra Tyagi b. State 0fM.P., 2011(1) MPLJ 245 = 2011(2) MPHT 361

17. Finality of decision.-[l] An order passed in appeal shall bb final, meaning thereby that no further appeal against such a decision would be competent. It should also be understood that a decision of the Commissioner as a competent Authority is appealable but his decision as an appellate authority would be final because no second appeal again•st his decision is provided in this sub-section. [21 Writ not tenable.-The Upper Collector having conducted an en- quiry set aside the election of the petitioner as Panch on the ground that his fourth child was born on 17-2-2001 that is to say, after the cut off date 26-1-2001. Held, alternative appeal remedy available hence this writ is not maintainable. Dhaneshwar Devangan v. State of C.G., 2006(1) CGI.J 221 = 2006 CGLT 29

18. Concealment and misrepresentation of caste-Contesting on reserved seat and getting elected-Challenge to such election.- Where (PA)77 s. 36 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI.-1993 [3] Disqualified for the post of OMce Bearer.-Thr• petitioner gave his one child out of three, to his brother. 'Ihe registered adoption deed was executed after the cut-off date. Helt that petitioner has three children at the time of election therefore he was rightly disqualified to contest election of member of Janpad Panchayat by the Returning Officer. Pradeep Kumar Tiwari v. State 0fM.P., 2006(3) MPlJ276

8. Bar when not applicable.-Contention that in view of Qub-section (2), elected office bearer of Panchayat is removable only after filing election petition. Sub-section (2) of section 36 of the Adhiniyam is to be read in context to sub-section (1). In order to construe section 36(1) as well as sub-section (2), both the provisions are to be interpreted in order to make the section 36 as a whole workable. Contention rejected because this bar would not come in the way when a writ petition seeking relief of quo warranto is filed. Suresh Baba s/o Agya Ram Sharma v. Virendra Tyagi, 2011(1) rvWLJ 454 = 2011(1) MPHT 72

9. Decision about vacancy.-[1J As stated above, an office-bearer who becomes disqualified subsequently, shall be so declared and his office shall be declared vacant by a competent authority. The competent authority is,-. (i) Collector, in the case of Gram Panchayat and Janpad Panchayat; (ii) Commissioner, in the case of Zila Parishad. [21 The competent Authority shall give his decision either on an applica- tion being glade by any person .do so on-his.own motion: But no order shall be passed •against any person without giving him a reasonable opportunity of being heard. For comments, on 'reasonable opportunity', kindly 100k to comments under Ss.40 and 87. IO. Evidence.-Unfair means and corrupg practice.-Some evidence does not lead to a conclusion that returned candidate had taken recourse to unfair means and corrupt practice. Uma Shånkar Chobey v. Madan, ILR 2013 MP 2603

11. No cessation till decision.-lt is also provided in sub-section (3) that no person shall cease to be an offce bearer until it is decided by the competent officer that he is disqualified and his post is declared vacant

12. Interpretation Of Sub-sections (2) & (3).(a) Sub-section (2>-word "and" to be read as "or".-in the language employed in Section 36(2)(a) is "concealing his disqualification for it which has not been questioned and decided by any election petition under Section 122" would not mean that filing of the election petition itself would arrest the jurisdiction of the Collector. The word used "questioned and decided" are to be read as one qualifying condition. The words "questioned" and "decided" are to be read as one. The word 'and'certainly can be read as 'or' if the intention of the legislature is not clear or the law

requires the word "And" $0 be as. "or". BIQuvaneshwar Prasad v. State of M.P.A 2009(1) •-råPLJ 434 (DB) = AIR 2009 (NOC) 242 MP (DB) = 2008(5) 72 (DB) = 2008(3) JIJ 293. (b) Sub-section (3).-Sub-section (3), if is read in its true perspective and in accordance with legislature then would clearly show that legislature wanted the Collector to exercise the power to see that no disqualified person s. 36 (PA)74 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 of persons mentioned in the section are deemed to be persons who do not deserve to become an office- bearer of any panchayat. The section does not make any difference in this respect in the three types of panchayats. The provisions of this section are applicable to every_panchayat whether it is Gram Panchayat, or Janpad Panchayat or Zila Panchayat

2. Applic ability .-provisions ofS. l)(cc) is attracted only ifthe person aspiring to the office-bearer of Panchayat had encroached on any land or building of the Panchayat or Government. Geeta Bai v. S.D.O., 2013(3) MPLJ 106 = ILR 2013 MP 2579 = 2013(5) MPHT 196

3. Persons who are disqualified.-[ll The section gives the description of those persons who are so disqualified to become an office-bearer of a nanchavatsuchnersonsare_as under•.— (PA)76 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 S. 36 of his release. Appellant was convicted under section 302, Pénal Code and was sentenced to life imprisonment. Five years have not yet been elapsed after his release and, therefore Writ Court has rightly held that the appel- lant was having disqualification for holding the office of Sarpanch. Suresh Baba s/o Agya Ram Sharma v. Virendra Tyagi, 2011(1) MPLJ 454 = 2011(1) MPHT 72

5. Disqualification of member.-Disqualification of member under is a matter of-record. Prabhasingh v. State of M.P., 1998 (11) MPWN 87. [21 Convicted person should vacant the post.-A convict cannot be allowed to occupy an elected post where a statute clearly prohibits. Section 36(1)(a)(ii) is quite clear that a person will not be eligible to hold a post for a period of 5 years if he has been convicted for not less than six mohths. Respondent No.9, President, Janpad Panchayat, Shahpura was convicted under S.326 of IPC and S.25 of Arms Act and sentenced for a period of 3 years and remained in custody till 2003. He could not have contested till 2008 in view of provisions of Act and he will cease to be such offce bearer. His post shall became vacant. Shiv Singh Rawat v. State of M.P., 2008 (2) MPLJ 573 = 2008(2) JIJ 124 = AIR 2008 (NOC) 1390 = 2008 MPHT 41[DB]. [31 Past disloyalty is also disqualification to election of Sar-panch.-Conduct of police constable of showing indecent behaviour with woman guard, posted in jail ward, exercise of undue power, using abusing language, show disloyålty. He had not adhered to the official discipline that was expected to him. Held, he has incurred the disqualification u/s.36(1)(e) of the Act for the post of Sarpanch. Surendra Singh v. Nasrat Ali, AIR 2007 (NOC) 2581 MP[DBJ

6. Disqualification becoming inoperative.-Where an offce bearer was convicted but his conviction was suspended by the High Court in appeal, he cannot be treated as convicted and consequently cannot be removed from the office. Every consequent disqualification becomes inoperativ_e and remains in abeyance pending his appeal. Jamuna Prasad Jaisani v. Smt. Shikha Dubey, 1999 (2) JIJ 382

7. Previous provision of S.36(1)(m).-Disqualification Clause (m) of sub-section (1) of Section 36 has béen deleted by M.P. Act 27 of 2006 w.e.f. 1-09-2006, before deletion it was as follows.- "(m) has more than two living children one of whom is born on or after the 26th day of January, 2001." Some cases regarding previous S. [1] Birth date of last issue accepted as 5-12-2000, extended date by High Court was 30-4-2001. Held, disqualification not attracted. Siyawati v. Phool- wan, 2009(1) nm-1T 301 = 2009(1) JIJ 431 AIR 2009 (NOC) 425 = 2008 (4)-MPLJ 437 = 2009(2) rtn»wN 49. 12) Since the fifth child of appellant was born on 17-03-2001 and not on 17-3-2000 prior to 26th January, 2001 therefore the appellant has earned disqualification under S.36(1)(m) of the Act. Laja Bai v. State of M.P., 2008 (2) MPLJ 26 = AIR 2008 MP 1850B]. AM GRAM SWARAJ ADHI., 1993 (PA)73 he shall, subject to the provisions of sub-section (3), cease to be such office bearer and his office shall become vacant: provided Shat where an application is made by an office bearer to the Panchayat for leave to absent himself under clause (c) and the panchayat fail' to inform the applicant of its decision on the applica- tion within a period of one month from the date of receipt of the application, the leave applied for, shall be deemed to have been granted by the Panchayat. (3) In every case the authority competent to decide whether a vacancy has occurred under sub-section (2) shall be Collector in respect of Gram Pånchayat and Janpad Panchayat and Commissioner in respect of Zila Perished who may give his decision either on an application made to him by any person or on his own motion. Until, the Collector or the Commissioner, as the case may be, decides

that the vacancy has occurred, the person shall not cease to be an office bearer: Provided that no order shall be passed under this sub-section against any office bearer without giving him a reasonable opportunity of tEing heard. (4) Any person aggrieved by the decision of Collector or Comrnis- sioner, as the case may be, under sub-section (3), may, within a period of 30 days from the date of such decision appeal to Commissioner or Board of Revenue respectively whose orders in such appeal shall be final. l. 2. 3. 4. 5. 6. 7. 8. 9. IO. 12. 13. 14. 15. 16. 17

18. COMMENTARY SYNOPSIS Object of the section. Applicability. Persons who are disqualified. Disqualification. Disqualification of member. Disqualification becoming inoperative. Previous provision of S. 36(I)(m). Bar when not applicable. Decision about vacancy. Evidence. No cessation till decision Interpretation of Sub-seclicns (2) & (3). Incompetent proceedings. Procedure to be followed by S.D.O. Appeal against decision of competent authority. Quo Warranto Writ finality of decision. Concealment and mist epresentation of caste-Contesting on reserved seat and getting elected-Challenge to such election

1. Object of the section.-The section specifies those person who would not be competent.to become an office bearer of any panchayat. The category MPHT 466. [5] Effect of disqualification suppressed - election declared il- legal.-Respondent did not pay the dues recoverable by the Panchayat and subsequently contested an election ofJila Panchayat by suppressing the fact of his disqualification and was elected. He was also proceeded under S.40 of the Act and was removed from the post of Sarpanch. Held that he was no.t entitled to hold the office as he was not eligible to contest the election. • I I • does not require any inquiry. His election declared illegal. AIR 1999 SC 172 and AIR 2003 SC 2128 Relied. Suresh Choudhary v Atarlal Verma, 2006(3 506 = 2006(3) MPHT 213

4. Disqualification.-[ll Factum of encroachment must be construed strictly, in absence of any evidence, candidate-cannot be held to be dis- qualified. Geeta Bai v. sub Divisional Officer, 2013(3) MPLJ 106 = ILR 2013 MP 2579 = 2013(5) 196. [21 Provision makes the person ineligible to be the omce bearer of Panchayat if he is convicted and sentenced to not less than 6 months imprisonment and unless a period of five years has elapsed since the date (PA)72 s. 36 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 of 1973) or in any Co- operative Society which shall contract with or be- employed by or on behalf. of the Panchayat; or (ii) having share or interest in any newspaper in which any advertisement relating to the affairs of the Panchayat is inserted; or (lii) holding a debenture or being otherwise concerned in any loan raised by or on behalf of the Panchayat: (g) Is employed as paid legal practitioner on behalf of the Panchayat; or (h) is suffering from a variety of leprosy which is infectious; or (i) has voluntarily acquired the citizeriship of a Foreign -State, or is under any acknowledgment of allegiance or adherence to a Foreign State; or (j) has been disqualified under the Act repealed by Section 130 during t.he period of five years preceding the date of filing a nomination paper in any election to be held for the first time under this Act and the period of such disqualification has not elapsed or the disqualification has not been removed; or (k) is disqualified by or under any law for the time being in force for the PufpoSe of électiön-to the Stäfé Legislätive Assembly: Provided that no person shall be disqualified on the ground that he is less than 25 years of age if he has attained the age of 21 years. (l) is so disqualified by or under any law made by the legisla- ture of the State. 1 (2) If any person having been elected [x x xl as an office bearer of Panchayat:— 2 3 (a) subsequently becomes subject to any of the disqualification mentioned in sub-section (l) and such disqualification is not removable or being removable is not removed [or be- comes office bearer coricealing his disqualification for it which has not been questioned and decided by any election petition under Section 1221; (b) accepts employment as legal practitioner against the Panchayat; absents himself from three consecutive meetings of the Panchayat or its Committee or -does not attend half the number of meetings held during thp QÉnod of six months without the leave of the Panchayat; Cl. (m) was ins. by M.P. 14' of 2000, w.e.f.26-1-2001 arid deleted -bj' MP Act 27 of 2006. w.e.f.. 1-9-2006, before deletion it Was as under:- "(m) has more than two living children one of whom is born on: or after the 26th day of January, 2001. " Omitted by M.P. 26 of 1994 [30.5.941 the words "nominated or coopted". Added by M.P.Act 5 of 1999 15-4-19991. s. 36 6 i- n n n .e t, d h a If o t, S PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 elapsed since his conviction; or (PA)71 (ii) of any other offence and had been sentenced to imprison- (b) (c) (ca) (cc) (f) ment for not less than six months, unless a period of five years or such less period as the State Government may allow in any particular case has elapsed since his release; or is of unsound mind and stands so declared by a competent court; or is an applicant to be adjudged an insolvent or is an undis- charged insolvent; or l[xxx] has not paid all the dues which are recoverable by

Panchayat and hes not filed with nomination paper. the declaration of such intention that no money is due to be paid by him on any account payable to the Panchayat; or has encroached upon any land or buildings of the Panchayat and Government; orl hold an office of profit under any Panchayat or is in the service of any other local authority or Co-operative Society or the State Government or Central Government or any Public Sector Undertaking under the control of the Central Government or the State Government: Provided that no person shall be deemed •to have in- curred disqualification under this clause by reason of being appointed as a Patel under the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959); or has been dismissed from the service of the State Governw ment or Central Government, or a panchayat, or any other local authority, or a Co-operative Society, .or any Public Sector undertakings under the control of the Central Govemment or the State Government for corruption or for disloyalty; or] has directly of. indirectly any share or interest in any con- tract with, by or •on behalf of the Panchayat, while owning suéh share or interest: Provided that a person shall not be deemed to have incurred disqualification under clause (f) by reason of his— (i)' Having share in any joint, stock company or a share or interest in any Association. registered under the Madhya Pradesh Society Registrikaran Adhiniyam, 1973 (No. 44 1 2 3 Clause (ca) subs. by M.P. Act 8 of 2005 (12-4--2005) then omitted by M.P. Act h8 of 2007. [25-5-2007]. The omitted clause was as under:- "(ca) even after one year of being elected, does not have flush latrine in his residential premises: or". New clauses (cb) & (cc) ins. by M.P. Act 16 of 2004, w.e.f. 15-12-2004, vide NotiÄö4tion dated 15-1272004. pub. M.P. Gaz.. Ext. ordy.. dated 15-12-2004, p. Subs. by M.P.Act 5 of 1999 [5-4-1999]. s. 36 (PA)70 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (i) 1 [two and half year] from the date on which tlKe Zila Presi- dent -or Vice- President enter their respective office; (ii) Six months preceding the date on which the term of office of the President or Vice-President as the case maybe, -expires; (iii) [six months] from the date on which previous motion of.no- confidence -was rejected. [(4) If the President or Vice-President, as the case .may be, desires 3 to challenge the validity of the motion carried out under sub-section (l), he shali within fifteen days from the date on which such motion was carried, refer the dispute to the State Government, which shall decide it, as far as possible, within forty-five days from the date on which it was received by it, and its decision shall be final.] COMMENTARY 1. A meeting called for consideration of no confidence motion cannot be adjourned. Presiding Officer has no such power. Dropadi Bai v. State of M.P., 1998 (2) Vidhi Bhaswar 11

2. Adjournment of meeting summoned for expressing no con.fidence.- A meeting summoned for expressing no confidence cannot be adjourned for want of quorum as the quorum has not been prescribed. The presiding pfflcer has to only preside over the meeting but has no power to adjourn it. 1975 JLJ 500 Disting. Hargovind Johari v. Zila Panchayat, Morena, 1996 JLJ 231= 1996 MPIJ 409

3. Opportunity not given to adduce evidence.-Respondent No.2 did not provide the opportunity to adduce evidence to the petitioner to establish the points raised in the memo of reference. Further more, under S. 35(4), a dispute is liable to be decided as for as possible within 45 days from the date of receipt. Respondent No.2 was expected to decide the reference case itself within the period prescribed under law. Held, impugned order not sus- tainable and reference case is liable to be decided afresh. Dinesh Sharma v. State 0fM.P., 2007(4) MPLJ 554. For detailed comments, see comments under section 40

36. Disqualification for being office bearer of Panchayat.-(1) No person shall be eligible to be an office-bearer of Panchayat who— 2 3 (a) has, either before or after the commencement of this Act, been convicted:- (i) of an offence under the Protection of Civil Rights Act, 1955 (No. 22 of 1955) or under any law in connection with the use, consumption or sale of narcotics or any law corresponding thereto in force in any part of the State, unless a period of five years or such lesser period as the State Government may allow in any particular case has Sub. for the words "one-year" by M.P. Act 18 of 2007 [25-5-2007]. Sub. for the words "one-year" by M.P. Act 18 of 2007 [25-5-20071. Ins. by MP 2 of 1997 17-1-1997]. . 33 this Zila tion Iled ices rats the 'ted the ses ng- .ate :ra- ent his ual the . of tch ing the Ing 13, (5} nd ila ler ed as s. 35 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)69 (2) Unless otherwise provided in this' Act the Office bearers of Zila panchayat shall hold office for five years from the date of the first meeting and no longer: Provided that -notwithstanding anything contained in this sub- section an Office bearer of Zila Panchayat shall cease to hold office forthwith on his ceasing to be— (a) a voter of the Gram Panchayat area within the district; (3) If before the expiry of the period prescribed in sub-section (2) the Zila Panchayat is not newly constituted, it shall stand dissolved on the expiry of the said period and the provisions of Section• 87 shall apply thereto for a period not exceeding six months within which the Zila

Panchayat shall be reconstituted in accordance with the provisions of this Act. COMMENTARY Co-option.-[ll An Office bearer ceasing to be a voter on delimitation cannOt be co-opted under S.29(2). Anjana Mulkalwar v. State of M.P., 1998 (2) JIJ 328. [2] An office bearer ceasing to be a voter on delimitation cannot remain an office bearer also_ since he po Ipnger remains a voter. b. State öfM.P., 1998 (2) JiJ 328

35. No confidence motion against President and Vice-Presi- dent.-(l) On a motion of no confidence being passed by Zila Panchayat by resolution passed by a majority of not less than three fourth of the [elected members) present and voting and such majority is more than two-third of the total number of [elected members] constituting the Zila Panchayat for the time being the President or the Vice-President against- whom such motion is passed- shall cease to -hold —office forthwith. (2) Notwithstanding anything contained in this Act or the rules made thereunder, President or Vice-President shall not preside over a meeting in which a motion of no-confidence is discussed against him. Such meeting shall be convened in such a manner as may be prescribed and shall be presided over by an officer of the Government as the prescribed authority may appoint. • The president or Vice-Presi- dent as the case ma•r be, shall have right to speak at or otherwise to *take part in-the-proceeding of-the meeting. (3) No-confidence motion shall not lie against the president or vice-president within. a period-of :— 1 Ooitted by M.P. 26 of 1994 130.5.941. 2 Subs. by M.p. 32 of 1994 [7.10.94]. 3 Subs. by M.P. 32 of 1994 [7.10.941. s: 33 (PA)68 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 1 [Provided further that the offices of President reserved under this section- shall be reserved by the prescribed åuthority in the Zila Panchayat within the state by rotation In the prescribed manner]. Provided also that the Zila Panchayat where there is no reservation of seaLs for the Scheduled Castes or as the case may be, the Scheduled Tribes shall be excluded from drawing o! lots for reservation of offices of Presidents for such castes, or such Tribes, as the case may be; (ii) Twenty five per cent of seats of President of the Zila Panchayats in the State shall be reserved for other backward classes. Subject to the provisions of sub-sections (2) and (4) the President and the Vice-President of the Zila Panchayat shall be elected by and from amongst the elected members thereof.] (4) If •the President of a Zila Panchayat does not belong to the Scheduled Castes or the Scheduled Tribes or other Backward Classes the Vice-President shall be elected from amongst the members belong- ing to such Castes or Tribes or Classes. (5) If a President or a Vice-President of Zila Panchayat becomes a member of either House of Parliament or a member of the State Legislative Assembly or a Chairman or Vice-Chairman of a Co- opera- tive Society, he shall be deemed to have vacated his office as President or Vice-President, as the case may be, with effect from the dete his becoming such member or Chairman or Vice- Chairman and a casual vacancy shall be deemed to have occurred in such office for the purpose of Section 38

33. Publication of names of members, President and Vice" President.-The names of members, President and Vice-President of Zila Panchayat shall be published by the prescribed authority in such manner as may be prescribed. 3 [33-A. Correction of clerical error or omission. -Notwithstanding anything contained in the Act or the rules made thereuhder, the clerical error or omission apparent on the face of the record regarding reservation of seats under sub-sections (4), (5) and (6) of Section 13, sub-section (2), (3) and (4) of SeCtion 17, sub-sections (3), (4) and (5) of Section 23, sub-section (2) of Section 25, sub-sections (3), (4) and (5) of Section 30 and sub- section (2) of Section 32, may be corrected by the prescribed authority with the prior permission of the State Government or the officer authorised by it for the purpose, at any time before the commencement of election proceedings.] 34. First meeting and term of office.-(l) First meeting of the Zila Panchayat shall be held within 30 days qf the date of publication under Section 33. Such meeting shall be convened by the prescribed authority and provisions of Section 44 regarding meeting, as far as may be, shall apply in respect of the said meeting. 1 Subs. by M.P.Act 5 of 1999 15-4-1999]. 2 Subs. by M.P. 26 of 1994 (30.5.941. 3 Ins. by MP 2 of 1997 [7-1-19971. 30 he ch fty n- ve he he tot he rat Its on rat be .es Its on on nd of its or, or, for ler s. 32 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)67 election of Zila Panchayat shall be reserved for women and seats may be allotted by the prescribed authority by drawing lots and by rotation to different constituencies in a Zila Panchayat in the prescribed manner. The constituencies which have no population of Scheduled Castes, Scheduled "IYbes or Other Backward Classes shall be excluded for allotment of seats reserved for Scheduled Castes or Scheduled Tribes or Other Backward Classes, as the case may be.] COMMENTARY Constitutional validity of provisions as to reservations of con- stituencies.-Election for posts of Panch, Sarpanch, members of Janpad Panchayats. Provision as to reservations of constituencies for Scheduled Castes/Scheduled Tribes and special provisions for election of not less than one-third of the total number of seats reserved for women candidates belonging to Scheduled Castes/Scheduled Tribes and Other Backward Clas- ses not ultra vires of Arts. 14, 15 and 16 of the Constitution. Ramlal v. State 0fM.P., 1998 (1) MPIJ 192. 3[31. xx xl •:32-.- Election Of -PfeSident-• and -After every-— Election of Panchayats the State Election Commission shall immedi- ately hold the Elections of President and Vice President of Zila Panchayats, in such manner as may be prescribed.] (2) (i) Offices of President shall be reserved for- (a) the Scheduled Castes; and (b) the Scheduled Tribes, and the number of offices of President reserved for the Scheduled Castes and Scheduled Tribes [including the number of offices of PreSident reserVed för the-SOhédüled Tibes in the-Schédu-ted' Ai-:eåS under Chapter XIV-A] shall bear as nearly as may be, the same proportion to the total number of such offices in the State as the population of Scheduled Castes or, as the case-may be, the Scheduled • bes bears to the total population of the State: Provided that not less than [halfl of the total number of offices of President of Zila Panchayat shall be reserved for women: 1 2 4 5 6 Proviso omitted by M.P.Act 5 of 1999 15-4-19991. Inf. by M.E.Act 5 of .19* [5-4.1999). ¯ÖmitQéd by M.p. 26 of 19" läo.*5.94]. Sub-sec. (1) subs. by M.P. Act 20 of 2005. w.e.f. 30-8-2005, for the following:— "Ihe prescribed authority shall, as soon as may be. after the election of members. call a meeting of the elected members of Zila Panchayat for electing president and Vice-President." Ins. by MP 43 of 1997 [5-12-19971. Sub. for the word "one-third" by M.P. Act lé of 2007 [25-5-2007]. (PA)66 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 s. 30 30. Division of District into constituencies.-(l) Subject to the provisions of sub-section (2), the State Government shall by notifica- tion divide a district into such number of constituencies that each constituency Shall have as far as practicable, a population of fifty thousand and every constituency shall be a single member constituen- Provided that where the population of a District is less than five lacs, it shall be divided into not less than ten constituencies and the population of each constituency shall as far as practicable, be the same in each constituency: Provided further that the total number of constituencies shall not exceed thirty five. (2) The ratio between the population of the territorial area of the Zila Panchayat and number of constituencies in such Zila Panchayat area, shall, as far as practicable, be the same throughout the State. (3) (i) Seats shall be reserved for- (a) the Scheduled Castes; and (b) the Scheduled Tribes, in every Zila Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be fillåd by-direct election in the Zila Panchayat as the population of the Scheduled Castes or the Scheduled Tribes in that Zila Panchayat area bears to the total population of that area and such seats may be allotted by the prescribed authority [x x x] to different constituencies in that Zila Panchayat in the

prescribed manner: 2 [Provided that for the purpose of computing the number of seats to be reserved for Scheduled "fribes in the Zila Panchayat. other than the Scheduled Areas

forming part of that district, the total population of the Scheduled Areas falling within that district and the population of Scheduled Tribes therein shall be excluded.] (ii) In the Zila Panchayat where fifty per cent Or less -than fifty-per cent seats have been reserved both for Scheduled Castes and Scheduled Tribes, twenty five per cent seats of the total number of seats shall be reserved for other Backward Classes and such seats shall be allotted by rotation to different constituencies by the Collector, in the prescribed manner. (4) Not less than 3 [halfl of the total number of seats so reserved shall be reserved, for women belonging to the Scheduled Castes or, the Scheduled Tribes or other Backward' Classes, as the case may be. (5) Not less than 4[halfl (including the number of seats reserved for women belonging to Scheduled Castes, Scheduled Tribes and other Backward Classes) of the total number of seats to be filled by direct 1 2 3 4 Words "by rotation" omitted by M.P.Act 5 of 1999 (5-4-1999]. Added by MP 43 of 1997 15-12-1997]. Sub. for the word "one-third" by M.P. Act 18 of 2007 125-5-20071. Sub. for the word "one-third" by M.P. Act 18 of 2007 125-5-2007]. 28 f no. be, Ider uch .hall e of is the alal ried Jeal r or The -led. mce not ugh d to icer 002 the {he ave to the s. 29 PANCVAY..V' i.' AVAM GRAM SWARAJ ADHI., 1999 (PA)65 29. Constitution of Zila Every Zila Panchayat shall consist of tl föllowing:— (iii) (v) Memb('l elected from the constituencies; All men 11 'ers of Lok Sabha representing parliamentary con- stituencies which wholly or partly from part of district; Äll Members of Rajya Sabha returned from the State of Madhya Pradesh whose name appears in the list of voters of a Gram Panchayat area within the district; All members of the State Legislative ASsembly returned from the district: Provided that the members of Lok Sabha and Members of State Legislative Assembly whose constituencies wholly falls within the urban area shall not be the mernbers of the Zila Panthäyat. [Provided further that a member of the State Legislative Assembly or a member of Parliament who is a member of the Zila Panchayat, may nominate his representative, who pos- sesses. such qualifications as may be prescribed in this behalf, to attend the meeting of the Zila Panchayat if he is unable to do so owing to absence, illness or any other cauSe.] -All Chair-persons of-Janpad Panchayats-Tn-the diStriOt:ö Provided that Chair-person of Janpad Panchayat who is a member under this clause shall not be a member of the committees under Section 47.1 and (3) x x x] 5 [(4) If any constituency fails to elect a membei•, fresh election proceedings shall be commenced in such constituency within six months to fill the seat: Provided that further proceedings of. election of President and Vice-President of. Zila Panchayat- shall not-- be stayed pending the election of a member in accordance with this sub-section: Provided further that if such constituency again fails to elect a member, fresh election proceedings shall not be commenced in such constituency unless the State Election Commission is satisfied that there is likelihöod of such constituency electing a member.] Rules:- The State Government has made,.the following rules in exercise of the powers conferred by this section. These Rules shall be found under Rules given separately. REPRESENTATIVE) RULES, 1997" 2 3 4 5 Omitted by M.P. of 1594 160.5.94). Ins. by MP 2 of 1997 [7-1-19971. Ins. by MP 2 of 1997 [7-1-1997). Sub-sections (2) and Omitted by M.P. 26 of 1994 130.5.941. Subs. by M.P. 26 of 1994 [30.5.94). (PA)64 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 s. 28 (iii) I [six months] from the dat-eon which previous motion of no confidence was rejected. 2 If the President or the Vice-President, as the case may be. desires to. challenge the validity of the motion carried out under sub-section (1). he shall, within ten days from the date on which such motion was carried, refer the dispute to the Commissioner, who shall decide it, as far as possible, within thirty days from the date on which it was received by him, and his decision shall be final.] COMMENTARY See detailed comments under S.40

1. Issue of no-confidence motion noticeST-he issue of notice of meeting of a no confidence motion 'must be issued by the Collector, who is the prescribed authority and not by the Chief Executive Offiéer of the Janpad Panchayat. But such a notice can be served by him. Mohanalal Marco v. Additional Commissioner, 2004 (4) MPLJ 461=2004 (4) MPHT 59

2. Bias of Presiding Officer.-A no confidence motion was carried against the Vice-President of Janpad Panchayat. It was set aside in appeal on the question of bias of Presiding Officer. Bias which was irregular. -or- contrary to law not reflected in conducting the meeting Of no-confidence. The order declaring the motion of no confidence to be illegal or vitiated quashed. Mohans•ingh v. Ratan Singh, 2003 (1) MPLJ 589=2003 (2) JIJ 327

3. Requirement.-[l] In a meeting called for discussing a no- confidence motion against Vice-President of Janpad Panchayat, the petitioner did not request the presiding officer for allowing him to speak in his defence, though he was present in the meeting. It cannot be said that he was not allowed to speak. The

provisions of sub-section (2) do not required the presiding officer to ask the petitioner to speak. Shivaji Raq Patil v. Collector Balaghat, 2002 (4) MPLJ 240=2002 (3) 175. [2] Application for bringing motion of no confidence against President of Janpad Panchayat. Thé secretary did not mention the hour at which the application was received. Held it is not fatal. Ramprasad Mavai v. Hari Singh Tomar, 2002 (2) JIJ 53=2001 (4) 364

4. Prescribed Authority.-The members of Janpad Panchayat sub- mitted.a No Confidence Motion to the Addl. Collector who convened the meeting of Janpad Panchayat and Petitioner challenged the legality of the order to convene meeting. Held that the Collector alone ought to have exercised the power under S. 28(2) of the Adhiniyam and not the Addl. Collector. The initiative taken by the Addl. Collector is, therefore liable to be condemned as the one without authority of law and in violation of the mandatory provision of S. 28(2) of the Adhiniyam. Ayodhya v. State of C.G. and Shanhar Prasad v. State 0fC.G., 2006(2) CGLJ 247. I 2 Sub. for the words "one-year" by M.P. Act 18 of 2007 [25-5-20071. Ins. by MP 2 of 1997 17-1-1997]. (PA)63 s. 28 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993, 27. First meeting and term of office. -(1) First meeting of the Janpad Panchayat shall be held within 30 days of the date of publica- tion under Section 26. Such meeting shall be convened by prescribed authority and provisions of Section 44 regarding meeting, as far as may be. shall apply in respect of the said meeting. (2) Unless otherwrise provided in the Act the office bearers of Jaripad Panchayat shall hold office for five years from the date of the first meeting and no longer: 1 [Provided that notwithstanding anything contained in this sub- section an office bearer of Janpad Papchayat shall cease to hold office forthwith on his ceasing to be a voter of a Gram Panchayat area within the Block]. (3) If before the expiry of the period prescribed in sub-section (2) the Janpad Panchayat is not newly constituted, it shall stand dis- solved on the expiry of the said period and the provisions of Section 87 shall apply thereto for a period not exceeding six months within which the Janpad Panchayat shall be reconstituted in accordance with the provisions of this Act. 28. No-confidence motion against President or Vice-Presi- dent.-(l) On a motion of no confidence being passed by Janpad Panchayat resolution passed by a majority of not less than three fourth of the [elected members-I present and voting. and sueh -m4prity is more than two-third of the total number of Öielected members] constituting the Janpad Panchayat for the time being, the President or the Vice-President against whom such resolution is passed shall cease to hold office forthwith. (2) Notwithstanding anything contained in this Act or the Rules made thereunder, a president or a vice-president shall not preside over a meeting in which a motion of no-confidence is discussed against him. Such meeting shall be convened in such manner as -may be prescribed and shall bp presided ovg• by an officer of the Government as the. prescribed auth6rity may appoint. The Prééidenf or the Vice-Preéident-,• as the case may be, shall have a right to speak at or othervnse •to take part in the proceeding of the meeting. (3) No-confidence motiöi€-shall not Ife against the PreSiderif Of Vice-President within a period of— (i) 4 [two and half yearl from the date on.which the President .or Vice- President enter their respeetive office; (ii) 'ix months preceding the date on. which the term of office of -thé President.di Vice-President, as the case may be, expires; 1 Subs. by M.P. 26 of 1994 130.5.941. Subs. by M.P. 32 of 199417.10.941 "member". 2 Subs. by M.P. 32 of 1994 17.10.94] "member". 3 sub. for the words "one-year" by M.P. Aet or. 2097 125-5-20071. 4 11 s. 26 (PA)62 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 district, the total population of the Scheduled Areas falling within the district and the population of Scheduled •,Tfibes therein should be excluded:] Provided further that not leés• than I [halfl of the total number of offices of President -of Janpad Panchayat subject to a minimum of one shall be reserved for women: Providéd also that the offices under this section' shall be reserved by the prescribed authoräty in the Janpad . Panchayat within the •district by rotation in the prescribed manner: Provided also, that Janpad Panchayats where there is no reserva- tion of seats for the Scheduled 'Castes or Scheduled Tribes as the case may be, shall be excluded for reservation of offices of President belong- ing to •such castes or, suOh tribes, as the case may be. (ii) Where the total population of Scheduled Castes and Scheduled Tribes in the district is less than fifty per cent twenty five percent of seats of President of Janpad • Panchayats within the district shall be reserved for other backward classes. 21(3) Subject to the provisions of sub-sectioris (2) •and (4) the . President and Vice-President of the Janpäd Panchayaf shall be elected by arid from amongst the elected members thereof.] (4) If the President of Janpad Panchayat does not • belong -to the Scheduled Castes, Scheduled Tribes or other Classes the Vice-President shall be elected from amortgst the members belonging to -such castes or tribes or classes. (5) If President or Vice-President of Janpad Panchayat become a member of either house of

Parliament or a member of the State Legislative Assembly or a Chairrnan or Vice-Chairman of Co-operative Society, he shall be deemed to have 'vacated his office as President or Vice-President as the case may be, with effect from the date of his becoming such member or Chäirrnan- or Vice- Chairman, and a casual- vacancy shall be deemed to have occurred In such office for the purpoSes •of section 38. COMMENTARY Procedure.- Application filed under sub-section (5). Respondent pray- ing to adduce evidence. Arguments heard on the application. Main petition cannot be decided without deciding first the application under sub-section (5). Manjula v. Collector Jhabua, 1997 (1) MPWN 24

26. Publication of names of members, President and Vice- President.-The names of the members, President-and Vice-President of Janpad Panchayat shall be published by the prescribed authority in such manner ås may be prescribed. sub. for the word "one- third", by M.P. Act 18 of 2007 125-5-20071. 2 Subs. by M.P. 26 of 1994430.5.941. s. 25 • PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)61 (5) Not less than 1 [half), (including the number of seats reserved for women belonging to the Scheduled Castes and Scheduled erribes and other Backward Classes) of the total- number of seats to be filled by direct election in every Janpad Panchayat shall be reserved for women and such seats may be allotted bJ the prescribed authority by drawing lots and by rotation to different [constituencies] in QJanpad Panchayat in the prescribed manner. 3 4 [(6) The constituencies which have no population of Scheduled Castes, Scheduled Tribes or Other Backward Classes shall be excluded for allotment of seats reserved for Scheduled Castes or Scheduled Tribes or Other Backward Classes, as the case may be.] COMMENTARY Non-reservation of seats for Scheduled Castes and Scheduled Tribes cannot be challenged at a late stage. It would cause public inconvenience and burden to public exchequer if granted at such a stage. Sunder Adivasi v. State 0fM.P., 1995 (1) MPWN 71. 5[24. x x.x] 25. Election. of President and Vice-President of Janpad :Åftéi- •every -the-state-Election (•ommission shall immediately hold the elections of President and Vice I •resident of Janpad Panchayats, in such manner as may be prescribed.] (2) (i) Office of President of Janpad Panchayat shall be reserved for- (a) the Scheduled Castes; and (b) • the Scheduled Tribes, and the number of offices of President reserved for the Scheduled Castes and the Scheduled Tribes in the district shall bear as nearly may be, the same proportion to the fotal number of such offices in -t district as the population of the Scheduled Castes or the Scheduled Tribes, as the case may be, bears to the total population of the district: 7 [Provided that for the purpose of computing the number of office of President of Janpad Panchayat to be reserved for Scheduled Tribes in the district other than the Scheduled Areas

forming part of -that 1 2 3 5 6 7 Sub. for the word "one-third" by M.P. Act 18 of 2007 [25-5-20071. Subs. by M.P. 26 of 130.5.941. Proviso.ognitt#d by M.?.Act of 199915-4-1999j. Ins. ii.V.Rct" 6 1955 Omitted by M.P. 26 of 1994 (30.5.94]. Subs. by M.P. 'Act 20 of 2005. w.eif. 30-8-2005 for the following:— "(l) The Prescribed Authority shall, as soon as may be. after the election of the members call a meeting Of the elected members of the Janpad Panchayat for electing a President and a Vice-President." Ins. by MP 43 of 1997 (5-12-19971. s. 23 (PA)60 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 constituency has as far as practicable a population of five thousand and every constituency shall be a single member constituency: Provided that where the population of a Block is less than fifty thousand it shall be divided into not less than ten constituencies and the population of each constituency shall as far as practicable be the same in each constituency: Provided further that the total number of constituencies in a block shall not exceed twenty-five. (2) The ratio between the population of the territorial area of a Janpad Panchayat and the number of constituencies in such Janpad Panchayat shall, 'so far as practicable, be the same throughout the State. (3) (i) Seats shall be reserved for— (a) the Scheduled Castes: and (b) the Scheduled Tribes, in every Janpad Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Jånpad Panchayat as the population of the Scheduled Castes in that Janpad Panchayat area or the Scheduled.Tribes in that Janpad Panchayat area bears to the total population of that area and such seats may bc allotted by• the prescribed authority I [x x x! to different [constituencies] in that Janpad Panchayat in the prescribed manner: 3 [Provided that for the purpose of computing the number of seats to be reserved for Scheduled Tribes in the Janpad Panchayat, other than the Scheduled Areas forming part of that Janpad Panchayat area, the total population of the Scheduled Areas falling within that Janpad Panchayat and the population of Scheduled Tribes therein shall be excluded.] (ii) •In the Janpad Panchayat where fifty per cent or less than fifty per cent seats have been reserved both for the Scheduled Castes and Scheduled Tribes twenty five per cent seats of the total number of seats shall be reserved for other Backward Classes and such seats shall be allotted by rotation to different constituencies by the Collector in the prescribed manner. (4) Not less than 4 Ihalfl of the total number o! seats reserved under sub-section (3) shall be reserved for women belonging to the Scheduled Castes or, the Scheduled Tribes, or other Backward Classes, as the case may be. 2 3 4 Omitted by M.P.Act 5 of 1999 [5-4-19991. Subs. by M.P. 26 of 1994 [30.5.94]. Added by MP 43 of 1997 15-12-19971. sub. for the word *one-third" by M.P. Act 18 of 2007 125-5-20071. .n a a a is to c- it or to s. n. 2. s. 23 PANCHAYAT RAJ AVAM GRAM SWARAJÄDHI., 1993 (PA)59 22. Composition of Janpad Panchayat. Every Janpad Panchayat shall consist of the following:— (i) Members elected from the constitueßcies; (iii) All members of the State Legislative Assembly returned from the constituencies which wholly or partly fall within the block: Provided that a member of the State Legislative Assemb- ly whose constituency wholly falls Within an urban area shall not be a member of the said Janpad Panchayat: tfrovided further that a Member of the State L.egislative Assembly who is a member of the Janpad Panchayat, may nominate his representative, who possesses such qualifica- tions as may be prescribed in this behalf, to attend the meeting of the Janpad Panchayat if he is unable to do so owing to absence, illness or any other cause.] 3 [(iv) One-fifth of the Sarpanchas in the territorial area of the Janpad Panchayat by rotation for a period of one year as the preScribed authority may determine by drawing lots: Provided that a Sarpanch who is a member under this clause for one term shall not be eligible to become a member for another term: Provided further that a Sarpanch who is member under this clause shall not be a member of the committees- under Section 47.] 4[(2), (3), (4), (5) and (6) x x xl 5 [(7) If any constituency fails to elect a member, fresh election proceedings shall be commenced in such constituency within six months to fill the seat: Provided that further proceedings of election of President and Vice-President of Janpad Panchayat shall not be stayed pending the election of a member in accordance with this sub-section: Provided further that if any constituency again fails to elect a member fresh election proceedings shall. not be commenced in such constituency unless the State Election Comniission is satisfied that there is likelihood of the constituency electing a member]. Rules:- The State Government has made the following rules in exercise of the powers conferred by this section. These Rules shall' be found under Rules given separately. "PANCHAYAT MEMBERS (NÖMINATION OF REPRESENTATIVE) RULES, 1997" 23. Division of block into consti Subject to the . pr_ovisions of-subsection, (2), the State overnment shall by notifica- tion divide a block into such number of constituencies that each 1 2 3 4 5 Omitted b' ü.p: 26 of 1954 \30.5.94]. Ins. by MP 2 of 1997 [7-1-19971. Ins. by MP 2 of 1997 [7-1-19971. Sub-sections (2) to omitted by M.P.

26 of 1994 (30.5.94]. Subs'. by M.P. 26 of 1994 130.5.94]. (PA)58 PANCHAYAT RAJ AVAM GRAM SWARAJ 1993 S. 21-A 16. Rules:- The State Government has made the following rules in exercise of the powers conferred on it by this section• These•Rules shall be found under Rules given separately. "GRAM PANCHAYAT SARPANCH TATHÅ UP-SARPANCH, JAN- PAD PANCHAYAT TATHA ZILLA *DANCE-AYAT KE PRESIDENT TATUA VICE-PRESIDENT KE VIRUDH AVISHWAS PRASTAVNIYAM, 1994. " I [21-A. Recalling of office bearers Of Gram Panchayat .-(1) Every Sarpanch of a Gram panchayat shall forthwith be deemed to have vacated his office if he is recalled through a secret ballot by a majority of moré than half of the total number Of the members C0nstituting the Gram Sabha within the Gram panchayat in aCCOrdance with the procedure. as may be prescribed: Provided that no such process Of recall shall be initiated unless a notice is signed by not less than one-third Of the total number of members of the Gram Såbha and presented to the prescribed authority: Provided further that no such process shall be initiated. _ (i) within a period of two and a half years from the date on which such Sarpanch elected at the Genera} Election enters his office; or '(ii) if hålf of the period of tenure of the Sarpanch. elected in a bye-election has not expired. (2) Every panch of a Gram panchayat shall forthwith be deemed to have vacated his office if he is recalled through a seeret ballot by a majority of more than half of the total number Of members' of the Gram Sabha constituting the ward from which the Panch is elected. (3) The provisions of sub-section (1) shall apply mutatis mutandis in relation to recall of a Panch. (4) If such Sarpanch or Panch, as the case may be. desires to challenge the validity of recalling him under the foregoing sub- sec- tions he shall within seven days from the date on which he is deemed to have vacated the office, refer dispUte to the COIIector who shall decide it, as far as possible, within 30 days from the date on which it was received by him, and his decision shall be final.] COMMENTARY Recalling of Sarpanch.-SignatUre Of m?mbers signing the prayer for recalling of Sarpanch by *members Of Gram Sabha cannot be enquired into since no procedure for the same is prescribed either by the Act or the rules. Prima facie satisfactipn of the sub-Divisional Offcer is sine qua non. Hariyare v. State of M.P., 2004 (3) MPI.J 255. see Also: Santosh Kumar Ahirwar State ofM•P• , 2009(3) MPLJ 442. Ins. by M.P.Act 5 of 1999 15-4-19991. s. 21 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 cannot be moved in the following (PA)57 (1) within one year of the Sarpanch or Up-Sarpanch, as the case may be, assumilig office; (2) before six months of the expiry of their term of office. Suppose the term of office of a Sarpanch or Up-Sarpanch, as the ease may be, is going to expire on 20th December, no no• confidence motion would lie against any of them between 21st of June and 21 of December; and (3) In a case where a no no-confidence motion was presented against a Sarpanch or Up-Sarpanchi as the case may be, and it was rejected, meaning thereby that members did not vote in its favour in sufficient number, then from the date of rejection of such motion, no new motion of no-confidence shall be allowed to be presented till the expiry of one year [4] Where the previous motion of no-confidence was set aside on the ground that it was carried in an illegal manner, it does not amount to rejection of no-confidence motion. Therefore, the bar under sub-section (3) against bringing another motion within one year does not apply to such a situation. Kandhilal Patel v. State 0fM.P., 1999 (2) JLJ 109. [5]. Sub-section (3)(ii)-Bar against motion-Applicability.-Where motion of no-confidence against Sarpanch was moved before six months from the expiry of the term of Gram Panchayat but the Sarpanch got stay from the Collector by filing a revision. The Collector ultimately rejected the revision and then the meeting for discussing the motion was called. •But it was within six months of the expiry of the term. The Sarpanch cannot take benefit of this provision. Rajaram Patel v. State of M.P., 2002 (5) MPLJ 513=2002 (1) JIJ 41

15. Writ petition.-[l] Application for moving no confidencé motion filed. No interference can be made under writ jurisdiction. The petitioner after passing of resolution can seek remedy under sub- section (4). Kushma Sharma v. State 0fM.P., 1998 (1) MPWN92. [2] Availability of an alternative remedy is not always an absolute bar for maintainability of writ petition. When the impugned order is illegal, a writ petition is maintainable. Prabhu Dayat Patel v. State of M.P., 2003 (5) MPHT 502=2003 (2) MPLJ 29=2003 (2) 182 (DB). [3] Direct writ petition-not justified —Direct writ petition not main- tainable when alternative remedy of revision under Rule 5 of M.P. Panchayat (Appeal and Revision) Rules, 1995 is available. Råmesh Soni v. State 0fM.P., 2008 (1) MPLJ 207. [4] Direct writ petition why justified.„Despitealternative remedy a writ petition may be preferred directly :- (i) where the Court or the Tribunal lacks ilflu2rent jurisdiction; or (ii) when a writ is for enforcement of fundamental rights; or (iii) there is a violation of principal of netural justice ; or (iv) where vires of the Act is in question. The

mandatory extent of the provision could bp relaxed only if it could be shown that no prejudice was caused to the party complaining. Ramesh Soni v. State 0fM.P., 2008 (1) 207. (PA)56 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 s. 21 12. Appeal and revision.-[l] Where a motion ofno confid$nce is passed or failed, no appeal or revision lies against it, since it is neither an order nor any proceeding in any pending case. 1998 (2) JLJ 267 Relied on. Ramnath Kaushik v. State 0fM.P., 1999 (1) JIJ 146. [2] An order passed by the Collector in the matter of resolution of no confidence is final. No appeal lies against his Order. But revision by Corn-a missioner is competent. Kandhilal Patel v. State of M.P., 1999 (2) JLJ 109. [3] No appeal lies against resolution ofnö confidence motion. A reference under sub-section (4) can be made to Collector. Kandhildl Patel v. State of M.P., 1999 (2) JIJ 109. [4] Reference to Collector is not an appeal. The word 'dispute' as used therein mean dispute on legal as well as factual aspect. The Collector may record even evidence on factual aspect* Kandhilal Patel v. State•of M.P., 1999 (2) JLJ 109. [5] Resolution for or against passed in a meeting called for considering motion of no-confidence-Appeal or revision against not competent-Expression "carried out"- Appeal and Revision Rules of 1995, Rr. 3 and 5.- The provision made in sub-section (4) provides for reference of a dispute to the Collector for his decision where the Sarpanch or the Up-Sarpanch, as the case may be, desires to challenge the validity of the motion carried out under sub-section (1). The expression "carried out" employed in the said Sub-section can only nåean the consequence provided in sub-section (1) which clearly indicates that'it is only against a motion of no confidence passed by the requisite majority that such a dispute under sub-section (4) can be raised by the person against whom the motion has been passed. It is clear that an appeal under rule 3 of the Appeal and Revision Rules Of 1995 was not maintainable against a no-confidence motion whether carried or failed and the Additional Collector therefore had no jurisdiction to entertain the same. A perusal of rule 5 shows that a revision is maintainable as to the legality or propriety of any order passed by the subordinate. authority or to the regularity of proceedings before such authority. A -no-confidence cannot be classified 'either as an order or as a proceeding. No specific power of Revision has been granted in rule 5 against a no confidi •nce motion. The no-confidence motion, not being any proceeding in a case. is not amenable to the jurisdiction of an authority in exercise of the power of revision granted by rule 5. 1998 (1) MPLJ 427 Rel. Ramnath Kaushik v. State 0fM.P., 1999 (2) MPLJ 67. [6] Sub-section (4)-Revision.-Where order is passed by the Collector under sub-section (4), revision against such an qrder is maintainable before the Revisional Authority. Sodan Kumar v. Starte of M.P., 2002 (5) MPI.J 28=2003 (2) JIJ 54=2002 (2) 257. But no appeal lies against such an order. See Premiata Jaiswal v. State 0fM.P., 2002 (5) MPIJ 522

13. Improper setting aside of no-confidence motion.- The Addi- tional Collector set aside the no confidence motion -passed without notice being served on the respondents. Order set aside. "Hemraj v. Smt. Suniran, 2005 (1) MPHT 10 NOC

14. Bar against another motion and its applicability.-Vide sub- section (3), a no-confidence rnotion against the Sarpanch or Up- Sarpanch s. 21 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 0fM.P., 1997 (2) rvm.J 175. (PA)55 of 6. te at in at ce 1, ot d. 53 if n- of th .te IO is Wi he •m .öt he ch to n- IO. Dispute- No confidence motion- Filing of dispute under sub- section (4) before Collectdr.-[l] Extension of time- Although there is no express provision in sub-section (4) to extend time for filing dispute before the Collector after expiry of 7 days, there is no express bar againSt granting such an extension of time. High Court granted extension and allowed the writ petitioner to file dispute before the collector within seven days. Jagdish Prasad Soni v; State 0fM.P., 1999 (1) MPLJ SN 19. [2] Sub-section (4) has been added by MP Act 2 of 1997 which has come into force 7-1-1997 hence, where no confidence motion has been passed after 7-1-1997, dispute in its respect should be referred to Collector. Kamia v. Sub-Divisional Officer, 1997 (11) MPWN 153. [3] The Collector has no inherent power to extend time for presenting of a dispute under sub-section (4). But under the provisions of the Limitation Act, 1963, he can admit a dispute if he is satisfied that the applicant had suffcient reasons for not presenting the same within the time prescribed or that the applicant was prevented for sufficient reasons from filing the dispute within seven days of its passing by the Gram Panchayat. [4] Threat or undue pressure-It requires an oral evidence to estab- 1ish that any kind of oral threat was executed to a particular Panch. Such fact could have been proved only in a dispute referable under S.21(4) of the Act. Santosh Ku-mar Singh v. state 0fM.P., 2008 (2) MPLJ 205 = 2008(1) 383. IO-A.' Expression of intention not proved.-A voter was required to cast his vote in favour of no confidence motion by putting the symbol of right mark and against it by putting a symbol of cross mark (x). One disputed ballot paper is liable to reject for the reason that r_everse mark of

right symbol was put on the blank back side. Held, it will not convey a_ny intention in specific of the voter and the same cannot be treated as a expression of intention within the meaning of election laws. Such ballot paper rightly rejected. Sunita Patel v. Collector, 2008 (3) MPLJ 248 = 2008(1) MPHT 302 = 2008(2) JIJ 26 = AIR 2008 (NOC) 802 MP. IO-B. Nirvachan Niyam, 1995 are applicable.-M.P. Nirvachan Niyam, 1995 are quite exhaustive and they would also cover the meetings of no confidence with regard to various things for which no provision has been made in the M.P. Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch .... Avishwas Prastav) Niyam, 1994. Illustratively, ChÅp. X of Nirvachan Niyam provides for counting of votes for which no specific provision made in Avishwas PrastaV Niyam and although counting is required to be made even in the meeting for; no confidence. Sunita Patel v. Collectora 2008 (3) MPLJ 248 .2008(1j 302 = 2008(2) JIJ 26 = -mm08üNööj éöiiip. 11. *Right of-reply and •leading -of evidence.-Where there was a dispute as to date of service of notice of no-confidence motion, it could not be decided without leading evidence. The party aggrieved should be given right of reply and opportunity to lead evidence. Kandhilal Patel v. State of M.P., 1999 (2) JIJ 109. I s. 21 (PA)54 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI.; 1993 Sarpanch or Up-Sarpanch as the case may be, the incumbent of the offce shall cease to hold office forthwith, that is to say, with immediate effect. That prescription is not a limitation on the power of the District Collector to pass appropriate interim order when a reference envisaged u/s. 21(4) of the Adhiniyam is made by the Sarpanch or Up-Sarpanch as the case may be for his decision. Smt. Basanti Chandra v. Nand Ram, 2006(1) CGLJ 486. [41 Effect of non-compliance of second part of sub-rule (3) of rule 3.-The motion of no-confidence is to be moved and passed by the requisite majority is the substance of the provisions of this section and the relevant rules. A mere non-compliance of second part of sub-rule (3) would not in every case invalidate the action unless the Collector while deciding the dispute under sub- section (4) or the High Court in exercise of its supervisory jurisdiction under Art.227 of the Constitution comes to the conclusion that such non-compliance has caused serious prejudice to the affected office bearer or has otherwise resulted in failure of justice. 1998 (2) MPLJ 661, 1997 (2) JLJ 397 Approved, 1998 (1) JLJ 124 & 1998 (1) JLJ 399 held not contrary, 1997 (1) Vidhi Bhaswar held right, 1971 JLJ 286 (DB) Overruled. Bhulin Dewangan u. State of M.P., 2000 (4) MPHT 69=2000 (2) JIJ 253 [5] Sub-section (I) further says that the Sarpanch or Up-Sarpanch against whom such amotion is passed shall cease to hold office forthwith. 8-A. Validity of No-confidence Motion.-ln accordance of S.21(3), if the previous motion of no-confidence was rejected, then within six months another no-confidence motion could not be considered. In this case, no-con- fidence motion was not taken into consideration by the members ofthe Gram Panchayat, for which, the date was fixed by the S.D.O. and that order of S.D.O. was quashed by the Collector exercising revisional power on the ground that seven days' time was not granted to the members of the Gram Panchayat for consideration of no-confidence motion in accordance with Rule 3(3) of the M.P. Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janpad Panchayat Tatha Zila Panchayat Ke President Tatha Vice President Ke Virudh Avishwas Prastav) Nijam, 1994. When the date of convening the meeting in accordance with Rules for consideration of no- confidence motion was held not to be proper, then subsequently, the SDO has fixed the date of another meeting vide fresh order, and the said order is in accordance with law and in accordance with Rules of 1994. Munni Devi v. State of M.P., 2013(2) MPWN 15

9. Prescribed Authority fixing date of meeting beyond 15 days- Motion of no-confidence passed cannot be held invalid.-Although the date of meeting fixed by the Prescribed Authority was beyond 15 days from the date of receipt of notice still, the motion of no-confidence passed cannot be held invalid for the reason that the will of members in relation to the no- confidence motion cannot be defeated On account of inaction or delayed action of the Prescribed Authority. But it was observed that in case the meeting is not held within 15 days, the members have the right to approach the High Court for its compliance and this judgment should not be held to have authorised the Prescribed Authority to fix date of meeting for con-sideration of no-confidence motion beyond 15 days. Dhumadandhin v. State ill 2) n. 'h Lil ty ot ;e. 53 til 3 he Ile ire nt Ice jer ed ng 15 he , it ras ICh he (PA)53 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 s. 21 [2] Sub-rule (4) of Rule 5 of M.P. Panchayat (Gram Panchayat ke Sarpanch tatha Up-Sarpanch . . . Ke Virudh Avishwas Prastav) Niyam, 1994 laid down the procedure as follows :- "(4) After the motion is moved the mover shall first speak on the motion and thereafter other members may, if they so desire, speak on the motion". [31 See also: (a) Comments under Rule 5 of aforesaid Rules; (b) Santosh

Kumar Singh v. State 0fM.P., 2008 (2) MPLJ 205 = 2008(1) 383; (c) Sukhanandan Patel v. State 0fM.P., 2003(1) MPLJ.220 = 2003(2) (d) Nagsai v. State 0fM.P., AIR 1998 MP 81

7. Total number of panchas.-TotaI number of panchas constituting the Gram Panchayat for the time being would mean that number of panchas which at the relevant time are members of Gram Panchayat. In order to find out this number, one should includé the Sarpanch and the Up-Sarpanch also. Rambhilash Patel v. State 0fM.P., 2003 (1) MPLJ 238

8. Passing of no confidence motion.-[l] Meeting called for consider- ing a no confidence motion adjourned in absence of Presiding Officer. Motion passed in the adjourned meeting. Motion is valid. Benefit under sub-section (3)(iii) not available. Mahaveer Saket v. Collector, Rewa, 1998 (2) JLJ 113. [21 Cessa@iqn .pf office_.: Cessation.. of ,Qffce. .by the Sarpanch•.-.after. passing of no confidence motion against him is automaåc. No stay can be granted in this respect. Kaushalya v. Additional Collector, 1998 (I) MP WN 236. [31 Effect of no-confidence resolution.-ln the instant case the Sar- panch was suspended and the Up-Sarpanch was appointed as Prabhari Sarpanch. No confidence motion moved against Prabhari Sarpanch. Motion not moved against petitioner as Up-Sarpanch, therefore, no-confidence motion was not passed against petitioner as Up-Sarpanch. Jagdish Prasad Soni v. State 0fM.P., 1999 MPLJ NOC 8. [3A] Not validly passed.-Disbuted ballot paper was liablé to reject hence no confidence motion was not validly passed for want of requisite strength i.e. 314th. Sunita Patel v. ('ollector, 2008 (3) MPI.J 248 = 2008(1) r,m--1T 302 = 2008(2) JLJ 26 = AIR 2008 (NOC) 802 NN. [3B] Resolution was passed by the majority - No confidence motion cannot be declared as null & void.-No prejudice has been pointed out by the Sarpanch/Resp. No. 1 in any manner and the resolution was passed by overwhelming majority, i.e. 16 out of 21 in favour of the no - confidence. motion" and Said Officer was cömpetent to preside over the Ipeeting.eThe Resp. No. I-has also notraised this objection of incompetence of the Presiding Officer during the no confidence motion. -The Collector's order -isr set aside and the resolution passed in meeting be - given full effect to. 2003(5) MPHT 502 (DB), Relied on. Ghanshyam Yadav v. Rameshwar sahu, 2007(1) MPHT 86 (C.G.). [3C] No Stay.-lt is true that in terms of the Sub-Section (1) of Section 21 of Adhiniyam once 'No Confidence Motion' is carried out against a (PA)52 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 s. 21 6. Principle of natural justice to be followed.-[ll Sub-section (2) further speaks that a Sarpanch or Up-Sarpanch shall not preside over a meeting in which a motion of no-confidence is to be discussed against him. Generally a meeting of Gram Panchayat is presided over by a Sarpanch and in his absence, the Up- Sarpanch presides such a meeting. In a case where the motion of no-confidence is to be discussed against either the Sarpanch or the Up-Sarpanch, leaving aside the one against whom the motion is to be discussed, whether the other person namely, the Sarpanch or Up-Sarpanch against whom there is no motion of no-confidence, can preside the meeting or not. The answer would be 'No'. A meeting called for considering a motion of no-confidence is a special meeting and sub-section (2) says that it will be convened in such manner as may be prescribed, i.e. as per rules and shall be presided over by an officer of the Government as the prescribed authority may appoint. Looking to this provision, the normal procedure would not apply and the meeting shall be presided over by an officer of the Government only and neither by a Sarpanch or Up-Sarpanch. 12] Since the passing of no-confidence motion results in adverse conse- quence of the Sarpanch or Up-Sarpanch vacating the elected office, the law incorporates the principle of natural justice that the office bearer concerned should have an opportunity to participate in the motion and to speak and take part in the proceedings so as to regain the confidence .of the House. Bhulin Dewangan v. State of M.P., 2000 (4) rvm-1T 69=2000 (2) JIJ 253 [31 Procedure.-The Rules framed under the Act lay down a time bound procedure for ensuring proper conduct of the proceedings of the no-con- fidence motion. As passing of no-confidence motion entails serious civil consequences against the concerned office bearer sub-rule (3) of Rule 3 prescribes a time limit for calling a meeting for consideration of no-con- fidence motion and sending of notice in advance of the meeting to all the members of the Panchayat. 'Ihe expression used in the first part of the rule for fixing the date, time and place for the 'neeting is 'which shall not be more than 15 days from the date ofreceipt of thc said notice'. The legislative intent behind the rule clearly appears to be that when a notice of no-confidence motion duly signed by the requisite not less than 1/3rd of the total number of elected members of the concerned Panchayat is received, the prescribed authority shall not be allowed to sit idle over it for an unreasonab)e long period of time. It is enjoined on him that he shall within not more than 15 days from the receipt of the notice by him, call a meeting for considering the no confidence motion. Bhulin Dewangan v. State of M.P.,

2000 (4) MPHT 69=2000 (2) JIJ 253 (FB). [41 Where no confidence motion was passed by requisite majority, it matters little whether opportunity to debate and discuss the motion was provided or not. Mahesh Prasad v. State of M.P., 1997 (2) JIJ 397. 6-A. Right to speak.-ll] Under Sub-section (2) of $.21, the Sarpanch or the Up-Sarpanch, as the case may be, shall have a right to speak in the meeting of no-confidence motion and have a right to take part in the proceedings of the meeting. 11 e e e S s h e s s. 21 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)51 presence, if he so desires, in the meeting to be held on such vital issue of passing of no-confidence motion. Bhulin Dewangan v. State of M.P., 2000 (4) 69=2000 (2) JLJ 253 (FB). [3] Meaning of the word 'dispatch'.-The legislature has designedly used the expression 'the notice of such meeting specifying date, time and place thereof shall be caused to be dispatched by him through the Secretary' of the Panchayat concerned. The use of the word 'dispatch' appears to be deliberate and it cannot be read as 'receipt' of the notices by members of the Panchayat. The law intends that the notice of meeting should be sent to the members concerned seven days in advance of the meeting to eriable them to participate in the motion of no-confidence. The rule does not convey any intention that the motion of no-confidence should be taken up only after each and every member of the Panchayat has been actually served with the . notice. Use of word 'dispatch' in the rule is clearly with a view that merely on non-service of notice of meeting on one or few members, the consideration Of motion of no-confidence should not be frustrated, as in any case the •passing of it depends on existence of the requisite majority. The word 'dispatch' should be assigned both a literal and legal meaning otherwise it is open fo wicked abuse in the hands of concerned authority who may act in collusion with any of the elected members. It is not merely sending or giving of notice of meeting in the manner best suited to the liking of the Secretary ofthe Panchayat. The word is analogous to the word 'issue'. Bhulin v. State 0fM.P., 2000 (4) MPHT 69=2000 (2) JIJ 253 (FB).. [41 1•'.tTeet oi non-service of notice of meeting on one or few members. -It' the. gnotion is validly passed by the requisite majority, mere non-serviee of notice of meeting on one or more members would not render the of no-confidence motion invalid. The latter part of sub-rule (3) of rule 3 uses the word 'shall be caused' indicating clearly that the rule is mandatory and requires due compliance. Bhulin Dewangan v. State of M.P., 2000 (4) 69=2000 (2) JIJ 253 (FB). [5] Mode of service of notice.-As far as mode of service of notice, the Panchayat (Method of Service of notice and document) Rules,- 1995 may be referred. The different modes prescribed by rule 3 for service of notice include 'giving or tendering the notice or document to the person concerned'. In the absence ofnotice, giving or tendering the same to somé adult member or servant of the family, sending the same by post under certificate of posting. Ifthe member resides beyond the jurisdiction of Panchayat and his address is known, by sending the same to hini by registered post acknow- ledgment due. 'Ihe Rules also prescribe the substituted mode of service. in the light of these rules presciibing various mOdps of service of notice, the word 'dispatch' would•mean giving or sending for transmission the notice in the manner prescribed in the Rules of 1995 so as to reasonably ensure its service. Ifthe dispatch of notices is not in the mpde prescribed for its service, there would be no proper compliance of the requirement of sub-rule (3) of Rule 3 of the Rules of 1994. Bhulin Dewangan v. State of M.P., 2000 (4) MPHT 69=2000 (2) JIJ 253 (FB). s. 21 (PA)50 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 provision with regard to toss of coin in case of equality of votes is already deleted by an amendment. Soji Nayak v. State of M.P., 1999 (1) MPI.J 174= 1997 (2) JIJ 179. 17] Panchayat consisted of 11 members. Motion of no confidence passed by all the eight members present in the meeting. Requisite majority ob- tained. Motion passed legally. 1975 MPLJ 116=1975 JLJ 386 Rel. Shree Bai v. State 0fM.P., 1999 MPLJ SN 28. [81 Panchayat consisted of 11 members. All were present at the meeting called for consideration of no confidence motion. 8 votes were cast in favour of the motion while 3 were against. The Presiding officer treated the figure of 8 as sufficient for the resolution of no confidence to have been passed. But the figure 8 is less than 3/4th of 11 person who were present and the requirement of law is that such a motion should be passed by not less than 3/4th of the members present and voting. Hence it is held that the motion was not passed at the meeting. Deshraj v. Gram Panchayat, 1999 (1) MPIJ 621. [91 Where 19 panchas were present at a meeting called for consideration of no confidence motion, the motion can be held to have been passed if 15, and not 14, persons vote in favour of the resolution. Motion passed by 14 pancha? is not valid. Kalawati Karayat u. State of M.P., 1998 (I) MP WN 154. See also Shantiråm v. Anuvibhagiya Adhikari, 1997 (I) MP uN 195

5. Notice of meeting of no-confidence:- [11 It is necessary for passing ofa no-confidence motion that notice of meeting should be despatched before 7 clear days.lvVheie no such notice was despatched, motion passed in such meeting shall not be valid. Shrinarayan Tiwari v. State of M.P., 1998 (1) JIJ 124. [IA] Admissibility of the Notice.-The notice was despatched on 22-8-2006 for the meeting to be held on 30-8-2006 before 7 clear days and as such, there is no •firmity in dispatch of notice. Pilaram Deewan v. State 0fC.G., 2007(2) CGLJ 280. [1B] Rejection of Notice - Beyond Jurisdiction.-The Prescribed Authority not empowered to enquire into the correctness of the notice received by him under Rule 3 of Avishwas Prastav Niyam, 1994. The preécribed Authority is required to satisfr only about the Qdmissibility of the notice with reference to Section 21(3) of the Adhiniyam. However, the Prescribed Authority instead of satisfying itself gone to the extent so as to hold that no useful purpose will be served in convening the meeting. The procedure adopted and the order passed by the Prescribed Authority so as to reject the notice received by him under Rule 3 of the Avishwas Prastav Niyam, 1994 is beyond his jurisdiction, therefore, cannot be sustained. Ravindra Singh v. State 0fM.P., 2007(3) MPHT 172. [2] Dispatch of notice of meeting.-The second part of sub-rule (3) of rule 3 mandates that the prescribed authority after fixing date, time and place of the meeting within the prescribed period not later than 15 days as laid down in the first part of the Rule, shall cause dispatch of notice of such meeting to every member of the Panchayat 7 days before the meeting. The said latter part of sub-rule (3) of Rule 3 is mandatory as intimation of date, time and place of meeting to every member is essential to ensure his 21 n. he be lis as as er in or of a a .r e e 5 t 1 -oo s. 21 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)49 number. It may be in a fraction also, e.g. 14.25, 7.5, 13.5 and so on. One should understand the requirement in such cases properly. Whenever there is a fraction, the next' full number would be the right number of votes which shall be necessary for passing of the resolution. in the example quoted above the requirement would be of 15, 8 and 14 votes. It is not possible to ignore the fraction of a number. This requirement is only one limb of the provision. It is with regard to the members present and voting. [21 The second limb of the requirement is conneqed with the total number of panchas by which a Gram Panchayat is constituted. This number would be that for which elections were held and the panchås were élected. Suppose there are 20' .panchas elected and the •Gram Pahchayat is con- stituted by these 20 including the Sarpaneh and Up-Sarpanch. Note that Sarpanch and Up-Sarpanch are also to be included in counting the number of panchas for this purpose. In this example the requirement is that the motion should be carried by more than two third of the total number of panchas. 2/3rd of 20 shall be 13.333.. and more than this number would be 14 i.e. in a case where 2/3rd of a number consists of a fraction then, the next number would be the required number. Here again, the fraction of a number cannot be ignored. 13] Looking to the requirements of the minimum majority required, the conclusion is that such a number would be higher one out of the two as given in paras [11 and [2] above. If the result of para [1] is the figure 15 and that of is 14- then, 15 would be the number required and in case the result: of para is 20 while that of para [21 is 24 then, the required number ',vould be 24. [41. Section 21, however, requires that a valid motion of no- confidence can be passed only on a motion mooted by prescribed one-third of total number of elected members find passed by majority of not less than 3/4th of the Panchas present and voting and such majorityis more than 2/3rd of total number of panchas. Bhülin Dewangan v. State of M.P., 2000 (4) MPH T 69=2000 (2) JIJ 253 (FB). [5] The subject matter of this section is passing of a no- confidence motion' against Sarpanch or Up-Sarpanch. These office bearers hold their office by election. The law requires that if they are mode to vacate their offices on loss of coofidence ofthé other elected members, there should be a requisite majority for passing the resolution i.e. riot less than 3/4th of the Panchas present and voting and the resolution should be carried by voting of more than 2/3rd of the total number of panchas constituting the panchayat. Bhulin Dewgngan v. State 0fM.P., 2000 (4) MPHT 69=2000 (2) JIJ 253 (FB). [6] gannol be Said to hæ@been passed by toss of coin in the event where the votes for and against thefrnotion being equal. As a matter of fact a motion of po 726Mdeficé shöul&béh by a -majority three-fourth of Che panchas present and voting and further such majority should be more than two-third of the total number of panchas constituting the Gram Panchayat. Therefore, in any case, a motion cannot be said to have passed where the number of votes for the motion and against the motion is found •to be equal. The s. 21 (PA)48 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 3. Election of Sarpanch direct but no-confidence motion in- direct- Section not arbitrary on this account.-[l] The Act provides for election of a Sarpanch of a Gram Panchayat directly by the members of the Gram Sabha while a no confidence motion

against such a Sarpanch can be passed by members of Gram Panchayat only under this section. On this ground it was contended that the provisions of this section are arbitrary and are violative of Art. 14 of the Constitution. The Court held that so far as providing the method of election and motion of no-confidence being passed is concerned, it is for the State Legislature to enact the law as this areas has been left open.by sub-clause (5) of Art.243C and the reasons appear to be that since the Gram Sabha is in the lowest in the hierarchy of the three tier system, the Parliament has thought it proper that the State Legislature may legislate on this aspect looking to the geographical and physical condition of the area. The State Legislature in its wisdom thought it proper that for removal of the Sarpanch by vote of no-confidence shall be the proper by indirect method of being voted out by the elected Panchas. After all elected panchas are also the voice of the whole Gram Sabha because it is Gram Sabha who has directly elected them. Therefore, when motion of no- con- fidence is passed against such sarpanch, it will be an indirect lack of confidence by Gram Sabha as all Panchas are elected representative •of the Gram Sabha. It is a different matter that the Legislature could have provided one more -check by seeking ratification of all the members of the Grärii Säbhabeing smaller body, but that is no justification for .the Court to • delve into the matter. There is no justifica'tion to strike down a law on the ground that Legislature could have provided a better method of removal of Sarpanch. It is within the domain of the State Legislature to make provision for the election of Sarpanch and Up-Sarpanch and also for their removal. In the method provided, there is no arbitrariness violating of Article 14 of the Constitution of India. AIR 1993 SC 2042 Rel. Jagdishprasad Bhunjwa v. State 0fM.P., AIR 1997 MP 184=1997 (1) 512=1996 JLJ 335 (DB). —12] It is a different matter that the legislature could have provided one more check by seeking ratification of all the members of the Gram Sabha being smaller body, but that is no justification for the Court to delve into a realm by the Legislature because the Legislature is the supreme body so far as enacting of laws is concerned and Court has•only limited role to adjudicate that whether the Legislature has overstepped its limit or not or the provisions are ultra vires of Constitution or not. Therefore, there is no . justification to strike down a law on the ground that legislature could have provided a better method of removal of Sarpanch. Jagdishprasad Bhunjwa v. State of M.P., AIR 1997 MP 184=1997 (1) MPLJ 512=1996 JIJ 335 (DB)

4. Requirements of section 21.-[11 Sub-section (1) starts with the expression "on a motion of no-confidence being passed by the Gram Panchayat" and then it states the requirements of such a motion being passed. The first requirement is that the motion should be passed by a majority which is not less than three- fourth of the panchas present and voting. The emphasis is on the expression "not less than three-fourth". It is not always necessary that the three-fourth number shall bé a full PANCHAYAT RAJ ÄVAM GRAM SWARAJ ADHI., 1993 s. 21 (PA)47 [f the Sarpanch or the Upsarpanch, as the case may be. desires to challenge the validity of the motion carried out under sub-section (l), he shall, within seven days from the date on which such motion was carried, refer the dispute to the Collector who shall decide it, as far as possible, within thirty days from the date on which it was received by him, and his decision shall be final.] 2. 3. 4. 5. 6. 6-A. 7. 8. 9. IO. IO-A. IO-B. 11. 12. 13. 14. 15

16. COMMENTARY SYNOPSIS Objects. Scope of Ss. 21 and 21-A. Both provisions operate in different spheres. Election of Sarpanch direct but no-confidence motion indirect- Section not arbitrary on this account. Requirements of section 21. Notice of meeting of no-confidence. Principle of natural justice to be followed. Right to speak. Total number of panchas. Passing of no-confidence motion. . Validity of No-confidence Motion. Prescribed authority. fixing date of meeting beyond 15_days_. Mo: tion of höZCOhfidenCe pa'sséd eannöt be held in-€ålid. Dispute-No confidence motiön-Filing of dispute under sub- sec- tion (4) before Collector. Expression of intention not proved. Nirvachan Niyam, 1995 are applicable. Right of reply and leading of evidence. Appeal and revision. Improper setting aside of no-confidence motion. Bar against another motion and its applicability. Writ petition.- Rules

1. Objects.-The provisions under Ss.21 and 40 are quite distinct regard- ing objects and consequences. Mahesh Prasad v. State of M.P., 1997 (2) JLJ 397

2. Scope of Ss.21 and 21-A. Both provisions operate in different sp»eres.- Section 21 provides for motion of nd-confidence against Sarpanch Up-Sarpanch and Section 21-A apply in case of recall of office bearers of ; ram Panghtiy4t.'T1fe äuthüities ivho take action under these provisions are S.21,-the 'panchas'take action-by passing a resolution I ue to lack of confidence of the 'panchas' in the Sarpanch. Under S.21-A, the Inembers.of4he Gram Sabha take action to recall the office bearers of Gram I 'anchayat to recall the Sa

rpanch by secret ballot. Gita Bai v. Sushila Bai, 2002 (2) MPI..J (2) JINJ '123. Ins. by MP 2 or 1997 17-1-19971. s. 21 (PA)46 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (3) If before the expiry of the period mentioned in sub-section (2), the Gram Panchayat is not reconstituted, it shall stand dissolved on the expi1Y of the said period and the provisions of section 87 shall apply thereto for a period not exceeding six months within which the Gram Panchayat shall be reconstituted in accordance with the provisions of this Act. COMMENTARY Ss.20, 21 and 38(1)- Motion of no confidence moved within one year of entering office by the Sarpanch elected in a bye-election -Not competent.- A person who was elected Sarpanch in a bye- election assumes office on the date of first meeting held after his election. Therefore, no no-confidence motion against him can be moved from the date on which the Sarpanch or Up-Sarpanch enter their office. The first meeting in his case would be that which is held after his election and not that which was held originally when the office bearers assumed office when the term of the Panchayat began. The first meeting mentioned in S.20, is for duration of the term of panchayat and for the original Sarpanch assum- ing office. It does not apply to a Sarpanch who is elected in a bye-election. Rajaram Patel v. State 0fM.P., 2002 (5) MPLJ 513=2002 (2) JIJ 41. 21. No-confidence motion against Sarpanch and Up-Sarpanch. (1) On a motion of no-confidence being passed by the Gram Panchayat by a resölution passed by majority of not less than three fourth of the panchas present and voting and such majority is more than two third of the total number of Panchas constituting the Gram Panchayat for the time being, the Sarpanch or Up-Sarpanch against whom such motion is passed, shall cease to hold office forthwith. (2) Notwithstanding anything contained in this Act or the rules made thereunder a Sarpanch or an Up-Sarpanch shall not preside over a meeting in which a motion of no-confidence is discussed against him. Such meeting shall be convened in such manner as may be prescribed and shall be presided over by an officer of the Government as the Prescribed Authority may appoint. The Sarpanch or the Up-Sarpanch, as the case may be, shall have a right to speak at, or otherwise totake part in, the proceeding of the meeting. (3) No-confidence motion shall not lie against the Sarpanch or Up- Sarpanch within a period of— I 2 (i) I [two and half yearl from the date on which the Sarpanch or enter their respective office; (ii) six months preceding the date on which the term of office of the Sarpanch or Up-Sarpanch, as the case may be, expires; (iii) [six monthsl from the date on which previous motion of no- confidence was rejected. Sub. for the words "one-year" by M.P. Act 18 Of 2007 125-5-2007]. Sub. for the words "one-year" by M.P. Act 18 of 2007 [25-5-20071. s. 20 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 in Section 20.1 (PA)45 If the outgoing -Sarpanch 2[or Piesident of Gram Nirman Samitil fails or refuses to hand over any parrs or •property in his posSession to the newly elected Sarpanch [or President of Gram Nirman Samitil, the prescribed authority may by order, in writing direct the outgoing Sarpanch [or President of Gram Nirman Samiti] to hand over forthwith all papers and property in his possession as Sarpanch [or President of Gram Nirman Samiti] to the new Sarpanch [or President of Gram Nirman Samiti]. Up-Sarpanch or Secretary of the Gram Panchayat, as the case may be.] (3) -If an out-going Sarpanch 7 lor President of Gram Nirman Samitil fails to comply with the direction under sub-section (2), the prescribed authority shall proceed against him in accordanée with Section 92 and shall take necessary steps to launch prosecution under Section 98. (4) A Sarpanch [or President of Gram Nirman Samiti] against whom an action has been taken under sub- section (3) and who has been found guilty, shall be disqualified to be member or an offiée- bearer of panchayat for a period of six years from the date on which he has been found guilty: Provided that such disqualification may be removed or the period thereof may be reduced by the State Government for reasons to be recorded in writing 9 [19. Notification- -of .election-.•Every Election zof -Sarpanch-,AJp-- Sarpanch and Panchas shall be published by the prescribed authority in such manner as may be prescribed.] 20. First meeting and term of office.-(l) First meeting of the Gram Panchayat shall be held within 30 days of the date of the publication under Section 19. Such meeting shall be convened by the prescribed authority and the provisions of section 44 regarding meet- ing as far as may be shall apply , in respect of the said meeting. (2) The office bearers of the Gram Panchayat shall hold office for _five years from. the date of the first meeting and -no longer: Provided that notwithstanding anything contained in this sub- section every person becoming an office bearer of a Gram Panchayat shall cease to hold office forthwith— 10 [(i) on his ceasing to be a voter of the Gram Panchayat area; or] (ii) On his becoming a member of State Legislative Assembly or member of either House of Parliament. 2 4 5 6 7 8 9 Subs. by M.P. 26 of 1994 [30.5.94]. Ins. iy M.P..Act 16-0f 2004. w.e.f;. .1-10005. -•fng. b' 'M.P.%Act-lffåf 2004 w ef I - , - .. :122005. Ins. by M.P. Act 16 of 2004, w.e.f. 1-1-2005. Ins. by M.P. Act 1.6 of

2004. w.e.f. 1-1-2005. Ins. by M.P. Act 16 of 2004. w.e.f. 1-1-2005. Ins. by M.P. Act 16 of 2004. w.e.r. 1-1-2005. Ins. by M.P. Act 16 of 2004, w.e.f. 1-1-2005. Subs. by M.P. 26 of 1994 (30.5.941. Subs. by M.P. 26 of 1994 (30.5.941. (PA)44 PANCHAYAT AVAM GRAM SWARAJ ADHI., 1993 s. 18 belonging to Scheduled Castes/ScheduIed Tribes and Other Backward Clas- ses not ultra vires of Arts. 14, 15 and 16 of the Constitution. Ramlal v. State 0fM.P., 1998 (1) MPLJ 192. I-A. Abandonment of Government service.- During service a Government servant cannot contest election either for the post of Panch or Sarpanch. Petitioner was intentionally absent from the service and was holding the office of Sarpanch as elected Sarpanch for a period of 5 years, it indicates that he has relinquished the employment. Pannalal Thakur v. State 0fM.P., 2008 (3) MPLJ 635

2. Election of Gram Panchayat- Five persons included in elec- toral rolls, not permitted to vote- Effect.- Where one petitioner won by 9 votes and the other by 36 votes, even if the five persons who were not allowed to vote, if allowed, would have voted against the petitioner, the result of the election would not have béen materially affected. Election therefore not set aside. Panbai v. Imratsingh, AIR 1995 MP 254

3. New election of Sarpanch invalid.- Where a no confidence motion passed against a Sarpanch was declared to be invalid, another person elected in bye-election as Sarpanch has no right to such seat because such seat never became vacant. Deshroj Singh v. Gram Panchayat, Tilabujurg, 1998 (2) JLJ 94

4. Appointment of Panchayat Karmi.- Where selection •was made WithOut issuing åriy advertigeméht, the papehayat karmi is not•éelected by a valid resolution. Kashiprasad Lodhi v. ståte 0fM.P., 1997 (1) MPWN 156

5. Person disqualified.-For election to the post of Sarpanch of a Gram Panchayat, a candidate who was holding the post of President, Jila Sahkari Sangh Maryadit, on the date of election is disqualied from being elected and in the instant case from the conduct of the candidate it was quite apparent that he had not submitted his resignation to that post, hence he is dis- qualified for being elected as a Sarpanch under sub•section (l)(iii). Krish- nonand Gautam v. State 0fM.P., 2002 (2) 4=2002 (2) JIJ 212

6. Rules:-- The 'State Government has- made the following rules- in exercise of the powers conferred by this section: These Rules shall be found under Rules given separately."PANCHAYAT (UPSARPANCH, PRESIDENT AND •VICE PRESI- DENT) NIRVACHAN NIYAM, 1995" 18. Handing over charge by outgoing Sarpanch Ilor President of Gram Nirman The newly elected Sarpanch Ior Presi- dent of Gram Nirman Samiti] shall be deemed to have assumed the charge Of the Office with effect from the date of first meeting as provided -Ins. by M.P. Act 16 of 2004. w.e.f. 1-1-2005. 2 Subs. by M.P. 26 of 1994 (30.5.94i. '3 Ins. by 'M.p. Act 16 of 5004, w.e.f. 1-1-2005. s. 17 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)43 total population of the Scheduled Areas falling within that:block and the population of Scheduled Tribes therein shall be exclude$..] (ii) Where the total population of Scheduled Castes and Scheduled Tribes in the Block is less than fifty percent, twenty five percent of seats of Sarpanchas of Gram Panchayats within the Block shall be reserved for other Backward Classes. (3) Not less than I [half) of the total number of seats of Sarpanchas within the block shall be reserved for women. (4) "Ihe seats reserved under this section shall be allotted by the prescribed authority in the Gram Panchayat within the block by rotation in the prescribed manner: 2 [Provided that the Gram Panchayat, which has no population of Scheduled Castes or Scheduled Tribes or other Backward Classes, shall be excluded for of seat reserved for Scheduled Castes, Scheduled Tribes or other Backward Classes, as the case may be:] [(5) After every election of Panchayats the State Election Commis- sion shall immediately hold the elections of Up-sarpanch of Gram Panchayats, in such manner as may be prescribed.] (6) If the Sarpanch of the P.anchayat does not belong to Scheduled Castes. or Scheduled Tribes or other Backward Classes the Up-Sarpanch shall be elected from amongst the Panchas belonging to such. castes or tribes or..backward classes. (7) If the Sarpanch or the Up-Sarpanch becomes the member of either House of Parliament or a member of the State Legislative Assembly or Chairman or Vice-Chairman of a Co-operative Society he shall be deemed to havé vacated his office as Sarpanch or Up- Sar- panch, as the case may be, with effect from the date of becoming such member or Chairman or Vice-Chairman and a casual vacancy shall be déemed to have occurred in such office for the purpose of Section 38. (8) Notwithstanding anything contained in this section the Sar- panch shall be deemed to be a panch of Gram __for _the purpöSé Of this Act. COMMENTARY 1. -Constitutional validity of provisions as to reservations of constituencies. -Election for posts of Panch, Sarpanch, members ofJanpad Panchayats.

Provision as to reservations of constituencies for Scheduled Castes/Scheduled Tribes and special provisions for election of not less than one- third of the total number of seats reserved for women candidates I Sub. for the word "one,„third" by-M.P. Act 18 of 2007125-5-2007]. 2 ins. by MP 39 of 1995 [15.12.951. 3 . Sub-sec. (5) subs. by. M.P. Act .20 of 2005, w.e.f. 30-80605. Before substitution. it was as under:— "(5) The Prescribed Authority shall. as soon as may bc after every election call a meeting of the elected Panchas and Sarpanch for thé purpose of election of Up-sarpanch and subject to the provisions of sub- section (7) the Gram Panchayat shall. in the meeting, so called elect from amongst its elected members an Up- Sarpanch. " (PA)42 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 s. 14 one-third of the total number of seats reserved for women candidates belonging to Scheduled Castes/Scheduled Tribes and Other Backward Clas- ses not ultra vires of Arts. 14, 15 and 16 ofthe Constitution. Ramlal v. State 0fM.P., 1998 (1) MPLJ 192. Trasnitory arrangement - Election of Sarpanch in first meeting.- Elected panchas in the first meeting of the Gram Panchayat elect the Sarpanch from amongst themselves who shall discharge all thc functions of Sarpanch. This is a transitory arrangement till a fresh proceeding for filling the post of Sarpanch is undertaken. This is a stop gap arrangement and transitory provision. Ramvati v. State of M.P. , 2011 (3) MPIJ 579 = 2011 (5) MPHT 105. 14. gualification to vote and to be a candidate. Every person whose name is included in the list of voters of a village shall be qualified to vote at the election' of an office bearer of a panchayat within whose area the village is comprised. (2) Every such person unless disqualified under this Act or any other law for the time being in force shall be qualified to be I [elected] as office-bearer of a Panchayat

15. Prohibition of simultaneous membership.-No person shall be eligible for seeking election as an office bearer of a Panchayat from more than one ward or constituency as the case may be. 2[16. x x xl 17. Election of Sarpanch and Up-Sarpanch.-(l) In every Gram Panchayat there shall be a Sarpanch and an Up-Sarpanch. A person who— (i) is qualified to be elected as panch; (ii) is not a member of either House of Parliament or member of - State Legislative -Assembly; and (iii) is not Chairman or Vice-Chairman of Co-operative Society, shall be elected as a Sarpanch, subject to provisions of sub- sections (2), (3) and (4), by persons whose names are included in the list of voters of the Gram Panchayat area in such manner as may be prescribed. (2) (i) Such number of seats of Sarpanchas of Gram Panchayats shall be reserved for Scheduled Castes and Scheduled Tribes in the Gram Panchayat within the block which bears the same proportion to the total number of Sarpanchas in the block as the proportion of the Scheduled Castes and Scheduled Tribes in the block bears to the total population of the block: 3 [Provided that for the purpose of computing the number of Sar- panch of Gram Panchayat to be reserved for Séheduled Tribes in the block, other than the Scheduled Areas

forming part of that block, the 1 Subs. by M.p. 26 of 1994130.5.94]. 2 Omitted by M.P. 26 of 1994 (30.5.941. 3 Added by MP 43 of 1997 [5-12-19971. s. 13 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 the Act.] 11(3) xx.x] (PA) 41 (4) (i) Seats shall be reserved in every Gram Panchayat for— (a) the Scheduled Castes, and (b) the Scheduled Tribes and tne number of seats so reserved shall bear, as nearly as may be the same proportion to the total number of seats to be filled by direct election in that Gram Panchayat as the population of the Scheduled Castes or of the Scheduled Tribes in that Gram Panchayat area bears to the total population of that area and such seats shall be allotted by the prescribed authority Ix x x] to different wards in that Gram Panchayat, in the prescribed manner. (ii) In.-a Gram Panchayat where fifty percent or less than fifty percent seats have been reserved both for the Scheduled Castes and Scheduled Tribes, twenty five percent seats of the total number of seats shall be.reserved for other Backward Classes and such seats shall be allotted by rotation to different in that Gram Panchayat by the Collector in the prescribed manner. (5) Not less than [half] of the total number of seats reserved under sub-section (4) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes or other Backward Classes. (6) Not less than 4 [halfl including the number of seats reserved for wornen belonging to the Scheduled Castes, the Scheduled Tribes and other Backward Classes of the •total number of seats to be filled by direct ielection in every Gram Panchayat shall be reserved for women and such seats may-be allotted by the prescribed authority by drawing of lots and by rotation to different wards in a Gram Panchayat in the prescribed manner. 5 6.1(7) The wards which have no population of Scheduled Castes, Scheduled Tribes or Other Backward Classes shall be excluded for allotment of seats reserved for Scheduled Castes or Scheduled Tribes or Other Backward Classes as the case may be.} COMMENTARY Constitutional validity of provisions as to reservations of con-stituencies.-mection for posts of Panch, Sarpanch, members of Janpad Panghayats. Provision .tp reservations of,constituencies for Scheduled , Castes/Scheduled 'Tribes and special provisions for election of not less than 1 2 3 4 5 6 Omitted by M.P. 26 of 1994 (30.5.94]. Words."by rotation"-omltted by M.P.Acg 5 of 1999 [5-4-19991. Sub. for the word "one-third" by M.P. Act 18 or 2007 125-5-20071. Sub. for the word "one-third" by M.P. Act 18 of 2007 (25-5-2007]. First proviso omitted by M.P.Act 5 of 1999 (5-4-19991 and second proviso omitted by M.P. 26 of 1994 [30.5.94]. Ins. by M.P.Act 5 of 1999 15-4-1999]. (PA)40 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 s. 12 12. Division of Gram Panchayat into wards.-Each Gram Panchayat area shall be divided into not less than ten wards as may be determined By the Collector and each ward shall be a single member ward: Provided that •where the population of Gram Panchayat area is more than one thousand it shall be divided in to wards in such manner that the total number of wards shall not exceed twenty and the populatiån of each ward shall as far as practicable, be the same in each ward: Provided further that the ratio between the population of the Gram Panchayat arga and the number of wards in such panchayat shall, so far as practicable. be the same throughout the block within which the Panchayat area falls. COMMENTARY Constitution of Gram Panchayat.-ln the matter of constitution of Gram Panchayat with head quarter at a particular place, the High Court shall not interfere with the decision of the State Government. See comments under S.3. Rajdhar Singh v. State 0fM.P., 1995 MPLJ 152 (DB)

13. Constitution •of Gram Every •Gram Panchayat shall consist of elected Panch'as and a Sarpanch]. If any village or ward fails to elect a Sarpanch or -as the case may be, a Panch, fresh election proceedings shall be commenced to fill the seat in such village or as the case may be, such ward within six nwnths: Provided that pending the election of Sarpanch under this sub- section, elected panchas shall subject to the provisions of sub- section (2), (3) and (4) of Section 17, in the first meeting under section 20 elect a Sarpanch from amongst themselves who shall discharge all the functions of Sarpanch under the Act till a Sarpanch elected under this sub-section enters upon the office: Provided further that further proceedings for constituting the ant- Panchayat shall not be stayed pending the election of Panch in accordance with this sub-section: Provided also that if any village or ward again fails to elect a Sarpanch or as the case may be, a Panch; fresh election proceedings shall not be commenced in such village or sas the case may be, in such ward unless the State Election Commission is satisfied that there is likelihood of the village or as the case may be, a ward electing a Sarpanch or a Panch; and in case the Commission decides not to hold fresh election of Sarpanch, the Sarpanch elected under the first proviso shall continue to discharge all the functiOns of Sarpanch under Subs. by M.P. 26 of 1994 (30.5.94]. 2 Subs. by M.P. 26 of 1994 130.5.94i. s. 11 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)39 10.

Establishment of Gram Panchayat, Janpad Panchayat and Zila Panchayat. There shall be a Gram Panchayat for every village specified as a village for the purposes of this Act under Section 3. (2) The Governor may by notification, divide a district into blocks. The notification shall specify the name of every such block, its head- quarters and the area comprised therein. For every block there shall be a Janpad Panchayat which shall be known by the name of the block. (3) There shall be a Zila Panchayat for every district: [Provided that every Municipal Corporation, Municipal Council or Nagar Panchayat constituted under the relevanC law for the time being in force shall form a separate administrative unit for the area within its jurisdiction.] 11. Incorporation of Panchayat. -Every Gram Panchayat, Janpad Panchayat and Zila Panchayat shall be body corporate by the name specified, there for in the order under Section 3 for village or notifica- tion under Section 10 for Janpad Panchayat and Zila Panchayat as the case may be, having perpetual succession and a common seal and shall by the said name, sue and be sued and shall subject to the provisions of this Act and the rules made thereunder, have power to acquire, hold or transfer property movable or immovable, to enter into contracts and to do all other things necessary for the purpose of this Act. COMMENTARY On behalf of the Panchayat the Sarpanch cannot sue and file an appeal independently.-Under S. 11 Gram Panchayat being body cor- porate can sue and can be sued. The power shall not vest in Sarpanch but it will vest in the whole body of the Gram Panchayat and if the Panchayat wants to sue or to file an appeal, the Panchayat has to pass a resolution authorising either to Sarpanch, or Up-Sarpanch or to any Panch or to file appeal or Writ Petition Or any other petition. Rule 3 of the M.P. Gram Panchayat (Powerg ähd functions Of the Secretary) RulöS, 1999 proVidéS that executive power of Gram Panchayat shall vest in the Panchayat Secretary, who will exercise the executive power, but in these Rules also it is nowhere provided that who will sue On behalf of the Panchayat. Held, therefore we are of view that Gram Panchayat is a body corporate, having power to sue or to be sued, and the Gram Panchayat has to authorise somebody to act on its behalf and without the resolution by authorising any person to sue of behalfofthe Panchayat, the Sarpanch cannot sue and appeal independently. Gram Panchayat, Bamrol v.-Jagdish Singh Rqwat, 2008 (3) MP LJ 127 = Gram Panchayat is a body corporate.-Under section 11 of the Act, there .can. be no .trqce of doubt that Gram Panchayat is a body corporate. Sagar Machhua Sahakari Samiti, Seoni v. Chief Executive Officer, Janpad Panchayat, Seoni & Anr., 2008 (2) MPLJ 194 AIR 2008 (NOC) 1388 = 2008(1) JLJ 329 = 2008(1) MPHT 2540B]. Subs. by M.P. 26 of 1994 130.5.94f. (PA)38 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 S. 7-1, 7-L. Control over Government employees. -(1) The Gram Sabha shall have the power to withhold salary, sanction leave, inspect and supervise the work of a Government employee whose area Of jurisdic- tion lies within the limits of Gram Sabha area. (2) Gram Sabha shall have the power to recommend to the com- petent authority imposition of penalties in respect of a Goverоment employee referred to in sub-section (1) for misconduct and negligence of duties. 7-M. Power of State Government in relation to functions of Gram Sabha. -The State Government may, by general or special order, add or withdraw functions and duties entrusted to Gram Sabha when the State Government undertakes execution of any of the functions entrusted to Gram Sabha

CHAPTER Ill-ESTABLISHMENT OF PANCHAYATS 8. Constitution of Panchayat.-There shall be constituted for the purpose of this Act— (a) a.Gram Panchayat for a village; (b) a Janpad Panchayat for a Block: and (c) a Zila Panchayat for a district

9. Duration of Panchayat.-(l) Every Panchayat shall continue for five years from the date appointed for its first meeting and no longer . unless sooner dissolved under this Act. (2) An election to constitute a be completed— (a) before the expiry of its duration specified in sub-section (1); (b) before the expiration of a period of six months from the date of its dissolution: Provided that where the remainder of the period for which the dissolved panchayat would have continued is less than six months it shall not be necessary to hold any election under this clause for constituting the Panchayat for such period. (3) A Panchayat constituted upon the dissolution of a -Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved panchayats, would have continued under clause (l) had it not been so dissolved. COMMENTARY Holding of office.-ln an election of Sarpanch, one person 'D' contested the seat but in the result, another person 'R' was•declared elected. 'D' filed an election petition, which was ultimately decided in his favour by the Supreme Court but after a lapse of more than 4 years. It was contended that such person is entitled to hold office for a full term of 5 years. Negativing his contention, it was held that the duration of a Panchayat is always for a period of five years from the date of the first meeting. As such the petitioner 'D' is entitled to assume charge of Sarpanch for the remaining duration of the Panchayat and no more. Dukhkhu Singh v. State of M.P., 2005 (3) 493=2005 (3) MPHT 46. (PA)37 (a) (b) (d) PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 donations, income from other sources, any sum received from the District Panchayat Raj Fund or from the Funds of three-tier Panchayats, the proceeds of the land revenue, cess on land revenue, royalty received on mlnor minerals, income received

form lease of fishing rights, grazing fees and shala bhawan upkar as prescribed or fixed by the State Government. the taxes, duties* tolls and fees imposed as mentioned iri the Schedule IA and Schedule IIA and other income of the Gram Sabha.] any sums received by Gram Panchayat under various schemes sponsored by the Central Government or the State Government, to be allotted to the Gram Sabha according to norms prescribed by the Central Government or the State Government. (2) Subject to the provisions of this Act and the. rules made thereunder all property vested in the Gram Sabha and the.Gram Kosh shall be applied for the purposes of this Act or for other purposes connected with the activities for the development Of village or for such other expenses as the Gram Sabha may approve: Provided that funds received under any, •scheme. shall be. utilised._-. according to the guidelines issued by the Central Government, or the State Government, as the case may be. (3) The Gram Kosh shall be kept and maintained in such manner and in such form as may be prescribed. 2 [(4) The Gram Kosh shall be operated by the Gram Vikas Samiti and all amounts from the Gram Kosh shall be drawn under Joint signature of the 3 [President of the Gram [Vikas] Samiti and the Secretary of the Gram Panchayat] with the approVaI of Gram Sabha and accounts of the drawal -shallbe maintained by-the Secretary of the Gram Vikas Samiti. The information regarding all receipts into and drawals from the Gram Kosh shall be placed before the Gram Sabha in its next meeting.] (5) 5 [xxxl 7-K. Account and Audit.-The Gram Sabha shall cause to be maintained proper books of accounts and prepare annual statement of accounts. The accounts of the Gram Sabha shall be audited from time to , time In such manner and by •kuch authority as may be e prescribed-and ethe Audit -Repovt submitted•rshall- be •placed before the next meeting of the Gram Sabha. 1 2 3 4 5 Clauses (c) & (d) subs. by M.P. Act 23 of 2001 (10-10-2001). Sub-sec. (4) subs. by M.P. Act 23 of 2001 (10-10-2001). Subs. by M.P. Act 16 of 2004, w.e.f. 1-1-2005 Subs. for the word "Nirman" by M.P. Act 20 of 2005, w.e.f. 30-8-2005. Sub-sec. (5) omitted by M.P. Act 16 of 2004, w.e.f. 1-1-2005. s. 69 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)117 Secretary and one or more Assistant Secretaries for a Gram Panchayat, who shall discharge such functions and perform such duties as rn•ay be assigned to them by the State Government or prescribed authority:] Provided that the person holding the charge of a Secretary of Gram Panchayat immediately before the comrnencement of this Act shall continue to function as such till a Secretary is appointed in accordance with this section. I [Provided further that a person shall not hold charge of a 2[Secretary or Assistant Secretary] of Gram Panchayat, if such a person happens to be relative of any office bearer of the concerned Gram Panchayat. Explanation.-for the purpose of this sub-section the expression "relative" shall mean father, mother, brother, sister, husband, wife, son, daughter, father-in-law, mother-in-law, brother-in- law, sister-in- law, son-in-law, daughter-in-law.] The State Government shall appoint for every Janpad Panchayat a Chief Executive Officer and may be also appoint one or more Additional Chief Executive Officer, who shall discharge such functions and perforrn such duties as may be assigned to them by the Chief Executive Officer]. The State Government shall appoint för every Zila Panchayat a Chief Executive Officer and may also appoint one or more Additional Chief Executive Offiéers,. Deputy Chief Executive. Officers -and-Execu- tive Officers who shall discharge such functions and perform such duties as may be assigned to them by thé Chief Executive Officer]. (4) During the absence of a Secretary of Gram Panchayat or •5 [Chief Executive Officer ofJanpad Panchayat or Zila Panchayat] due to leave, retirement, death, resignation or otherwise the prescribed authority shall, as soon as possible, make such arrangements as he deems fit, for carrying on the office of Secretary of Gram Panchayat or 6 [Chief Executive Omcer of Janpad Panchayat Or Zila Panchayat] as the case may be. A person while carrying on such office shall exepcise all powers cöriferred by this- Aét- öf -rules måde thereunder on the Secretary of Gram Panchayat or 7 [Chief Executive Officer of Janpad Panchayat or Zila Panchayats] as the case may be. (5) Secretary of the Gram Panchayat, the 8 [Chief Executive Officer of the Janpad Panchayat and Zila Panchayat] shall be respon- Sible for keeping and maintaining the records of the Gram Panchayat, Janapad Panchayat or Zila Panchayat as the case may be. 1 2 3 4 5 6 7 8 Ins. by MP 2 of 1997 [7-1-1997]. Subs. by M.P. Act No. 26 of 2012 123-5-20121 for' the words "Secretary". Subs. by MP 43 of 1997 [5-12-19971. Subs. by MP 2 of 1997 \7-1-1997]. •Subé. by M.P. 26 of 1994 130.5.941 for the words "Chief Executive Officer ofJanpad Panchayat or Secretary of Zila Panchayat" Subs. ibid. Subs. ibid. Subs. by M.P. 26 of 1994 130.5.941 for the words "Chief Executive Officer ofJanapad Panchayat or Secretary of Zila Panchayat" s. 67 (PA)116 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 ance with such instructions as the State Government may either gene-ally or specially issue in this behalf. All amounts from the Panchayat Fund shall be drawn under,— the joint signatures of the Sarpanch and

Secretary in the case of a Gram Panchayat; (ii) the signature of the Chief Executive Officer or any other officer authorised by Chief Executive Officer, in the case of a Janpad Panchayat of Zila Panchayat, as the case may be: Provided that in the case of a Janpad or Zila Panchayat all amounts shall be drawn only in accordance with the Annual Budget, Detailed Action plan setting •out purposes and with the prior approval of the General Administration Committee of the Janpad Panchayat or Zila Panchayat, as the case may-be; Provided further that information regarding all receipts into and drawals from the Panchayat Fund shall be placed before the Panchayat in its next meeting]. 2 67. Mode of executing contract.-The mode of the executing the contracts by the Panchayats shall be such as may be prescribed. Rules:- The State Government has made the following rules in exercise (jf the pöwerS conferféd'by•-thié sectiofi. Thé" Riiles•shall- be-fourid uridér Rules given separately. "Modes of Executing Contract Rules, 1995" 68. Powers to make grant-in-aid.-Subject to the previous sanc- tion of the State Government or the prescribed authority the Panchayat may make grant-in-aid for any work of public utility. COMMENTARY Promotions.- Order of promotions were passed without taking any previous approval of the prescribéd- - aüthOrity. - -being illegal, the promotees were revert&d back. Ratan Deep Gupta v. State of M.P., 2005 (1) MPLJ 149 (DB)

CHAPTER VIM-ESTABLISI-MENT, BUDGET AND ACCOUNTS OF PANCHAYATS 69. Appointment of Secretary and 'Chief Executive Officer.-(l) 3 {The State Government or the prescribed authority may appoint a Secretary"ähd ohé -of rnöFe föf Grarh Panchayat, who shall discharge such functions and perform such duties as may 1 2 3 Subs. by MP 43 of 1997 [5-12-19971. Sub-sections (5) and (6) subs. by MP 2 of 1997, omitted by MP 43 of 1997 {5-12-19971. Opening para subs. by M.P. Act No. 26 of 2012 [23-5-2012] for the following:- '"Ihe State Government or the prescribed authority may appoint a Secretary for a Gram Panchayat or group of two or more Gram Panchayats:" S. 66 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)115 COMMENTARY 1. Applicability.-All appointments required the previous approval of the prescribed authority. The word "appointment" does not exclude "promo- Mons". Ratan Deep Gupta v. state 0fM.P., 2005 (1) MPLJ 149 (DB)

2. Natural justice.-Promotion of appellants cancelled for violation of the provisions of this secti01i and they were reverted to their original post without giving any opportunity to show cause. The opportunity, if given, would have been futile since no other order could have been passed in the matter. Ratan Deep Gupta v. State of M.P., 2005 (1) MPLJ 149 (DB)

64. Grant-in-aid to Panchayat.-The State Government shall make grant-in-aid to the Panchayats as may be decided on the basis of recommendations of the State Finance Commission

65. Transfer of immovable property.-(l) No immovable property vested in or belonging to a Panchayat shall be transferred by sale, gift, mortgage or exchange or by lease for a period exceeding three years, or otherwise except with the sanction of the State Government or any officer authorised by it in this behalf. (2) The procedure of transfer of immovable property shall be such as may be prescribed. C O M ME N WAR Y 1. Lease of immovable property.- Lease of immovable property cannot be granted for more than three years in the absence of sanction of the State Government. Balaram v. State of M.P., 1998 (I) MP WN 238

2. Rules.-The State Government has made the following rules in exer- cise of the powers conferred by this section. Ihese rules shall be found under Rules given separately. "Tansfer of Imrnovabte Property Rules, 1994." 66. Panchayat Fund.-(l) Every Panchayat shall establish a fund to be called the Panchayat Fund and . all sums received by the Panchayat, shall form part of the said Fund. (2) Subject to: the provisions of this Act and the rules made t hereunder, all property vested in the Panchayat and the Panchayat Fund shall be applied for the purposes of this Act or for other purposes connected with activities for the development of Panchayats generally or for such other expenses as the State Government may approve on an application of Panchayat or otherwise in the public interest. The Panchayat Fund shall be kept in the nearest Government Treasury or Sub-Treasury or Post Office or Cooperative Bank or Scheduled Bank or its branch. (3) An amount allotted to the Panchayat by the State Government or any other person or local authority for any specified work or purpose shall be utilised exclusively for such work or purposes and in accord- (PA)114 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 s. 62 tion or illegal construction: (i) being an officer having power to sanction layout or map for the construction of a building grants sanction or approves such layout or map; or (ii) being an officer under a primary duty to do so

knowingly omits to report illegal diversion of land or illegal construc- tion of a building in such an area to the proper authority; or (iii) being an officer or an employee responsible to take action against the illegal diversion of land or illegal colonization or illegal construction of a building in such an area fails to take action; or (iv) being an officer or the authority competent to sanction electrical or water supply connection grants such sanction with respect to the building in such an area; or (v) illegally influences the officers aforesaid in granting such sanction or in omitting to make a report of such illegal diversion of land or construction of building in areas; shall be punished with simple imprisonment which may extend to six months or with fine or with both: Provided that nothing contained in clause (iv) shall apply to the cases yhere-the -Collector, -with the-approval of.the State.Government, certifies thåfin-public interest there is no objection to provide electrical and water supply _ connection- to -the building in the area of illegal diversion or illegal colonization

CHAPTER VII-FUND AND PROPERTY OF PANCHAYAT 62. State Government may vest certain property in Panchayat.-(l) The State Governmgnt may,. by notification .and_sub-- ject to such conditions and restrictions as it may think fit to impose. vest in a Gram Panchayat, Janapad Panchayat or Zila Panchayat as the case may be, any property vested in the State Government. (2) The State Government may, resume any property vested in the Panchayat other under sub-section (l). No compensation other than the amount paid by the Panchayat for such transfer or the market value at the date of resumption of any building or works erected or executed on such property by the Panchayat shall be payable: Provided .thqt no._cpmpensation shall. be- payable in respect of buiidi*nu, stfucture or works constructed or erected in contravention of the terms and conditions vesting

63. Assignment of funds to the Panchayat.-The State Govern- Inay assign to a Panchayat such taxes, tolls and fees levied and collected by the State Government and may make grant-in-aid from the consolidated fund of the State for such purposes and subject to such conditions and limits as the State Government may deem fit. S. 61-G PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)113 prescribed.] 1(2) Notwithstanding anything contained in the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959) the transfer or agreement to transfer of plots made by a-colonizer; in an area of illegal diversion or illegal colonization, shall be void. (3) The prescribed authority may after giving show cause notice to the parties take over the management of the land, cause the area to be planned and developed and shall thereafter allot the land preferentially amongst the plat holders in such manner and subject to such condi- tions as.may be prescribed. (4) The all-out shall on fulfillment of the conditions be deemed to be a valid transferee of the plot from the Colonizer and the power of the prescribed authority as manager of the plot shall come to an end. 61-G. Forfeiture of the land involved in illegal colonization.- The right, title or interest of the colonizer in the land under illegal colonization, shall upon and from the date of conviction of the Colonizer under sub-section (3) of Section 61 -D stand forfeited and vested in the Gram Panchayat free from all encumbrances.] PREVIOUS PROVISIONS [Provisions which were applicable before substitüion, are as underl- 61-A. Definitions.-For the purposes of this Chapter "Gram Panchayat area" means such area which is situated in the Gram -Panchayät withili• a- distance Of'.-= • (i) sixteen kilometers from the limits of a Municipal Corporation constituted under the Madhya Pradesh Municipal Corporation Act, 1956 (No.23 of 1956); (ii) eight kilometers from the limits of a Municipal Council or Nagar Panchayat constituted under the Madhya Pradesh Mumicipalities Act, 1961 (No.37 of 1961); (iii) three kilometers from the limits of an urban area other than those specified in (i).and (ii) above'* (iv) one kilometers from the side of a National Highway specified in or declared under the National Highway Act, 1956 (XLVII of 1956) or public road notified under section 2 of the Madhya Pradesh Highway Act, 1936 (XXXIV of 1936). 61-0. Development of Colonies.- The registration certificate shall entitle the Colonizer to undertake the development. ofcålonies in the Gram Panchayat area subject to the -provisions of and the rules made in this behalf. 61-D. Sub-section (3) .-(3) Whoever commits or abets'@he commis- Sion of an offence Of illegal diversion or hllegal colonization shall be punished with simple imprisonment which may extend to six months or with a minimum fine of ten thousand rupees or with böth. 61-E. Punishment for abatement of Offence of Illegal Con- struction.- •Whoever in the area of illegal diversion or illegal coloniza- Sub-sections (2) & (3) renumbered as (2), (3) & (4) by MP 29 of 2013 [10-9-2013]. (PA)112 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 S. 61-E or with a minimum fine of one thousand rupees or with both. 1.161-E. Punishment for abatement of Offence of Illegal Construc- tion.-(l) Whoever in the area of illegal diversion or illegal colonization or illegal construction,- (i) being an officer

having power to sanction layout or map for the construction of a building grants sanction or approves such layout or map; or (ii) being an officer under a primary duty to do so knowingly omits to report illegal diversion of land or illegal construction of a building in such an area to the proper authority; or (iii) being an officer or an employee responsible to take action against the illegal diversion of land or illegal colonization or illegal construction of a building in such an area fails to take action; or (iv) being an officer or the authority competent to sanction electri- cal or water supply connection grants such sanction 'with respect to the building in such an area, shall be punished with simple imprisonment which may extend to three years and a fine which may extend to ten thousand rupees: Provided that nothing contained in clause (iv) shall apply to the cases where the Collector, with the approval of the State Government, certifies that in. to pr-o&ldé -éleet-tiéal and water supply connection to the building in the area of illegal diversion or illegal colonization. (2) Whoever illegally influences the officers aforesaid in granting such sanction or in omitting to make a report of such illegal diversion of land or illegal construction shall be punished with simple imprison- ment which may extend to three years and a fine which may extend to ten thousand rupees.] 2 [61-EA. Punishment for not taking action against illegal coloniza- tion.-ln a case-of illegal-colonization-if an- official- authorised-by •the Competent Authority to inspect, report, SC-Op or remove any construc- tion knowingly omits to take action, or•ifå' police officer responsible to provide assistance necessary for such action does not do so, shall be punished with simple imprisonment which may extend to three years or with fine which may extend to ten thousand rupees or with both.] 61-F. Transfer of plots in area of illegal diversion of illegal colonization to be The RegiStrars and Sub-Registrars appointed under Section 6 of the Registration Act, 1908 (No. 16 of , 1908). shall; at the end euery.mönth, cqm.municate details of all transfers or agreements to transfer of Plots or houses in the- Gram ?mgbayatravea tQthe prescribed authority in such 1 nanner as may be ' Subs. by MP 21 of 2013 124-4-20131. See old provisions in Provisions. 2 Ins. by MP 21 of 2013 124-4-20131. 3 Ins. by MP 29 of 2013 110-9-2013]. S. 61-D PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)III establishment of the colony. (2) On receipt of the application for registration under sub- section the I [such Competent Authority as may be prescribed by State Governmentl shall, subject to the rules made in this behalf, either issue or refuse to issue the registration certificate within thirty days: Provided that if the [such Competent Authority as . may be prescribed by State Government] refuses to issue the registration certificate, the reasons for refusal shall be intimated to the applicant. (3) The State Government shall have power to make rules prescrib- ing the form of application, amount of fees for registration and other terrns and conditions, for issue of registration certificate. [61-C. Development of Colonies.-(l) Subject to the provisions of this Act and the rules made thereunder, any colonizer, who has been issued registration certificate under sub-section (2) of Section 61 - B, may develop a colony in the Gram Panchayat area. (2) (a) The colonizer shall provide developed plots or constructed dwelling units to the economically weaker section as may bé prescribed. (b) The size, number and location of such plots or dwelling units may be prescribed. (3) Notwithstanding anything contained in this Act, in addition to or in .1ieu of the. plots or dwelling units_ .mentioned in clause. (b) of _ sub-section (2), Che Stace Government may impose, cölléét and utilize a shelter fee as may be prescribed.] 61-D. Punishment for Illegal Colonization.- (l) A Colonizer who, in contravention of the provisions of Section 172 of the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959) and the rules made thereunder, diverts the land or part thereof, Commits and offence of illegal diversion of land. (2) A Colonizer who divides his land or the land of any other person into plots with the object of establishing a colony in breach of the requirements contemplated in this Act or the rules måde in this behalf, commits an offence of illegal colonization. 4 (3) Whoever commits an offence of illegal diversion or illegal colonization shall be punished with imprisonment of not less than three years and not more than seven years, and a minimum fine of ten thousand rupees. Such offence shall be cognizable.] (4) Whoever constructs a building in an area of illegal diversion or illegal colonization commits an offence of illegal construction. (5) Whoever commits an offence of illegal construction shall be punished with simple imprisonment which may extend to six moriths I 2 3 4 Subs. by MP 21 of 2013 [24-4-20131 for words "Sub-Divislonal Officer (Revenue)". Subs. by MP 21 of 2013 [24-4-20131 for words "Sub-Divisional Officer (Revenue)". S.61-C Subs. by MP 21 of 2013 [24-4-2013]. See old provisions in "Previous Provisions", given at the end of this chapter. Subs. by MP 21 of 2013 (24-4-20131. See old provisions in Previous Provisions. (PA)IIO PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 I[CHAPTER-VI-A - COLONIZATION 2 [61-A. Definitions.-For the purposes of this Chapter,- S. GI-A (a) "Gram

Panchayat Area" means such area which is situated in the Gram Panchayat Definitions within a distance of,- (i) sixteen kilometers from the limits of a Municipal Corporation constituted under the Madhya Pradesh Municipal Corporation Act, 1956 (No. 23 of 1956); (ii) •eight kilometers from the limits of a Municipal Council or Nagar Parishad constituted under the Madhya Pradesh Municipalities Act, 1961 (No. 37 of 1961): (iii) three kilometers from the limits of an urban area other than those specified in (i) and (ii) above: (iv) one kilometer from the side of a National Highway specified in or declared under the National Highway Act, 1956 (XLVII of 1956) or public road notified under Section 2 of the Madhya Pradesh Highway Act, 1936 (>oøav of 1936): Provided that any area situated within the planning area notified under section 13 of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam 1973, (No. 23 of 1973) shall be deemed to be a "Gram Panchayat Area" for the purpose of this Chapter; (b) '_'colony" -means.:an. area .which-has been -developedzby-dividing= the said area into plots and includes group housing but excludes an area which may have been divided amongst the members of a family, ordinarily for the purpose of constructing dwelling units; (c) "colonizer" means any person, society, institution or entity, excluding those that may be so notified by the State Government, who intends to take up the work of developing a colony in accordance with the provisions of this Act and rules made thereunder for the purpose of transfer by sale or otherwise all or some of the plots or the building or part thereof _ aæ-lc! _i>_ registered _ colonizer_ by the Competent _ Authority under this Act.] 61-B. Registration of Coloniser.-(l) Any person who intends to undertake the establishment of a colony in the Gram Panchayat area for the purpose of dividing land into plots, with or without developing the area, transfers or agrees to transfer gradually, or at a time, to persons desirous of settling down on those plots by constructing •residential, non-residential or composite accommodation shall apply to the [such Competent Authority as may be prescribed by State Government] for *the grant of a_ registration certificate, alongwith a copy öf•tHe resolütiöh ü.ily passed 'bj •the Grärfi PäfiöhåYat"iri éüéÖort the 2 3 Chapter Ins. by MP -43 of 1997 [5-.10-19971. Ss.61-A to 61-G ins. by MP 43 of 1997 [5-12-19971 and thereafter S. 61-A subs. by MP 21 of 2013 [24-4-20131. See old provisions in "Previous Provisions", given at the end of this chapter. Subs. by MP 21 of 2013 [24-4-20131 for words "Sub-Divisional Officer (Revenue)". s. 61 a mela: PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)109 Provided that the State Government, may by notification, declare any market or mela to be public market Or public mela and the public market or public mela, as the case may-be, So declared shall vest in the Janpad Panchayat. (2) The State GoVernment may make rules to regulate the market or the mela specified in sub-section (l). Rules:- Ihe State Gövernment has made the following rules in ekercise of the powers conferred by this section. These Rules shål-l be found under Rules given separately: "Regulation of Mårkets arid MelaS Within the Gram Panchayat Areas Rules, 1994." 59. Powers of Janpad Panchayat to turn, divert, discontinue or close roads.-A Janpäd Panchayat may, with the sanction of the prescribed authority, •turn, divert, discontinue or permanently close any road which is under the control and administration of, or is vested in the Janpad Panchayat

60. Encroachment upon road and land vested in Janpad Panchayat.- (l) Whoever erects or encroaches or obstructs any road, street, land, building or structure which vest in the Janpad Panchayat shall On conyiction bé punished with a fine, which may extend to hone thoüSäfid rüPees]. (2) The Chief Executive Officer shall have power to remove any such obstruction or encroachment and the expenses of such removal shall be paid by the person who has caused the said obstruction or encroachment and on his failure to pay, the same shall be recoverable as an arrear of land revenue: Provided that before proceeding to remove any such obstruction or encroachment, the Chief Executive Officer may, by a written notice, call upon person who has caused such obstruction or encroach- ment to remove it within the time specified in the notice, or shmü cause as to why the same should not be removed. (3) Not hing in this section shall prevent a Janpad Panchayat from allowing any temporary occupation of erection on, thé places men- tioned in sub-section (I) on occasions of festivals and ceremonies for such period as it may deem fit, in such manner so as not to cause inconvenience to the public or any individual

61. Powers to' compromise.-A Panchayat may, with the.previous sanctions of the prescribed- authority, compromise any suit instituted by or against, it or any claim- or demand arising out of any contract entered into it under this Act on such terms as it may deem fit. 1 Subs. by M.P. 26 of 1994 [30.5.94]. (PA)108 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 S. 4[56-A may be punished with fine, which may extend to hone thousand] and in .caSe of continuing offence with further fine which may extend to

(tw,goty rupees] for every day during which such encroachment, or projection continues after the date of first conviction .1Cnysüéh offence. (2) Notwithstanding anything contained in sub-section (1), the Gfåi i*Panchayat shall have power to remove any such obstruction or and to remove any crop unauthorisedly cultivated on or any other land not being private property and shall have •tne•.ll.lke power to remove any unauthorised obstruction or encroach- mept or projection of the like nature in any open site not being private praperty, whether such site is vested in Gram Panchayat or not and the expenses of such removal shall be paid by the person who has cauSed the said encroachment and on failure to pay such expenses the same may be recovered from such person as an arrear of land revenue: 3 [Provided that notwithstanding anything contained in sub-section (l) and this sub-section if the Gram Panchayat resolves tö remove any hindrances. obstruction or encroachment on any land vested in the State Government it may refer to the Tehsildar to remove such hindrances, obstruction or encroachment from such land and the Tehsildar shall _prpceed- to do so under-the provisions--of4-he Madhya Pradesh Land Revenue Code, 1959 (No.20 of 1959)]. (3) Notwithstanding anything contairied in this section the Gram Panchayat may allow any temporary occupation or erection in or putting projection over any public place for not exceeding ten days in such manner so as not to cause inconvenience to the public or any individual, on occasions of festivals and ceremonies in accordance with the byelaws made under this Act. (4) "lhe Gram Panchayat shall not pass any order in the exercise of powers under this section -until -the person concerned has been given- a reasonable opportunity of being heard. 4 [56-A. Delegation of powers of Gram Panchayat under Section 55 and 56. -In case of a Special Economic Zone,- the powers of Gram Panchayat under Section 55 and 56 shall be delegated to •the Develop- ment Commissioner.) 57. Powers to name streets and number of building.-The Gram Panchayat may cause a name given to any street and may also cause a number to be affixed to any building and from time to time, cause suOh name ofestreets and number of buildings to be altered

58. Regulation of markets and melas.-(1) Save as provided in the MadhyaPradesh Krishi-Upaj Mandi'Adhiriiyåi•n•; 1972 (No¯.24 •of "1073), no person except Gram Panchayat shall within the Gram Panchayat area set up, establish or use any place for 'the purpose of a market or 1 2 3 4 Subs. by M.P. 26 of 1994 [30.5.941. Subs. by M.P. 26 of 1994 130.5.941. Subs. by MP Act 28 of 1998 [4-9- 19981. Ins. by MP Act 18 of 2007 w.e.f. 25-5-2007. s. 56 PANCHAYAT RAJ AVAM GRAM SWARAJADHI., 1993 (PA)107 (2) If any person erects, alters, adds to or reconstructs any building without the permission of Gram Panchayat and contrary to any such conditions under which permission has been granted the Gram Panchayat may by written notice direct such person to stop the erection, alteration, addition or reconstruction and to alter or demolish such erection, alteration, addition or reconstruction, as it may deem necessary in the public interest within a period specified in notice. (3) If any person fails to comply with the directio s contained in the notice served under sub-section (2) by the Gram nchayat within the period specified in such notice, the Gram Panchayat may, itself take such action as required to be done by such persons at the expense of such person which shall be paid by him within thirty days from the date on which a demand notice has been served by the Gram Panchayat. On failure to pay the expenses within specified period, the same shall be recovered as an arrear of land revenue. I {(8-A) Notwithstanding anything contained in sub-section (3) whoever contravenes any provision of this section or the rules or byelaws made thereunder or the conditions of permission granted by the Gram Panchayat or fails to comply with any lawful directions or requisition made under any of the said prövisions may be prosecuted by the Gram Panchayat or the officer authorised by the State Govern- ment for this purpose and on conviction he shall be punished with simple imprisonment which may extend to six months -or with -fine Which may extend -to two -thousand Hnpees or with boih, and in case of continuing offence with further fine which' may extend to two hundred and fifty rupees for eveo,' day during which the offence continued after the date of first conviction.] (4) An appeal may be preferred to the prescribed authority from any direction or notice of the Gram Panchayat under sub-section (2) and the decision of the prescribed authority on such appeal shall be final

56. Hindrances, obstructions and encroachment upon public street and open sites.-(l) Whoever within the Gram_Panchayat area causes any hindrance, obstruction or encroachment over any public street or open site or upon any drain in such street— 1 (a) by building or setting up any wall, fence, rail, post, stall, verandah, platform, plinth, step or any other structure; or (b) without written permission of the Gram Panchayat or con- trary to the conditions mentiqned in such permission by putting up any verandah,

balcony, room or other structure so as to project over any public street or upon any drain in such street; or (c) by unauthorisedly removing earth, sand or other material from any site; or (d) by unauthorisedly cultivating any grazing or other land, Ins. by M.P.Act 5 of 1999 15-4-1999]. (PA)106 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 COMMENTARY S. 54 As provided in Schedule IV-5, fishing lease granted by the District Panchayat is as per guidelines of the State Government. Matsaya Udyog Sahakari Samiti v. State 0fM.P., 2007(2) ryæwr•163. Rules:- The State Government has made the following rules in exercise of the powers conferred by this section. These Rules shall be found under Rules given separately. "Panchayat Shiksha Karmis (Recruitment and Conditions of service) Rules, 1997" POWERS OF PANCHAYATS 54. Powers of Gram Panchayat as to public health facilities and safety.- Subject to the rules as the State Government may make in this behalf the Gram Panchayat shall have power:— (i) to regulate the offensive or dangerous trade; (ii) to remove the structures and trees; (iii) to maintain the sanitation, conservancy, drainage, water works, sources of water supply; (iv) to regulate the use. of_ water; (v) to regulate-slaughter of animals; (vi) to regulate establishment of Workshops. factories and other industrial units: (vii) to ensure environmental control; and (viii) to carry out such functions as are necessary by or under the provisions of this Act. Rules:- The State Government has made the following rules in exercise of the powers conferred by this section. These _Rules. .ghall be found under Rules given separately. 1. "Gram Panchayat (Regulation of Slaughter House) Rules, 1998" 2. "Gram Panchayat (Regulation of Offencive or Dangerous Goods Trades) Rules, 1998" 3. "Gram Panchayat (Power relating to removal of structiures and trees) Rules, 1999" 4. "Gram Panchayat (Sanitation, Coeservancy and Prevention and Abatement of Nuisance) Rules, 1999"

55. COntrol of erection of Subject to the provisions of this section no person shall erect any building or alter or add to_any pdsting building or reconstruct-any building Without thé pei-niiésion in writing of the Gram Panchayat and except in accordance with byelaws made in this behalf under this- Act. Permission shall be presumed to have been granted if no refusal of such permission is communicated by the Gram Panchayat within forty five days of the receipt of the application. s. 53 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)105 Zila Panchayat of the district and all the assets and liabilities and functions of the said Agency shall stand transferred and be vested in, and be discharged and performed by the Zila Panchayat concerned. (b) Notwithstanding anything contained in this Act, or any rules or byelaws made thereunder, the pay, allowances and other benefits of all permanent employees of District Rural Development Agency, on the date of commencement of this sub-section shall be the existing pay, allowances and other benefits]. COMMENTARY Sub-section (1), clause (xii).- An employee of one Gram Panchayat cannot be transferred to another Gram Panchayat. Power of Janpad Panchayat cannot be equated to that of the State Government under S.58(5) ofM.P.Municipal Corporation Act. Biharilal Jaiswal v. State of M.P., 2002 (2) MPHT 77

53. Power of State Government in relation to functions of I(a) Subject to such conditions as may be specified by general or special order issued by the State Government, the Panchayat at the appropriate level shall be entrusted such powers, alongwith budget and staff as may be necessary to enable them to function as institution of self Government in relation to matter listed -in Schedule IV- ,- including • preparatiorr of pläns-.- implementatiorv •of; • schemes for economic development and social justice and other duties and functions assigned to them under sections 7, 49, 49-A, 50, 52 and Chapter NV-A.] (b) The State Government may by notification endow Panchayats at the appropriate level with powers and responsibilities for the selec- tion, recruitment, appointment and management of any cadre or cadres of employees required for the efficient implementation of schemes, subject to the staffing pattern approved by the State Govern- ment and such other conditions as-it may deem fit]. (2) The State Government may, by general or special order, add to any of the functions of Panchayats or withdraw the functions and duties entrusted to such Panchayats, when the State Government undertakes the execution of any of the functions entrusted to Panchayat. The Panchayat shall •not be responsiblefor such functions so long as the State Government does not,re-entrust such functions to the Panchayats. 1 Sub-sec. (1) Subs. by MP 43 of 1997 and thereafter Cl.(a) of sub-sec. (I) again subs. by M.P. Act No. 26 of 2012 [23-5-20121. Before substitution Cl. (a) was a's follows:- " (a) Subject to such conditions as may be specified by general or special order issued by the State GOvernment, the Panchayat at the appropriate level shall have .the .powers and authority as may be necessary to enable them to function as institutions of Self government in relation to matters listed in Schedule IV, including preparation of plans. implementation of schemes for

economic development and social justice, and other duties and functions assigned to them under Sections 49, 49-A. 50. 52 and Chapter XN-A." (PA)104 (iii) (iv) (v) (vi) (vii) (viii) (ix) (x) (xi) (xii) PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 s. 52 Government; co-ordinate, evaluate, and monitor activities and guide the Janpad Panchayat and Gram Panchayat; ensure overall supervision, co-ordination and consolidation of the plans prepared by the Janpad Panchayat; ensure the execution of schemes, works, projects entrusted to it by any law and those assigned to it by the Central or State Government; ensure the execution of transferred or delegated functions, works, schemes and projects of the Central or State Govern- ment; reallocated to Janpad Panchayats and Gram Panchayats the funds made available by Central or State Government per- taining to the transferred functions works, schémes and projects, as per the norms fixed by the Central or State Government; co-ordinate the proposals for grants for any special purpose received from the Janpad Panchayat and forward them to the State Government; secure the execution of plans, projects, schemes or other works common to two or more Janpad Panchayats; -execute -wöt-ks, Séheines- -a-nd -projects through - Gtäi-n- Panchayat or through the executing agencies transferred by the State Government to •Panchayats, irrespective of their source of fund; advise the State Government tin development activities, protection of the environment, social forestry, family wel- fare, welfare of the disabled, destitute, women, youth, children and weaker sections of the society; administer and control the employees appointed and posted in- Panchayats -including staff transferred -by-the State-Government to the Panchayats; Explanation.-The administration and control of the staff trans- ferred by the State Governments shall include the exercise of such power as may be defined by the State Government from time to time by special or general order; (xiii) take all necessary measures to mobilise the resources by exercising the powers entrusted to it by any law-or the Central or State Government; -(xiv) exercise and perform such •otheri powers and functiöns as the State Government may confer or entrust upon it]. Notwithstanding anything- eohtäihed in - the Madhya Pradesh Societies Registrikaran Adhiniyam, 1973 (No. 44 of 1973) or any other State -enactment for the time being in force, the District Rural Development Agency of the district shall stand merged with the 1 Subs. by MP 43 of 1997 12-10-1997]. s. 52 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)103 ment block within its jurisdiction, as the case may be, and the functions 'and schemes assigned to such block by the State Govern- ment shall be implemented under the superintendence, directions and control of the Janpad Panchayat in accordance with the instructions issued by the State Government from time to time. Rules.-The State Government has made the following rules in exerise of the powers conferred by this section. These rules shall be found under Rules given separately. "JANPADPANCHAYAT(MANAGEMENTOFFERRIES) RULES, 1999" 51. Entrustment of certain functions of State Government to Janpad Panchayat. -(1) The State Government may entrust, to a [Janpad Panchayat or Zila Panchayat) functions in relation to any matter to which the executive authority of the State Government extends or in respect of functions which have been entrusted to the State Government by the Central Government and the 2 [Janpar Panchayat or Zila Panchayat] shall be bound to perform such func- tions. It shall have necessary powers to perform such functions. (2) Where functions are entrusted to a [Janpad Panchayat or Zila Pänchayat]under sub-section (l), the 4 [Janpad Panchayat or Zila Panchayat] shall in the discharge of those functions, act as an agent of the State Government. (3) There shall be paid by the State Government to the 5 [Janpad Panchayat or Zila Panchayat] such sum as may be deemed necessao,' for discharéin•g the functions entrÜSted to• it -undéf this Section: (4) The 61Janpad Panchayat or Zila Panchayat] shall, for the purposes of discharging the functions entrusted to it under this action, be under the general control of the State Government or any other authority appointed by it and shall comply with such directions as may from time to time be given to it

52. Functions of Zila 7 [Panchayat].subject to the provisions of this Act and rules made thereunder and subject to policy, directions, instructions, general or special orders as may be issued by the State Government from -time to time,- it shall be the-duty of Zila- Panchayat — to— (i) prepare annual plans for economic development and social justice of the district and to ensure the co-ordinated im- plementation of such plan in respect of the matters trans- ferréd to Panchayats; (ii) prepare annual plans in respect of the schemes entrusted to I 2 3 4 5 6 7 8 it by the Law and those assigned to it by the Central or State Subs. by MP 43 of 1997 15-12-19971. Subs. by MP 43 of 1997 15-12-1997]. Subs. by MP 43 of 1997 (5-12-1997]. Subs. by MP 43 of 1997 [5-12-19971. Subs. by MP 43 of 1997 15-12- 19971. Subs. by MP 43 of 1997 [5-12-19971. for "Parishad" by MP 26 of 1994 (30-5-19941. Subs. Subs. by MP 2 of 1997 [7-1-19971.

(PA)102 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 shall be the duty of the Janpad Panchayat to— s. 50 (i) (ii) (iii) (iv) (v) (vi) (vii) (viii) (ix) (x) (xi) (xii) (xiii) prepare the annual plan in respect of the schemes of economic development and social justice entrusted to it by the Act and those assigned to it by the State Government or the Zila Panchayat and submission thereof to Zila Panchayat within the prescribed time for- integration with the district Panchayat plan; consider and consolidate the annual plan in respect of the scheme of economic development and social justice of all Gram Panchayat and the Janpad Panchayat and submis- Sion of the consolidated plan to Zila Panchayat; prepare plan of works and development schemes to be undertaken from Janpad Panchayat Fund; undertake regional planning and infrastructural develop- ment within the Janpad Panchayat; sanction, supervise, monitor and manage the works of development schemes from Janpad Panchayat funds and for this purpose incur expenditure therefrom; ensure the execution of schemes, works, projects entrusted to it by any law and those assigned to it by the Central or State Government or Zila Panchayat; 'implement; supervise, -monitor-and .manage works, schemes Programmes and projects through Gram Panchayats or through executing agencies, transferred by the State Government to Panchayats; recommend for the consideration of Zila Panchayat any works or development schemes which could be taken up by the Zila Panchayat in the block, and indicate the extent to which local resources are likely to be available in such works or schemes; co-ordinate and - guide the—Gram Panchayats within the block; secure the execution of plans, projects, schemes or other works common to two or more Gram Panchayats in the block; reallocate to Gram Panchayat funds made available by Central or State Government or the Zila Panchayat pertain- ing to the transferred schemeS, works and projects as per the norms fixed by the Central or State Government or the Zila Panchayat, as the case may be; take all necessary measures to mobilise resources by exer- cising the powers entrusted to it by any law or the Central or the State Government; exercise and perform such other powers and functions as the State Government may entrust to •it.) (2) The Janpad Panchayat shall • control and supervise the ad- ministration of the community development block or tribal develop- s. 50 (xv) 4E(xvi) (xvii) PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)IOI State Government or Zila Panchayat or Janpad Panchayat; consider the application for establishment of colonieg falling within the Gram Panchayat area as defined in section 61- 3 to exercise control over local plans resources and expendi- ture for such plans.] co-ordinate; evaluate and monitor activities of committees constituted by Gram Sabha. re-allocate to Gram Sabha the funds made available by the Central Government or State Government, pertaining to functiorfs assigned to Gram Sabha, works, schemes and projects as per the norms fixed by the Central Government or State Government.] 50. Functions of Janpad Panchayat.-(l) Subject to the provisions of this Act and the rules made thereunder, and subject to general or special orders. as may be issued by the State Government, from time to time, it shall be the duty of a Janpad Panchayat, so far as the Janpad Panchayat funds allows to make reasonable provision in the block for the following matters:— (a) (b) (C) (d) (e) (f) 5 Integrated -Rural Deyelppment, Agriculture, Social Förestry., -Ahiifiäl HilSbändi37 arid' and -Sa•nitaffori, Adult Education, Communication and Public Works, Co- operation, Cottage Industries, Welfare of Women, youth and children, welfare of disabled and the destitutes and welfare of backward classes, family planning and sports and rural employment programmes; provision of emergency relief in cases of distress caused by fires, floods, drought, earthquake, scarcity, locust swarms, epidemics and other natural calamities; arrangément -m - connectiön--With locäl -pilgrimage- an-d féS- tivals; management of public ferries; management of public markets, public •mélas and exhibi- tions; and any other function with the approval of the State Govern- ment or Zila Panchayat. [(1 -A)Subject to the provisions of this! Act and rules made there- under and sUbject to Policy. directions, instructions, general or special orders as may be issued by the State Government from time to time, it 2 3 4 5 Items (vi) Lo (viii) omitted by Act 3 OT 2001, w.e.f.26-l-2001. Ins. by MP 43 of 199715-12-1997]. Items (x) to (xfv) omitted by Act 3 of 2001, w.e.f.26-l-2001. Added by Act 3 of 2001. w.e.f.26-1-2001. Ins. by MP 2 of 1997 17-1-19971. s. 49 (PA)IOO PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 CHAPTER VI-FUNCTIONS OF PANCHAYATS 49. Functions of Gram Panchayat.-lt shall be the duty of a Gram Panchayat in so far as the Gram Panchayat funds allOws to perform within its areas the following functions:- (18) establishment, management and regulation of markets and melas other than public markets and public melas; 2 [x x xl COMMENTARY ss.49 & 50-M.P.Minor Mineral Rules, 1996, Rr.6 & 7.- The powers vested with Gram Panchayat under the rules, cannot be exercised by Janpad Panchayat under executive instructions. No rights conferred by acting on such instructions. Writ Court has

jurisdiction to mould thé rélief. Gram Panchayat Parei v. state 0fM.P., 2002 (1) JIJ 73. Rules:: The State Government has made the following rules in exercise of the powers conferred by this section. These Rules shall be found under Rules given separately. 1. "Gram Panchayat (Sanctin of Loans to The Indigent Persons) Rules, 1995" 2. "Gram P.anchayat (Regulationof_Sale if Meat and Preservation) Rules, 1998" 3. "Gram Panchayat (Regulating places for disposal of dead bodies, caracases and other offensive matter) Rules, 1998" Model Byelaws:- The State Government has also made various model byelaws in. exercise of the powers conferred by this section. These byelaws shall be found under Model Byelaws given separately. 3 [49-A. Other functions of the Gram Panchayat.-Subject to the provisions of this Act and ruléS made thereUfidér an-d subject to policy, directions, instructions, general or special orders as may be issued by the State Government from time to time. It shall be duty of the Gram Panchayat to— 2 3 4 (i) prepare annual plans for economic development and social justice of Panchayat area and submission thereof to the Janpad Panchayat within the prescribed time for integration with the Janpad Panchayat plah; (v) ensure the execution of schemes, Works, projects entrusted to it by any law and those assigned to it by the Central or Items to by Act 3 of 2001. w.e.f.26-l-2001. Items (19) to (29) omitted by Act 3 of 2001. w.e.f.26-l-2001. Ins. by MP 2 of 1997 [7-1-19971. Items (it) to (iv) omitted by Act 3 of 0001, w.e.f.26-I-2001. s. 48 PANCHAYAT RAJ AVAH GRAM SWARAJ ADHI., 1993 (PA)99 2. Election delayed for constituting Standing Committee of Jan- pad Panchayat by two days- Holding of election, not without juris- diction.- The Panchayat Raj Adhiniyam does not contengplate that if there is a delay in holding the meetings or elections, the committees cannot be constituted at a later date. There is no other provision which gives an alternative in the event of non- constitution of he Standing-Committees. Unless the provision is accompanied by some penal consequences, the same cannot be held to be mandatory. The provision can only be said to be directory. Simply because the elections were held two days after the prescribed period for constitution of Standing Committee, the holding of election cannot be said to be without jurisdiction. Harisingh Patel v. Janpad Panchayat, 1996 MPLJ 418

3. Rules:- The State Government has made the following rules in exercise of the powers conferred by this section.-These Rules shall be found under Rules given separately. "Janpad Panchayat and Zilla Panchayat Standing Committees (Elec- tion of Members, Powers and Functions and Term of Members and Procedure for the Conduct of Business) Rules, 1994. " I [47-A. Resignation.- A member of Standing Committee other than General Adrn.inistration Committee and the Chairman of a Standing Committee other . than-the-General- Administratiöri- aild -Educatiofr Committees may resign by tendering his resignation in person to the President of the Janpad Panchayat or Zila Panchayat, as the case may be, and his resignation shall take effect from the date of its receipt by the President. 47-B. Disputes regai•ding validity of election of Member or Chairman.-(l) The provisions of Section 122 relating to election dis- putes and rules made thereunder shall apply mutatis-mutandis in relation to election of Member of chairman under section 46 and 47. (2) All legal proceeding relating- to Such disputes pending before the State Government and its subordinate officers, shall stand transferred to the specified officers having jurisdiction under section 122.1 48. Powers and duties of Sarpanch, Up-Sarpanch, President, Vice-President.-The Sarpanch and Up-Sarpanch and the President and Vice-President shall exercise such Ypowers and perform such functions, as may be prescribed. Rules:- The State Government has made the following rules in exercise of the powers conferred by this section. These Rules shall be found under Rules given separately. "Powers and Functions of Sarpanch and Up-sarpanch of Gram Panchayat, President and Vice-president of Janpad Panchayat and Zilla Panchayat Rules, 1994." 1 Ss.47-A and 47-B. ins. by M.P. 39 of 1995 119.12.19951. s. 47 (PA)98 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 1 2 [(4-A) (a) Every member of the Legislative Assembly who is a member of Janpad Panchayat; shall be ex-officio member of each Committee of that Panchayat; (b) Every Member of Parliament who is a member of a Zila Panchayat shall be ex-officio member of any two Committees of his choice in that Panchayat; and (c) Every Committee of Zila Panchayat shall co-opt not more than two members of the Legislative. AsSembly who are members of that Panchayat, subject to the condition that a member of the Legislative Assembly shall not be member of more than two Committees.} Every Committee except Che General Administration Commit- 3 tee and the Education Committee shall elect from amongst its elected members a Chairperson within such time and in such manner may be prescribed: Provided that— (i) The President of the Janpad panchayat or Zila Panchayat, as the case may be, shall be officio Chairperson of the -General Administration Committee; (ii) the Vice President of the Pån•chåYät- Zilå Panchayat. as the case

may be, shall be ex officio-Chairper- son of the Education Committee; and (iii) the President and Vice-President of the Zila Panchayat and Janpad Panchayat, as the case may be, shall not be member of any Committee other than the Committee of which he is the Chairperson by virtue of clauses (i) and (ii) of this proviso.] (6) Every Committee shall, in relation to the subject assigned to it exercise such powers and perform suClfOf the füriOtiOtfS of the-Janpad" Panchayat or Zila Panchayats as the case may be, as may be prescribed. (7) No person shall be a member of more than three committees other than General Administration Committee at a time. COMMENTARY 1. Education Committee not entitled to make every appoint- ment.-An Education Committee would be constituted for education includ- ing adult' éduéåtion etc. bilt- that does not imean• that Such Education Committee shall be entitled to make every appointment. When the State Governme1iE is"éntitléd -tö eit-reisé -general •pot*.rers of superintendence as provided in Section 53 and Section 86 and other allied sections to have control over the Panchayats then the State Government would be entitled to issue such directions. Ajay Tripathi v. State of M.P., 2009(1) MPIJ 75 - 2009 (1) JIJ 257 = 2008 (5) MPHT 195 (DB.). I Third proviso inserted by MP 26 of 1994. omitted by MP 39 of 1995. 2 Ins. by M.P. 39 of 1995 [19..12.19951. of hy MP of 199417. 10.941. i! (PA)96 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 s. 45 can call a meeting and in case none of the above eventualities happens and if members are keen to discuss the matter then they can requisition the calling of a meeting. Where after calling a meeting of the Gram Panchayat, the Sarpanch locked the panchayat premises, it would not give any authority to Upsarpanch to hold the meeting at another place. This is because notice regarding place of meeting is to be given to other members also. The notice is not only with regard to agenda but also with regard to place of meeting. Under the circumstances any meeting so held at another place cannot be said to be a valid meeting and the resolution passed thereat will not be effective. Ramkishan v. State of M.P., 1998 (1) MPLJ 589

2. Rules:-The State Government has made the following rules in exer- cise of the powers conferred by this section. These Rules shall be found under Rules given separately. "Procedure of Meeting and Conduct of Business Rules, 1994." 45. Reconsideration of subjects finally disposed of by Panchayats.-No subject once finally disposed of by Panchayat shall within six months be reconsidered by it unless the recorded consent of not less than three fourth of its niembers entitled to vote has been obtained thereto or- unless the -prescribed, authority has -directed -its - reconsideration. SUBORDINATE AGENCIES 46. Standing Committees of Gram Panchayat.-(l) A Gram Panchayat may for discharging its functions and duties, constitute standing committee not exceeding three and such committee shall exercise such powers as may be assigned to them by the Gram Panchayat. The committee shall be under the general control of the Gram Panchayat. (2) No person shall be a member of more than two comrnittees at a time. (3) The term of office of the members of standing committee and the procedure for the conduct of business of the standing committee shall be such as may be prescribed. Rules:- The State Government has made the following rules in exercise. of the powers conferred by this section. Thése Rules shall be found under Rules given separately. "Gram Panchayat (Term of Offce of Meriibers of Standing Committee and procedure for the Conduct of Business) Rules, 1994" 47. Standing Committees of Janpad Panchayat and Zila Panchayat.- (1) Every Janpad Panchayat and every Zila Panchayat shall from amongst its l[elected members] constitute the following standing committees, namely:- 1 Subs. by M.P. 26 or \30.5.941. s. 44 (PA)95 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 shall •be posted in the office of the Panchayat. No quorum shall be necessary, for suph postponed meeting, and no new subject for con-sideration may be brought before such meeting. (4) The President or Sarpanch shall call a meeting of Zila Panchayat, Janpad Panchayat or Gram Panchayat, as the case may be,. atleast once every month. If the President or Sarpanch fails to call the meeting in any month the I [the Chief Executive Officer of the Zila. Panchayat or Janpad Panchayat pr Secretary of the Gram Panchayat as the case may be] shall issue a notice of the meeting of the Panchayat concerned as soon as twenty five days elapse after the date of the last meeting. (5) A report about the income and expenditure of the Gram Panchayat between the period of last meeting and the current meeting as well a's the cumulative income and expenditure in the current financiäl year up to the current meeting shall be placed before the Gram Panchayat, in addition to any other subjects, by the Secretary of Gram Panchayat and such report shall be discussed by the Gram Panchayat. In case of Janpad Panchayat and Zila Panchayat such report shall be •placed [by the Chief Executive Officer] in its meeting once in three months. [The report of income and expenditure shall be prepared according to the approved annual budget estimate alongwith the comparative statement of figures

which shall be placed in the meeting by •the ChieTExecutive Officero (6) If more than fifty percent of the members of the Panchayat give requiéitiön in writing for a speéial meeting of the Panchäyat, the President or Sarpanch, as the case may be, shall call such a meeting Within seven days of receipt of such requisition. If the President or Sarpanch as the case may be, fails to call the meeting on such requisition the members who have given requisition of a special meeting may call the meeting themselves and thereupon 4[the Chief Executive Officer of the Zila Panchayat or Janpad Panchayat or the Secretary of the Gram Panchayat as the case _ may _ be], _ shalL issue notice of the meeting. (7) If the President or the Sarpanch, as the case may be, fails on at least three occasions to act in accordance with sub-section (4) or sub-section (6), he shall be liable to be removed from his office under Section 40 and the provisions of Section 40 shall be applicable to him, who has been so removed. COMMENTARY 1. Meeting of Gram Panchayat-Validity of proceedings.-The power to call the meeting of Gram Panchayat vests in the Sarpanch. If for any reason,.he does not call the meeting then the Secretary of the Panchayat 1 2 3 4 Subs. by M.P. 26 of 1994 130.5.94j. Subs. by M.P. 26 of 1994 [30.5.941. Substituted by M.P. Act No. 26 of 2012 123-5-20121 for the following reports shall be prepared in such manner as may be prescribed." Subs. by M.P. 26 of 1994 (30.5.941. (PA)94 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 S. 42-A Rule 36. State Election Commission M.P. u. Ras Bihari, 1995 JIJ 651=AIR 1995 MP 245 (DB). 1 [42-A. Power to appoint officers and staff and to assign duties and functions to them.-(l) In the exercise of powers under Section 42, the State Election Commission may. in consultation with the State Government, appoint officers and members of staff for conducting elections to panchayats. (2) The State Election Commission may assign such' duties and functions to officers and members of staff appointed under sub- section (l) and invest such officers and members of staff with such powers and in relation to such areas as it may deem necessary or consider fit in relation to conduct of elections and matters connected therewith or incidental thereto.] [43. Power to make rules. -The State Government shall in consult- ation with the State Election Commission make rules for the prepara- tion of Electoral rolls and conduct of all Elections to the Panchayats.] COMMENTARY 1. Nomination paper accepted- Acceptance cannot be set at naught- Rule 35(8).- There is no provision in the rples. which empowers the Returning Officer or any other authority to reject nomination paper which was earlier accepted by a person acting as a Returning Officer. Ranvirsingh v. State 0fM.P., AIR 1995 MP 271

2. Rules:- The State Government has made the following rules in exercise of the powers conferred by this section. These Rules shall be found under-Rules given separately. "PANCHAYAT NIRVACHANNIYAM, 1995" CHAPTER V - CONDUCT OF BUSINESS AND THE PROCEDURE AT THE MEETING OF -THE PANCHAYATS 44. Procedure of meeting.-(l) Subject to the provision of this Act, the procedure of meeting and conduct of business of a Panchayat shall be such as may be prescribed. (2) The chair person of a Panchayat and other members of a Panchayat whether or not chooses by direct election from territorial constituencies shall have the right to vote in the meeting of the Panchayats. (3) 3 [The quorum for a meeting of Panchayat and Janpad Panchayat Shall be one-third, and for a meeting of Gram Panchayat shall be one-half, -of the members constituting the concerned Panchayat for the time being]. If there be no quorum present at a meeting, the presiding authority shall, adjourn the meeting to such date and hour as may be fixed by it. A notice Of the meeting so fixed •i Ins. by M.P. 26 of 1994 130.5.941. 2 Subs..by M.P. 26 of 1994 130.5.941. 3 Subs. by MP 43 of 1997 [5-12-19971. s. 42 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)93 (3) Any intimation under sub-section (1) shall be final and ir- revocable. (d) For the purposes of this Section a person shall be deemed to be elected on the date of declaration of the result

CHAPTER IV-CONDUCT OF ELECTION 42. Commission conduct of Election.-The superintendence, direction and control of the preparation of electoral rolls for and the conduct of all elections to he Panchayats shall be vested in the •state Election Commission. COMMENTARY 1. Countermanding of election by State Election Commission. Validity and jurisdiction. -Article 243-K of the Constitution and sectin 42 vest in the Commission, superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, election and Rule 17(3) of the Rules confers on the Commission power to issue such special or general orders or directions which may not be inconsistent with the provisions of the Act for fair and free elections. Rule 33(6) declares that the order accepting or rejecting the nomination paper passed by the Returni ng Officer shall be final. Article 243-0(b) is enacted to prescribed manner in which and the stage in which this ground and other grounds which may be reised in .1aw to call .the

election_in questipn_cguld raised_. By-znecessary. implication, it ft)llows from the language of the provision that thesb grounds cannot be urged in any other manner or at any other stage and before any other court. The scheme of Article 243-0(b) read in the light of Rule 33(6) is that the decision of the Returning Officer shall be final, subject to review only by the Election Tribunal in a duly filed election petition. The order passed by the Returning Officer accepting or rejecting the nomination paper is not susceptible to review at any other stage or by any authority other than Election Tribunal. It is significant to note that the rules do not provide an appeal to the Commission or revision suo motu or otherwise to the Commis- Sion against the order of the Returning Offcer-. These circurhstances•make it clear that whatever be the amplitude of the power vested in the Constitu- tion under ARticle 243-K and section 42 of the Act, it does not take in the power of upsetting the final decision arrived at by the Returning Officer accepting or rejecting the nomination paper. The Election Commission has no jurisdiction to interfere at that stage in that matter. The power of countermanding the poll leading to fresh election cannot be exercised in the case of rejection of nomination papers of all candidates except one par- ticularly in view of Article 243-O(D and rule -33(6) of the Rules. Wrongful acceptan9e or rejeqtipp _ofgo_1Qin4tion paperis aground which could be urged in election petition. State Election Commission v. Ras Bihari, 1996 MPI.J 966 (DB)

2. Jurisdiction of Election Commission.- Where some nomination are rejected by the Returning Officer, resulting in leaving one candidate only in the field, the order cannot be challenged or suo motu revised by the Election Commission. The order of the Returning Officer is final subject to an order passed in revision by the prescribed authority under (PA)150 PANCHAYAT GRAM SWARAJ ADHI., 1993 s. 91 2008(1) JIJ 329 = 2008(1) MPHT 2540B]. [4] Challenging to resolution - S.91 not applicable - suo motu powers of the State Government or Prescribed Authority.-lt is worth noting that certain resolutions of the Gram Panchayat are assailable in a different manner as provided in other provisions of the statute. The resolu- tions which would have been specifically challengeable in a different manner under the Act would not come. under the purview of section 91 but other proceedings of theoram Panchayat can be challenged by the substantive provision. Thé State Government has not framed rules by providing a forum. Under these circumstances it would be apposite and seemly to hold that the Person aggrieved can bring his grievance to the notice of the State Govern- ment and the State Government should take a decision under section 85 of the Act. While taking the said decision the State Government shall be guided by the concept of promptitude which is an intrinsic and inseggregable facet of suo motu exercise of jurisdiction. Be it noted, while exercising suo motu power under section 85 of the Act the State Government shall be guided by the parameters provided therein and the nomenclature given to a proceed- ing under section 85 of the Act. Sagar Machhua Sahakari Samiti, Seoni v. Chief Executive -Officer; Janpad- Pâncha-yåt, Sébni & Ani.-; •2008(2) -MPLj- 194 = AIR 2008 (NOC) 1388 2008(1) JIJ 329 = 2008(1) MPHT 254 [DBI. [5] From the intent of the Adhiniyam, no powers are conferred 'upon the authorities for cancelling the resolution in a proceeding under S.91 of the Adhiniyam. Resolutions of Panchayats cannot be set aside. Sagar Machhua Sahakari Samiti, Seoni v. Chief Executive Officer, Janpad Panchayat, Seoni & Anr., 2008(2) MPLJ 194 = AIR 2008 (NOC) 1388 = 2008(1) JIJ 329 = 2008(1) MPHT 2540B]. [6] Appeal shall lie & Appellate Authority have necessary powers .-The provisions of an Act cannot be interpreted -bj,' iéféfénce to Ché provisions of a Scheme made by the Government to give effect to the provisions of the Act, but has to interpreted by reference to the provisions of the Act. Hence an appeal would lie against an order of appointment of- Panchayat Karmi issued by Sarpanch of Gram Panchayat under Section 91 of the Adhiniyam read with Rule 3 of the Rules of 1995. Held, while deciding the appeal, the Appellate Authority will have all necessary powers to grant relief in a case where he decides to allow the appeal and such powers will also include the power to decide whether the selection made by the Gram Panchayat by, adopting a resolution was not Correct either on facts or in law. Further held that the view taken by the learned Single Judge ih Ramtakhan Rawgt v. ,state 0fM.P., 176 JIJ 280, is not correct in -iaw, [OVERRULED]. Devidayal Raikwar v. state 0fM.P., 2009(1) JIJ 7 = 2008(4) r,NLJ 647 = 2008(3) MPHT 505[DBl. [7] Objection at last stage, rejectable.-GFam Panchayat Karmi ap- pointed by majority Of voting not on merit hence selection process vitiated. Further an objection towards maintainability of the appeal raised by the petitioner at the last stage of final arguments also rejected for the reason that it was not raised before all three authorities below and also not even in writ petition. Praiapal Singh' v. $tqte of M.P MPT s. 91 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)149 the State Government brought to the notice of this Court a Notification dated 30th January, 1996. This Notification has been issued by the

State Government in exercising the powers, conferred on the State Government under Part "5" of Rules of Business. On the basis of the aforesaid, it is clear that the State Government under the Supplementary Instructions No. 13 of Business Rules has conférred the power on the Hon'ble Minister to exercise the revisional jurisdiction under the Panchayat Raj Adhiniyam, 1993. According to the same, the Hon'ble Minister shall exercise the powers against the orders passed in appeal/revision. Paragraph 2 of the aforesaid Notification also indicates that against the orders passed by the Commis- sioner exercising the appellate/revisionaljurisdiction, the Hon'ble Minister, Panchayat and Village Development Department shall exercise the power to hear the case. Therefore, the Minister's order Annexure P-2 to the petition is proper and second revision thus would be maintainable. Dilip Kumar v. State 0fM.P., 2006(3) MPLJ 38

4. Appeal or revision.-[ll Maintainability of Appeal.-Appointment of petitioner as Panchayat Karmi by resolution. Under Section 91 of Act, order appointing Panchayat Karmi is appealable and not a resolution. RajkumarKushwaha v. state 0fM.P., 2013(1) MPLJ 238 2013(1) MPWN 24 = ILR 2013 MP 53. (21 Termination of services of Panchayat Karmi by passing a resolution. No fürthér orders were issued and instead the services of respondent No. 5, Panchayat -Karm-i were btöüght:tD-.äii' Crid- bythe Said - rééöIütiön--itSélf.:.Thé•- resolution in substance amounts to an order. Appeal against the said resolution was maintainable before the SDO'. Chandrakant Kushwaha v. Collector, Katni, 2011(3) MPLJ 196 = 2011(3) MPHT 19. See also: Jitendra Singh v. Rambabu, 2012(3) MPLJ 450 = 90 = 2012(3) MPHT 183; Comments under Section 85 of the Act; and Comments under M.P. Panchayats (Appeal and Revision) Rules, 1995. [3] Resolution is a Proceedings of Panchayats. -A panchayat being a body corporate has to act by passing resolutions. There can be no doubt that certain resolutions can be fruited and ripened and become orders. Some basically shall remain strictly in the frame or compartment of resolutions. The question would be whether a resolution is a proceeding because section 91 of the Act uses the term 'proceedings'. Section 91 of the Act clearly stipulates that an appeal or revision •would die against a proceeding of a panchayat and other authorities to such authority and in such manner as n2.gy Qf_the_ is_gssailable in an appeal or revision. The 'Gram Panchayat functions by passing resolutions which. eventually rn?y: fru#ifr but there capnot be denial *oftfie a Yesolution is a proceeding of the Gram Panchayat. Sagar Machhua Sahakari Samiti, Seoni v. Chief Executive Officer, Janpad Panchayat, Seoni & Ann, 2008(2) MPLJ 194 = AIR 2008 (NOC) 1388 = I The text of said notification in Hindi is. published in 2006 (3) MPLJ 40. but its Gazette publication reference is not mentioned hence enforcement is doubtful. (PA)148 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 s. 91 [31 Resolution passed by Gram Panchayat. Appeal Before Collector against the resolution not maintainable. Jurisdiction exercised by the Colleqtör and the Commissioner in quashing the resolution is unsus- tainable. Phool Singh Marko v. State of M.P., 2010(3) MPLJ 66. C. Necessary parties. -Appeal filed by candidates before Additional Commissioner in the matter of appointment of Shiksha Karmi. Appel- lants at whose instance the impugned order is passed are not im- pleaded as party. This is a material lacuna. Court cannot interfere into the matter in the absence of the appellants at whose instance the impugned appellaté order was passed as they are necessary parties. Petition suffers from misjoinder of the parties. Chakresh Kurnar Jain State of M.P., 2012(1) MPLJ 461 2011(5) MPHT 162 Rule 5: A. Jurisdiction. -The respondent No.5, by suppressing the fact that the writ petition preferred by him has already been dismlssed has preferred a revision before the State Government. In any case, the Minister, Panchayat and Social Welfare Department cannot sit over the order passed by the Division Bench of High Court. The initiation of proceedings by respondent No.5, before the Minister, amounts to abuse of process of law. Mordhvqj v. State of M.P., 2013(2) MPLJ 196. B. Revision. One revision competent.- Only one revision under of_ Rule_5 lies_either_ to State Government/ -Comrnis-. Sioner/ Director-of Panchayat or Collector. The•powers conferred upon them is concurrent. No second revision lies revisional order passed by any of the authorities mentioned above. 2000 (2) MPL_J 176 Rel. Mamta Patena v. State of M.P., 2002'(4) MPLJ 196=2002 (2) JIJ 89=2002 (5) MPHT 76. [21 Ascribing of reasons while disposing of the revision is a must. Anita Singh U. State of M.P., 2009(2) MPLJ 273 2009(1) JIJ 132 = 2009(1) MPHT 392. 131 Power of revision.-Can be exercised even suo motu. Harish Chandra Yadav v. State ofM.P., 20i'i(2) MPLJ 27 - 2012(1) Nü'l--l'l' 397. C. Second revision.-[l] 'After disposal of the revision before the Commissioner the respondent No. 5 filed the second revision before the Minister. Revision so filed was maintainable. Ramkinkar Vishwakärrna D. State of M.P., 2012(2) MPLJ 690 = 2012(3) MPHT 253. [2] Scope of Second revision. -Second revision against the order of the Commissioner passed in first revision is -maintainable..

:Sar- panch, Gram Panchåyat, Bhqrjuna Khurd v. $dntQsh Singh, 2010(4) MPLJ 417. [3] Second revision pould .be maintain:able.-The .question is whethei a suo motu revisiorial power can be exercised by the Hon'ble Minister so that the order Annexure PO can be said to be a valid exercise of power by him or whether second revision shall lie ? Held, the Counsel for s. 91 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)147 passed by or as to the regularity of the proceedings of an authority subordinate to it. Neither this section nor the rule provides that the revisional authority under the garb of exercising the revisional powers can set aside an election. An election held under the Act is neither an order nor a proceeding. Consequently revisional authority would have no jurisdiction to entertain or register a dispute under this section. The Collector, a revisional authority, had no power to entertain or register an election dispute under suo motu revisional powers. Order passed by him quashed. Amarsingh v. State 0fM.P., 1999 (2) MPI.J 337. [2] On behalf of the Panchayat the SaÉpanch cannot sue and file an appeal independently.-Under S. 11 Gram Panchayat being body cor- porate can sue and can be sued. The power shall not vest in Sarpanch but it will vest in the whole body of the Gram Panchayat and if the Panchayat wants to sue or to file an appeal, the Panchayat has to pass a resolution authorising either to Sarpanch, or Up-Sarpanch or to any Panch or to file appeal or Writ Petition Or any other petition. Rule 3 of the M.P. Gram Panchayat (Powers and functions ofthe Secretary) Rules, 1999 provides that executive power of Gram Panchayat shall vest in the Panchayat Secretary, who will exercise the executive power, but in these Rules also it is nowhere provided that who will sue on behalf of the Panchayat. Held, therefore we are of view that.Gram Panchayat is a body corporate, having power to sue or to be sued, and the Gram_Panchayat has to authorise somebody to act on its behalf and without the resölütiöh by äutfiöösing• any •persori•-tö Süe-öf' behalfofthe Panchayat, the Sarpanch cannot sue and appeal independently. Gram Panchayat, Bamrol v. Jagdish Singh Rawat, 2008 (3) MP LJ 127 = 2008(4) MPHT 132 = 2008(2) MPWN 102 (DB)

3. Comments under M.P.Panchayats (Appeal and Revision) Rules, 1995.- The rules are framed under S.91 read with S.95. They are applicable only the appeals and revisions which are filed under S

91. Hukumchand v. Dheerji, 2001 (1) JLJ 229. Rule 3: A Right of Appeal. -Right of appeal is not restricted to a party to the proceeding. An appeal under Rule 3 can even be preferred by any person aggrieved. Harish Chandra Yadab v. State of M.P., 2012(2) r,Q1.J 27 = 2012(1) MPHT 397. B. Maintainability of Appeal.-[ll Appointment of petitioner as Panchayat Karmi by resolution. Under Section •91 of Act, order ap- pointing Paichayat Karmi is appealable and not. a resolution. Rqj- kumar Kushwaha v. State of M.P., 2013(1) MPLJ 238 2013(1) • nx 2013 MP 53. 12] Termination .of services of -Panchayat Karmi by passing a resolution. No further orders were issued and instead the services of respondent No. 5, Panchayat Karmi were brought to an end by the said resolution itself. The resolution in substance amountS to an order. Appeal against the said resolution was maintainable before the SDO. Chandrakant Kushwaha u. Collectqr, Katni, 2011(3) MPLJ 196 = 2011(3) nmrr 19. s. 90 (PA)146 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 90. Disputes between Panchayats and other local authorities.- (1) In the event of any dispute arising between two or more Panchayats or Panchayat and any other local authority in any matter in which they are jointly interested such dispute shall be referred to the State Government and the decision of the State Government thereon shall be final: Provided that if the dispute is between a Panchayat and a canton- ment board the decision of the' State Government shall be subject to approval of the Central Government. (2) The State Government, may by rules made under this Act, ,regulate the -relations between Panchayats and Panchayat and other local authorities in matters in which they are jointly interested. Rules:- The State Government has made the following rules in exercise of the powers conferred by this section. These Rules shall be found under Rules given separately. "REGULATION OF RELATIONS BETWEEN PANCHAYATS AND PANCHAYAT AND OTHER LOCAL AUTHORITIES RULES, 1994" 91. Appeal and revision.-An appeal or revision against the orders or proceedings of a Panchayat and other authorities under this Act, shall lie to such authority and in such manner as may be prescribed. l. 2. 3. 4. 5

6. COMME.NTARY SYNOPSIS General. Scope of jurisdiction. Comments under M.P.Panchayats (Appeal and Revision) Rules, 1995:- Rule 3: A. Right of Appeal. B. Maintainability of Appeal. C. Necessary parties. Rule 5: A. Jurisdiction. B. Revision. C. Second Revision. Appeal or revision. Jurisdiction of S.D.O. Rules

1. General.-The appellant was working as Education Instructor and was handed over the additional charge of Secretary Gram Panchayat but later on removed from the post of secretary. Hrs remedy against the removal was by way of appéal. Randal Satpute v. State of M.P., 2003 (1) MPLJ 119 (DB)

2. Scope ofjurisdiction.-An election under the Act can be challenged only by election petition and no other and in view of the provisions of section 122, an election to panchayat conducted or held under the Act cannot be interfered with by revisional or an appellate court. Section 91 ofthe Act read with rule 5 of thé Appeal and Revision Rules of 1995 makes it clear that the -revisional authority can only examine the legality or propriety of any order S. 89 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)145 between 'negligence' and 'gross negligence'? The difference is of degree only. The examples of negligence, are found to be most common, because after achieving independence in 1947, persons sitting on posts of responsibility take it to be their right to become negligent and the legislature too does not mind. Punishment is given for 'gross negligence', meaning thereby an action or inaction of the type which is most unexpected. Here, it will depend upon the authority sitting in judgment to call one thing to be 'negligence' and the other 'gross negligence'. It is not possible to give an exhaustive list of what may be called 'gross negligence'. [4] Gross negligence means negligence which is gross, i.e. not simple. There is a distinction between negligence and gross negligence, although the exact dividing line is difficult to demarcate. "Gross negligence" connotes higher degree of negligence, it is negligence not arising merely from some want of foresight or mistake of judgment but from some culpable default. See Giblin v. McMullen, (1869) LR 2 PC 317 at p.337). [5] In Black's Law Dictionary the expression is defined as follows:- "The intentional failure to. pertOrm a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify the presumption of wilfulness and wantonness." [6] Petitioner found guilty of not keeping proper supervision resulting in pecunia}y loss tot-he society.:-Th-is act.amounts to gross negligence. Suraj Devi v. Dy. Registrar, lööl RN 40 (HC). See also Deveshwar Singh v. Board of Revenue, 1991 RN 48 (HC)(DB); Nanhelal v. Asst. Registrar, AIR 1970 MP 39 (DB) & Shakuntala v. Board 0fRevenue, 1991 RN 18 (DB). [7] It should also be remembered that the section makes liable even those persons who are not paid any remuneration by the panchayat for the work they perform. In order to hold them liable for being gross negligenet, the standard of care expected of them, giving due consideration to their education and experience, the extent of responsibility one would feel, and the onerous- obliüation one would liké Co discharge éhould.nofbe 16kt'ighC of

8. Reasonable opportunity of being heard.-[l] It is a universally accepted principle of natural justice that no one shall be condemned-un- heard. The proviso to sub-section (1) specifically provides that before any recovery is made under this section, the person concerned shall be given a reasonable opportunity of being heard in the matter. [2] Here, reasonable opportunity of being heard would mean that the person concerned should be intimated the fact that he has caused loss to the pafiéhajät%y fiié GiscÖn*duce G". *FÉross• he is fiåble to reimburse the panchayat the amount of loss so caused. The intimation shbuld ööntain éäéFafid'évéi•y éofiöérnéd*fäcts cönstituting his liability to reimburse the panchayat. [31 If a person does not attend the enquiry made against him inspite of notice, he cannot be heard to say that he was given no opportunity of being heard. Shakuntala v. Board of Revenue, 1991 RN 18. For detailed commentary, kindly see comments under Section 87. s. 89 (PA)144 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 result. Every money or property has its own value and by spending the same or by giving the same to someone, if nothing is gained in exchange, it would be called wastage of money or property. [31 'Misapplication' of money or property means not applying the same for a purpose för which it was meant and instead it is applied to a cause or purpose for which it should not have been applied or spent or given. [4] 'Ihe legislature has enumerated these three types of losses caused to a panchayat for which an order of reimbursement may be made

6. Misconduct.-[l] When power is vested in a person or institution to act and that person acts then, his action will' be called 'conduct'. The term 'conduct' may be of three types, (i) action taken in the natural course and in a natural manner, it will be simple 'conduct', action done with great efficiency, diligence, and application of mind, it would also be conduct but the type would be nice, brilliant or appreciable conduct, an action done in a hopeless manner, without application of mind, with an intention to deceive, defraud or misappropriate, the action would be called 'misconduct'. The intention here may be criminal also. [2] Misconduct literally means wrong or improper conduct, i.e. conduct in violation of a definite rule of

action. It ordinarily means failure to be done. An omission to do what is required of a person to do may therefore constitute misconduct even though the person has not acted wilfully or maliciously. Mohammad Sheik Nathu v. Governor General in Council, AIR 1954 NAG 337 (DB)

7. Gross Negligence.-[ll In order to understand 'gross negligence', one should know what the term 'negligence' 'means. A person is enjoined with some duties and negligence may be caused in discharging those duties. It is 'action' in some cäses and in other cases, it is 'inaction' too. A person may be said to be negligent in his action and as well as in his inaction. In doing an act, a person may not observe the standard of care expected of a man of average standard, he may not apply his mind or he may do it absent mindcdly, or he may not do it at the proper time. When a person is expected to do something at a particular time_and he does not do it, it is inaction called in other words negligence. One can put to loss another person by his action as well as inaction and in both of them, he can be said to have acted negligently. But where a person does not possess the ability, the qualifica- tiorfänd•knowledge of the subject-for doing any- act and if me does it or if he is required to do it or if he is unable to do it, then it -will not be called 'negligence' on his part. [2] The author finds the above state bf affairs in many fields. The modern day politics has completely overlooked education, experience and merit of a person who is put up as a candidate by $ome political party and who is Ultimately elected by man and money poWer. The capability of a person to perform the duties attached to a post is completely ignored. [3] In sub-section (1), the expression used is 'gross negligence' which does not include 'negligence'. Ifloss is caused to a panchayat by the persons mentioned therein due to negligence, no action -can be taken against that person under this section. But where loss is caused due to 'gross negligence' then, that person would be liable. The question is, what is the difference s. 89 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)143 Provided that no recovery shall be made under this section unless the person concerned has been given a reasonable opportunity of being heard. (2) If the person concerned fails to pay the amount, such amount shall be recovered as arrears of land revenue and credited to the funds of the Panchayat 1 [or Gram Nirman Samiti and Gram Vikas Samiti] [or committee of Gram Sabha] concerned. COMMENTARY 1. Object of.-The section provides for reimbursement of the loss caused to a panchayat by its office-bearers or officers or servants etc

2. Persons liable to reimburse.-Sub-section (1) enumerates a list of persons who would be so liable. It includes the following:- (i) Panchas of Gram Panchayats; (ii) Members of Janpad Panchayats and Zila Panchayats; (iii) Sarpanch and Up-Sarpanch of Gram Panchayats; (iv) President and Vice-President of Janpad Panchayats and Zila Panchayats; (v) Officérs and serünts of various panchayats

3. Liability for reimbursement.-[ll It is not each and every loss or waste of any property belonging to the Panchayat for Whigh hability o$_the 'persons enumeratéd aböüé is to be fi*éd. Thé stlbiséctiön• SPéOifiCällY pöintS out the type of loss etc. for which liability of some person may be fixed or determined. [2] A person would be liable to reimburse any loss etc. for which he himself has been responsible or he has been a party who caused such loss. [3] A person is also made responsible where the loss is caused due to his misconduct. What is 'misconduct' is again a question of interpretation. Similarly such a person is also liable if the 'IOss is caused due to his gross neglect of his duties. The expression 'gross neglect of his duties" also need to-be -üriderstööd -properly

4. Caused by him.-The word 'caused' as it is used in the section must be understood in the sense of 'causa causans' meaning thereby the real effective cause of sustaining the loss. To be more clear, the action complained of should be the real cause of sustaining the loss and not a remote cause

5. Loss, waste or misapplication.-[l] 'The expression 'loss of money or other property' would indicate "going Away from the possession or enjoyment of". A person is said to lose money or property when he is deprived of it by stealing from him, by misappropriation or by taking forcible posses- Siön-öf theWSäniet. AnöthGY ekämPleÄVötild bewhefi PérSön'is instigated to do an act or to enter into a contract and consequently he suffers loss of money a-or-property in the deak [2] The expression 'waste of money or property' denotes an action by which money or property is either spent or misused.without getting expected 1 Ins. by M.P. Act 16 of 2004, w.e.f. 1-1-2005. 2 Ins. by MP Act 18 of 2007 w.e.f. 25-5-2007. (PA)142 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 functions and duties. s. 88 Any order which does not satisfy the above tests would be liable to Me set aside either by the appellate authority or in supervisory or writ jurisdic- tion of the High Court

17. Appeal and revision.-[l] Looking to the provisions of sub- section (1), it is the State Government or the prescribed authority who is empowered to pass an order of dissolution of a panchayat. Where an order is passed by the State Government, no appeal lies against its orders because under the Madhya Pradesh Panchayat Appeal and Revision Rules, 1995, an appeal is provided against the order passed by the Director but there is no forum where an appeal caxi be filed against the order of the State Government. It is the highest authority. Generally, it will be the Director who will take action under this section and an appeal can be filed against his order to the State Government. The limitation for appeal would be thirty days. [2] Revision.-Although an application for revising the order passed by the prescribed authority may be made to the State Government, it would be better to file an appeal to the State Government and not a revision

18. Jurisdiction of High Court to interfere.-On receipt of a petition against an order passed by any of the authorities, the High Court has a supervisory jurisdiction and also a writ juriidietron. Both of them are not similar to appellate jurisdiction. It will nevei• interfere unless it finds_that the provisions, of law have been violated and the authority coricérnéd hås not followed the procedure it ought to have followed

88. Inquiry into affairs of Panchayat.-The State Government may, from time to time, cause an inquiry to be made by any of its officers in regard to any Panchayat on matters concerning it or to any matter with respect to which the sanction, approval, consent or order of the State Government is required by or under this Act or he rules made thereunder .or under any law-for the time being in force

89. Liability of Panch etc.for loss, misappropriation.-(l) Every Panch, member, office-bearer, officer or servant of Panchayat [or Gram Nirman Samiti and Gram Vikas Samiti) 2 [or committee of Gram Sabha) shall be personally liable for loss, waste or misapplication of any money or other property of the Panchayat (or Gram Nirman Samiti and Gram Vikas Samitil 4 lor committee of Gram Sabha] to which he has been a party or which has been caused by him by misconduct or gross neglect of his duties. The amount required for reimbursing such loss, waste, or misapblication shall be recovered by the prescribed authority: 3 4 Ins. by M.P. Act 16 of 2004. w.e.f. 1-1-2005. Ins. by MP Act 18 of2007 w.e.f. 25-5- 2007. Ins: by M.P. Act 16 of 2004, w.e.f. 1-1-2005. by MP Act 18 of 2007 w.e.f. 25-5-2007. s. 87 •oceed 'iving ply a :ause rs of por- ture tna- Ina- Jate non zat. ion of it ed he he st s s. 87 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)141 of different facts and circumstances. This opportunity may include inform- ring him of the material which is to be used against*him, supplying him all material that may be necessary for his defence, reasonably instructed in law, would reach on the basis of facts and circumstances on record. Unless the opportunity as aforesaid has been given, it will be difficult to hold that the person affected by the order had a reasonable opportunity of showing cause against the proposed action. If enquiry is made under section 88, the prescribed authority is bound to give a copy of the enquiry repokt to the panchayat concerned. see AIR 1977 SC 1267 & AIR 1978 SC 597

12. Service of notice.-lt is provided in the section that a notice calling for explanation shall be served in accordance with the provisions of section 119 of the Act. Section 119 says that a notice or other document under this Act shall be served in the prescribed manner. Rules have been made by the State Government for service of notice etc. and they are called, "Panchayat (Method of service of and other Document) Rules, 1995". See Rule 3 of the aforesaid rules

13. Appointment of a person or committee in place of dissolved panchayat and their remuneration.-[l] Where a panchayat is dissolved, the State Government or the prescribed authority, as the case may be, shall appoint a person or a committee of.persons to perform the functions and duties of panchayat and exercise all the powers of the dissolved panchayat till the new panchayat. is reconstituted. Where a committee is so appointed2 the appointing åuthoi•ity khåll algo appoint- héÅd• of such committee. [21 The State Government is also empoyered to determine the fee or remuneration of such person or committee for the services rendered by them

14. Vacation of cffice.-When a panchayat is dissolved, all the offce- bearers of the panchayat shall vacate their offices. The office-bearers would mean a panch, Sarpanch and Up-Sarpanch in the case ofa Gram Panchayat, a member, President and Vice- President in the case of Janpad Panchayat and Zila Panchayat

15. Reconstitution of Panchayat.-[l] It is provided in sub- section (5) that a Panchayat dissolved under sub-section (1) shall be reconstituted within six months of the dissolution and the reconstituted panchayat shall function for the remaining term of the panchayat dissolved. But where the remaining term is less than

six months, no such panchayat shall be reconstituted. [2] It is also provided that the new panchayat shall be reconstituted in accordance with the provisions of this Act. 1-6. Nature of .order.to be-passed.-The authority passing the order should bear in mind that exercise of power under this section to dissolve a J)enchayat.wauld be a raxe thing.Therefqre, the authority passing.the order should pass a speaking order which must itself speak as to why such an action is taken. The order should disclose that the concerned panchayat was given reasonable opportunity of submitting its explanation and/or hearing and the authority has considered its explanation and reply to the allegations very minutely. The order should set an example for other panchayats so that they may not behave in that manner and should be vigilant to perform their (PA)140 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 s. 87 initiation of proceedings under this section. The authority shall not proceed in the matter unless it is satisfied primarily. (3] Where the authority has proceeded under this section after receiving report of a preliminary enquiry, it is the duty of such authority to supply a copy of such report to the panchayat concerned along with the show cause notice. 1993 RN G. [4) Preliminary enquiry need not be held in presence of the members of the panchayat. 1989 RN 11

11. Reasonable opportunity.-[l] The expression "reasonable oppor- tunity is found to be used in many a statutes. It embodies the principle of natural justice that no body should be condemned unheard. The Legislature here has used the expression "reasonable opportunity of furnishing explana- tion". The question arises as to what is the meaning of furnishing explana- tion? There are many hidden•words to be read in this expression. The State Government or the prescribed authority, as the case may be, has to mention everything in the notice for which it needs an explanation of the Panchayat. It should specify in the notice each and every allegation, should mention documents which tend to prove any allegation against the working of panchayat, with copies of such documents or its relevant extracts and it should also mention the names of witnesses who have deposed or verified the allegations. The intention is that nothing should be hidden from the panchayat and decision of dissolution should not be based on facts, docu- ménts and witnesses about: which the panchayat had no khöWledge. The Panchayat should know each and every matter which can be used against it for dissolution. [21 The concerned panchayat should be given full opportunity to render explanation of each and every allegation and it should not be denied to explain things either in person or by representation or by leading evidence in the matter. It should be given a reasonable opportunity of cross-examin- ing the witnesses who have deposed against it, if so desired. [3] The purpose of affording reasonable opportunity is not served unless it reaches the stage of taking final decision in the matter. Before taking any final decision in the matter the concerned authority should consider the explanation given by the panchayat quite impartially in the light of the situation mentioned above. It is neither a routine matter nor an ordinary thing to be witnessed formally. It is a serious matter and should be judge free from all prejudices. It is not necessary that the primary satisfaction of the authority is required to be maintained. The entire exercise of affording reasonable opportunity to submit an explanation is aimed at to find out real facts and an adequate remedy to correct the wrong, committed if any. [4] It is a settled position that the constituting any panchayat in Madhya Pradesh may not be law knowing but the authority taking action against it under this section shall be knowing the law fully well. It should reach a conclusion which a reasonable mind, reasonably instructed in law, would reach on the basis of facts and circumstances on record. 151 The two words "reasonable opportunity" incorporate principles of natural justice. Principles of natural justice are not contained in any straightjacket formula and have been interpreted differently in the context s. 87 follow tion to m the the tuted ue to m ted ayat ; the n, it yat. tam put ar- ia-l •n s. 87 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)139 administration done by a Panchayat fail, then only the remedy of removal should be resorted *to. When people party are in Government, they try to remove persons belonging to their rival party and often exercise pressure on the officials at different levels to do so. The officers in the Government should be aware and keep themselves free from such pressures. [3] It may,phowever, be noted that the prescribed authority before resorting to an action under this section should see that there are other provisions in the Act which can give. him better information about the working of panchayat. Section relates to inspection of work of panchayats, Section 84 provides/for inspection of works of Panchayats, Section 85 empowers the authorityes to suspend execution of orders and Section 86 empowers the State Government to issue orders directing panchayat for execution of works in certain cases

6. Persistently makes default.-ln sub-section (1), the first ground on which a panchayat can be dissolved is its persistent default. The word 'persistently' connotes not one or two defaults but it means "again and again, goes on committing defaults time and again"

7. Default.-The default mentioned in sub-section (1) is in respect of performance of duties imposed on it by or under this Act, or under any other law for the time being in force. The term other law would include even the rules made by the State Government under various sections of this Act. But the panchayat is not-obliged -to carry out-an illegal öÉdéF•of-any authority. It cannot be asked to do a thing which it is not empowered to do

8. Exceeds Or abuses its powerS.-In Order to bring any case #ithin this clause, one shall have to define the powers of the concerned panchayat. If it appears that the panchayat concerned has been doing acts which are not expected of it, meaning thereby it is exceeding its powers in resolving to do any act or series of acts. Similarly where it appears that in the name of Panchayat it is resolving to do certain acts which may be called 'abuse of power'. A panchayat is not expected to exercise power or jurisdiction which is not _vestedin it

9. Fails to carry out orders.-The sub-section makes specific mention that the panchayat has failed to carry out the orders either of the State Government or that of the competent authority. It is not that eyery omission or failure will empower either Che State Government or the prescribed authority to order dissolution. There must be persistency in doing so. If the panchayat has not understood the nature and implication of any order either of the State Goy_ernment or the competent authority, it cannot be said that it has failed-to Carry it out. The Panchavat should be made to understand the impyggéd erder. IO. Enquiry.-[l] Betore ordering dissolution Of a panchayat, the State ox. !bqprecqibedauthority is.required to make an enquiry as it deems fit. Powers are vested in the State Government to make an inquiry into the affairs of the Panchayat and it may do so through any of its officers. [2] The object of this enquiry should be to find out facts which would either lead the State Government or the prescribed authority to form a prima fagie opinion that the situation is such which demands action. It is the primary satisfaction of the concerned authority which would lead to s. 87 (PA)138 PANCHAYAT IVAM GRAM SWARAJ ADHI., 1993 [6) Sub-section (3) enumerates the censequences which would follow when a panchayat is dissolved under sub-section (1 [71 Provision is made in sub-section (4) for payment of remuneration to a person who is appointed an administrator or say an officer to perform the powers and duties of a Panchayat, from the funds of the. Panchayat as the State Government may; determine. [8] A panchayat, if dissolved under sub-section (1) shall be reconstituted within six months as per provisions of the Act but it shall not be reconstituted in a case where the term of the concerned panchayat is due to expire within six months. It is also provided there that a reconstituted panchayat shall remain in existence for the remaining term ofthe panchayat dissolved

2. Applicability of the section.-C1ause (xvii) of section 2 defines the expression 'panchayat' as used in this Act. According to this definition, it means, (i) Gram Panchayat, (ii) Sanpad Panchayat and (iii) Zila Panchayat. Accordingly the section applies to all panchayats namely, the Gram Panchayat, the Janpad Panchayat and the Zila Panchayat

3. Object of the provision.-The object of enacting this section i*to put an effective check on the misdoings-of such persons, who by some means have obtained the administrative posts of panchas or members and Sar- panch or President of the panchayat and are acting in a manner which will ruin the administration of the panchayat

4. Prescribed Authority.-The State Government has by its notifica- tion dated 5th -March 1994, prescribed 'Director, Panchayat & Social Welfare' as the prescribed Authority under this section

5. Requirements for dissolution.-[l] It should be remembered that ours is a country governed by a Constitution under which the whole nation and the States comprised therein are governed by a Democratic Form of Government. In this Democratic Form of Government, administration at different levels is entrusted to the representatives of the people. But the most unfortunate state of affairs is that even after expiry pf 53 years of independence, most of the people of our State are Still uneducated and the population consists ofmany backward communities. The State Government as well as the prescribed authority should not forget this state of affair of our State and in exercising any power under this section, they should not forget that much cannot be expected from the members constituting various panchayats. If they work

reasonably well, no attempt should be made to remove them. Even if they commit mistakes or they are negligent in some respects and also if they exceed their jurisdiction in their zeal of overdoing things, they must be properly guided, rather than removed. The legislature has very wisely used the term 'persistently makes default' for this reason only: Certain defaults of-their have to be tolerated unless they form the habit of making defaults. -Similarly they gannot be expected to recognise the boundary line of their jurisdiction and powers, hence they may exceed. Abuse of power is certainly very bad thing and it is often made in political rivalry. [21 From the above observations, one should also understand that dissolution is the last resört and not the first. if all attempts to reform the s. 87 at for State ersist- •ce, or State the an ution .11ess d to Lt or tice ect he by n- te s. 87 2. 3. 4. 5. 6. 7. 8. 9. IO. 11. 12. 13. 14. 15. 16. 17

18. PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 COMMENTARY SYNOPSIS . General interpretation. Applicability of the section. Object of the provision. Prescribed authority. Requirements for dissolution. Persistently makes default. Dcfauit. Exceeds or abuses its powers. Fails to carry out orders. Enquiry. Reasonable opportunity. Service of notice. (PA)137 Appointment of a person or committee in place of dissolved panchayat and their remuneration. Vacation of office. Reconstitution of Panchayat. Nature of order to be passed. Appeal and revision. Jurisdiction of High Court to interfere

1. General interpretation.-[l] The section provides for dissolution of panchayat for the reasons that the panchayat is,— (i) persistently making default in the performance of the duties imposed on it; or (ii) exceeds or abuses its powers; or (iii) fails to carry out any order of the State Government; or (iv) fails to carry out any order of the competent authority. [2] It should appeafto the State Government or the prescribed authority that a panchayat has committed an act or has failed to do an act as mentioned above, either the State Government or the prescribed authority may, by an order dissolve any panchayat. [33 Whenever the State Government or the prescribed authority takes an action under sub-section (1), it shall also order for constitution of such panchayat afresh. i3A] It is also made compulsory that before passing any order of dissolution of a panchayat, the State Government or the prescribed au'.thority, as the,case ruay Ve, should give a reasonable opportunity to the •conéernedVän0hüYät•for TürnhÉhifig its' explaiätiori. [4] A notice asking explanation should be addressed to the Sarpanch or Påöchajat• or Zila• Påi{cluayat, as the case may be. Such a notice shall be served in accordance with the provisions of section 119 of the Act. [5] It is also provided in sub-section (2) that a panchayat, on receipt of a notice calling upon its explanation under sub- section (2), shall submit its reply after getting it supported by a resolution of the panchayat. (PA)136 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (b) See also: Manoj Kumar Yadav v. State 0fM.P., 2008(4) MPHT 22 2008(11) MPWN 70 [DB)

87. Power of State Government to dissolve Panchayat for default, abuse of Powers.etc.-(l) If at any time it appears to the State Government or the prescribed authority that a Panchayat is persist- ently making default in the performance of the duties imposed on it by or under this Act or under any other law for the time being in force, or exceeds or abuses its powers or fails to carry out any order of the. State Government or the competent authority, the State Govemment or the prescribed authority, may after such enquiry as it may deem fit, by an order dissolve such Panchayat and may order a fresh constitution thereof. (2) No order under sub-section (1) shall be passed unless reasonable opportunity has been given to the Panchayat for furnishing its explanation. The notice calling explanation shall be addressed to the Sarpanch or President of Gram Panchayat, Janpad Panchayat or Zila Panchayat as the case may be, and shall be served according to the provisions of Section 119. The reply of the Panchayat to the notice shall be supported by the resolution of the Panchayat. (3) On dissolutioå of Panchayat under. the..follow- ing consequences. shall ensure•namely:—' (a) all the office-bearers, shall vacate their offices with effect from the date of such order; (b) all powers and duties of the Panchayat shall, until the Panchayat is reconstituted, be exercised and performed by stich person or committee of persons as the State Govern- ment or the prescribed authority may appoint in this behalf and where a committee of persons is so appointed, the State Government or the prescribed authority shall also •point a head of-such committee; (c) where a committee is appointed under clause (b) mem- ber of such committee duly authorised by it may issue or institute or defend any action at law on behalf of by or against the Panchayat. (4) Any person appointed to exercise and perform the powers and duties of a Panchayat during the period of dissolution may receive from the fund of the Panchayat concerned such payment for his service as the State Government may, by order determine. (5) A Panchayat dissolved under sub-section (l) shall be reconstituted in accordance with the provisions of this Act within six -months of its dissolution. Such reconstituted Panchayat shall function for

the remaining term of the Panchayat: Provided that if the unexpired period is less than six months the reconstitution of the Panchayat shall not be done for this period. s. 86 or any in the ary in ssued 2nt or the and ction or by lal, iry a n- -a .s n. PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA.)135 s. 86 panchayat Karmi in case the Gram Panchayat fails to make such appoint- Pawan v. state 0fM.P., 2009(4) MPLJ 66 = 2009(3) JIJ 276 = 2009(4) MPHT 377 (FB)

5. Scheme of MANREGA:-See Akhilesh Singh Baghel v. State of M.P., 2013(3) MPLJ 716 = ILR 2013 MP 2389

6. Opportunity of hearing.-ln the matter of recruitment of Shiksha Karmi Grade-111, the petitioners were members of selection committee constituted under the Rules. The select list of the candidates prepared by them was cancelled. No opportunity was afforded to the petitioners before cancelling such list. Since the petitioner had no personal right or interest in the list so prepared by them, it could not be said that their interest was adversely affected by such cancellation. It was not necessary to give oppor- tunity of hearing to the petitioner before cancellation of the select list. 1993 (1) SCC 154 Rel. Mansingh v. State 0fM.P., 2000 (2) MPLJ 187 (DB)

7. No suo motu powers lies with Collector to adjudge validity of an order.-Under Sub-Section (2) of S. 86, no suo motu powers lies with Collector to adjudge validity of an order which is passed in compliance of the direction of the State Government under S.86(1) to fill up the vacant post of Panchayat Karmi. The correctness of the order passed in the favour of the petitioner could therefore be adjudged only in an appeal before concerning SDO. The exercise of power under Section 86(2) could only be in the event of non-compliance of the direction of the State Government. Seema Singh v. State 0fM.P., 2009(11) MPWN 46

8. Appointment of Panchayat Kai•mi.-As empowered by S.86(1), Gram Panchayats can make appointments of Panchayat Karmi after a period of thirty days. Lallu Koi v. State of M.P., 2008 (4) MPLJ 418 = 2009(1) MPWN 27

9. Selection & appointment by C.E.O. not permitted.-For the purpose of S.69 prescribed authority is Collector {and for S.70 Collec- tor/Addl.Collector. Therefore, on failure to discharge the liability of S.86(2) the process of selection and appointinent of Panchayat Karmi must be made by them or under their close surveillance and approval but selection and appointment done since inception till completion by the Chief Executive Officer, without any approval of the prescribed authority. Such action cannot be recognized, akin to approval the act of prescribed authority and do not have the protection under the provisions of this Act as specified under sub-section (2) of Section 86 of the Act. Moreover as per the discussion made hereinabove, it is apparent that C.E.O. has acted with the bias of arbitrari- ness in the matter of preparation of selection list, therefore, also selection panel and prdcess of-selection •is liable to be quashed. Ramniwas v. State of M.P., 2008 (2) MPLJ 297 = 2008(3) JIJ 136

10. Powers of Collector u]s.86.-(a) The Panchayat failed to comply directions issGed u/s.70 of appointing a Panchayat Karmi. In such a case, the Collector as thé prescribed authority had the power under Sub-section (2) of S. 86 to authorise the Chief Executive Officer of Panchayat to appoint a Panchayat Karmi. Leelawati v. State of M.P., 2008(4) MPHT 470 = 2008(3) MPWN 86 [DB]. (PA)134 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 s this Act, or by or under any other law for the time being in force or work as is not being performed or executed, as the case may be, b and the performance or execution thereof by such Panchayat is, in t opinion of the State Government or prescribed authority, necessary public interest]. (2) The Panchayat shall be bound to comply with direction issut under sub-section (I) and it it fails to do so lithe State Government the prescribed authority shall have all necessary powers to get tk. directions complied with at the expense, if any. of the Panchayati an in exercising such powers it shall be entitled to the same protectio and the same extent under this Act as the Panchayat or its offlcers o servants whose powers are exercised. 2. 3. 4. 5. 6. 7. 8. 91 COMMENTARY SYNOPSIS Enquiry is essential before removal order. Exercise of power by Competent Authority. Appointment of Panchayat Karmi. Scope of S. 86(2). Scheme of MANREGA. Opportunity of hearing. No suo motu powers lies with Collector to adjudge validity of an order. Appointment of-Päiiéliayat Karmi. Selection & appointment by C.E.O. not permitted. Powers of Collector U/s.86. 1 'Enquiry is essential before removal order.-Explanation given by the employee against show cause notice without unequivocal, unconditional, unqualified and specific admission of guilt. Hence order of the competent authority directing to remove the

petitioner without conducting the enquiry set aside. Ghanshyam v. State 0fM.P., 2013(1) MPLJ 144 = 2013(2) MPHT 59 = 2013(1) MPWN 18

2. Exercise of power by Competent Authority.-Unless there is a wilful default or negligence on the part of the Gram Paichayat, the Com- petent Authority cannot exercise that power. Brajesh Sharma v. Nagendra Singh Sisodiya, 2010(2) MPLJ 101 = 2010(5) MPHT 133

3. Appointment of Panchayat Karmi.-Application by the petitioner for appointment on the post of Panchayat Karmi. On the date when his selection was finalized an recommendatiön for his appointment was mad as Panchayat Karmi, the petitioner was holding the post of Panch of the Gram Panchayat concerned. This being so, the petitioner was ineligible to be appointed as Panchayat Karmi. Collector rightly set aside illegal appoint- ment of the petitioner. Prahlad Das Tandia v. State of M.P. , 2012(3) MPLJ 580

4. Scope of Government or the prescribed authority can direct the Chief Executive Officer of the Janpad Panchayat to appoint a Subs.by MP 43 of 1997 15-12-19971. S. 85 done by l.nto the eal was c hand, cerned :der of State even arities to thé »assed yat in Gram act of found ts for their the ICh a such 38 ined was the .t on at.- inst uch ;ed. nd ion t is fer of he to s. 86 PANCHAYAT RAJ AVAM GRAM SWARAJ ADI-11., 1993 (PA)133 resolution. Narendra Kumar v. state 0fM.P., 2012(3) 627. $. SDO not empowered for.-Suspension of resolution of Gram Panchayat appointing Panchayat Karmi by Sub Divisional Officer. Sub Divisional Officer cannot order Gram Panchayat to appoint another person as Panchayat Karmi. Must remit the matter back to the Gram Panchayat for making the proper selection and to pass the appropriate orders. Narendra Kumar v. State of M.P. , 2012(3) MPLJ 627

7. Challenging to resolutions of Panchayats - Suo motu powers of State Government or prescribed authority.-On a keener scrutiny of section 85 it is evincible that the power has been conferred on the State Government or the prescribed Authority can suspend the resolution, order, etc. on the conditions precedent or such action being satisfied. That apart, the said order is subject to further scrutiny for the purpose of confirmation by the State Government. The power is of the wide amplitude. The State Government has the authority to suspend the execution of any resolution. It also prohibits to perform any act by Panchayat. Many a ground has been enumerated empowering the State Government for inter- ference. The term used is 'resolution' as well as 'order', etc. Though the language employed under section 85 does not use the term suo motu but it is virtually the suo motu exercise of power because the State Governrnent can take up the issue by itseff. Suo motu power can also be invoked by a person aggrieved. In the absence of the rules it will be difficult to hold that the power of appeal or Fevision can be exercised by the said authorities bul Court cannot be oblivious of the fact that an appeal or revision is provideu in the substantive provision ofthe Act. The State Government has not framed rules by providing a forum. Under these circumstances it would be apposite and seemly to hold that the Person aggrieved can bring his grievance to the notice of the State Govern- ment and the State Government should take a decision under section 85 of the Act. While taking the said decision the State Government shall be guided by the concept of promptitude which is an intrinsic and inseggregable facet of suo motu exercise of jurisdiction. Be it noted, while exercising suo motu power under section 85 of the Act the State Government shall be guided by the parameters provided therein and the nomenclature given to a proceed- ing under section 85 of the Act. Sagar Machhua Sahakari Samiti, Seoni v. Chief Executive Officer, Janpad Panchayat, Seoni & Anr., 2008(2) MPLJ 194 = AIR 2008 (Noc) 1388 = 2008(1) JIJ 329 = 2008(1) MPHT 254 [DB]

8. Words ' 'resolution" and "order".- The two words "resolution" and "Order" as used are two different acts; Ramcharan Ahinwar v. Sub- Divisional Officer, Jatara, 1998 (2) JIJ 267

86. Power of State Government to issue order directing Panchayat for execution of works in certain cases.- The State Government or the prescribed authority may, by an order in writing, direct any Panchayat to perform any duty imposed upon it, by or under 1 Subs. by MP 43 of 1997 15-12-19971. (PA)132 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 s. 85 affirmed in terms of the provisions of S.85 of the Act. This yas not done by the prescribed authority, i.e. the SDO. He was not required to look into the claim made in the appeal filed by the private respondents, if the appeal was directed against the resolution of the Gram Panchayat. On the other hand, it was to be treated as a complaint under S.85 of the Act or the- concerned appellants were to be directed to file the appeal against the order of appointment and not against the resolution. Rajkumar Kushwaha v. State 0fM.P., 2013(1) MPLJ 238 = 2013(1) MPWN 24

= ILR 2013 MP 53 . (2) Gross irregularities/improper procedure would be cure even in writ petition.-The Court cannot shut its eyes to the gross irregularities committed in the matter of appointment in case the same is brought to the notice in the Court even in •a writ petition filed against such an order passed by the SDO. Entire process was not initiated by the Gram Panchayat in appropriate manner and improperly the resolution was passed by the Gram Panchayat for making appointment of Panchayat Karmi. Such an act of Gram Panchayat cannot be approved. High Court in various cases found that improper procedure has been adopted by the Gram Panchayats for making appointments of Panchayat Karmis, so that such persons after their notification as Secretary of the Gram Panchayat, may act according to the choice of the concerned Sarpanch. This is not the object of making such a scheme and, therefore, the High Court will not hesitate in quashing such proceedings. Rajkumar Kushwaha v. State of M.P., 2013(1) MPLJ 238 2013(1) MPWN 24 = ILR 2013 MP 53. (3) Criteria for appointment. Scheme required that the marks obtained in the 10th class shall decide the fate of the candidate. 2nd respondent was having higher marks than the petitioner. However ignoring the merit, the petitioner was appointed only on the basis of majority of votes casted in his favour in the meeting of the Gram Panchayat. Petitioner's appointment on the basis of majority of votes was illegal and therefore set aside. Mahesh v. State 0fM.P., 2010(3) MPLJ 470

5. Powers of SDO to suSpend resolution of the Gram Panchayat.- 11] Resolution appointing Panchayat Karmi found illegal. Remedy against such resolution is that the SDO under S.85 can suspend execution of such resolution which is to be affirmed by next higher authority under S.85(2). Once such resolution is suspended, such resolution can not be imblemented. Rajkumar Kushwaha v. state 0fM.P., 2013(1) MPLJ 238 = 2013(1) MPWN 24 = ILR 2013 53 [2] True it is that the Sub Divisional Officer is empowered to sUspend the resolution of the Gram Panchayat iri exercise of his powers under section 85(1) of the Act in case it is found after an enquiry that such a resolution is not valid, proper, justified or legal. However, before passing such an order a summary enquiry is required to be conducted. The order of suspension of the resolution of the Gram Panchayat is required to be referred to the next higher authority, i.e. the Collector, under sub:section (2) of Section 85 of the Act. The Collector is required to hear all concerned and then either to confirm the order of suspension of the resolution or to revoke or modify the Order of suspension of the resolution. Such a reference is required to be made within a period of 10 days from the passing of the order of suspension of the . 85 :on- r or on - ler ter nt [fy ut er st S. 85 PANCHAYAT RAJ AVAMGRAM SWARAJ ADHI., 1993 (PA)131 2. Maintainability of Appeal. -Resolution passed by Gram Panchayat. Appeal Before Collector against the resolution not maintainable. Jurisdic- tion exercised by the Collector and the Commissioner in quashing the resolution is unsustainable. Phool Singh Marko. v. State of M.P., 2010(3) MPI.J 66

3. No Interference.-Appointment of petitioner on post of Panchayat Karmi by resolution passed by Gram Panchayat. The SDO after considera- tion of the record found that the respondent was having better marks in tenth standard still the petitioner was given appointment by the Gram Panchayat only on the basis of majority. He therefore set aside the appoint- ment of the petitioner and ordered appointment of the respondent. Said order has been upheld by the Additional Collector. No case is made out to interfere into the impugned orders. Bherulal v. State of M.P. , 2010(3) MPLJ 454

4. Appointment on post of Panchayat Karmi, Validity of proce- dure.- Out of the six candidates, the petitioner was selected and the order of appointment as Panchayat Karmi was issued, pursuant to which, he gave his joining and, thereafter, was declared as the Secretary, of the Gram Panchayat by the Collector in exercise of the powers under S.69(1) of the Adhiniyam, 1993. The appeal was preferred by respondents Nos. 8 to 11 against the said appointment of the petitioner, before the SDO and in fact, instead of challenging the order of appointment of the petitioner, the resqlution- of the Gram Panchayat was sought to be challenged. _T_he said _ resolution was not tö be challenged in kuch a manner and therefore, such an appeal was not maintainable. The appeal was liable to be dismissed, but instead of dismissing the appeal, the same was allowed and the order of appointment of the petitioner was sought to be cancelled by setting aside the resolution of the Gram Panchayat. It is contended that such power was not conferred on the SDO and as such the order was non est in the eye of law. Only on the basis of such an order, the petitioner was not to be terminated and, therefore, the writ petition was required to be filed. True it is that a resolution of the Gram Panchayat is not to be challenged before-the Appellate Authörity- öame is not treated as an oräér. The Division Bench of the High Court in various cases, has held that only an order consequent upon the resolution of the Gram Panchayat, appointing any person as Panchayat Karmi, is appellable under S.91

of the Act as also under the Rules known as M.P. Panchayats (Appeal and Revision) Rules, 1995. However; there is a power conferred on the prescribed authority, i.e. the SDO under S.85 of the Act to suspend the execution of the orders etc. and a resolution of the Gram Panchayat iS also to be suspended by the Competent Authority. The said suspengion of the execution of the execution -of the resolution,is to .be aki*med bj the next higher authority as per the provisions of sub-section (2) of the S.85 of the Act. At any rate, there is no power conferred on .a -prescribed authority or the affirming authority to set aside the resolution. If once the resolution is suspended and the said order of suspension of resolution is affrmed by the- Competent Authority, the resolution is to be pocketed for all time to come and is not required to be implemented at all. No action whatsoever, can be taken on the strength of such a resolution, if the same is suspended and such suspension order is (PA)130 (c) s. 85 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 the execution of such resolution or order, or the con- tinuance in force of such licence or permission or the doing of such act is likely— (i), to cause loss, waste or misapplication of any money or damage to any property vested in the Panchayat; (ii) to be prejudicial to the public health, safety or con- venience; (iii) to cause injury or annoyance to the public or any class or body of persons; or (iv) to lead to a breach of peace. 1 [(2) Whenever an order is made by the prescribed authority under sub-section (1), it shall forthwith and in no case later than ten days from the date of order, forward to the State Government or the Officer nominated by the State Government for this purpose, copy of the order with the statement of reasons for making it, and the State Government or the officer nominated by it [may confirm, set aside, revise or modify the order] or direct that it shall continue to be in force with or without modification permanently or for such period as may be deemed fit: Provided that no order of the prescribed authority passed under sub-section (l) shall be confirmed, [set aside], revised or modified by the State Government or the officer nominated by it without giving the Panchayat concerned a reasonable opportunity of being heard against the proposed order]. l. 2. 4. 5. 6. 7

8. COMMENTARY SYNOPSIS Scope to entertain an appeal by S.D.O. against an resolution passed by Panchayat. Maintainability of Appeal. No Interference. Appointment on post of Panchayat-Karmi, Validity of procedure. Powers of SDO to suspend resolution of the Gram Panchayat. SDO not empowered for Challenging to resolutions of Panchayats . Words "resolution" and "order"

1. Scope to entertain an appeal by S.D.O. against an resolution passed by Panchayat.-Under S.85 an..authority not specified to hear an appeal and the State Government not framed Rules to prescribed an authority to hear an appeal. The S.D.O. has no jurisdiction to entertain the appeal against the resolution passed by; the Gram Panchayat. [Sagar Machhua Sahakari Samiti, Seoni v. C.E.O., Janpad Panchayat, Seoni, 2008(2) MPLJ 194 Rel.l State of v. Rajesh Kumar Gupta, 2013(2) MPLJ 130. 1 2 3 Subs. by MP 2 of 1997 17-1-19971. Subs. by MP 43 of 1997 [5-12-19971. Ins. by MP 43 or 1997 [5-12-19971. {ture this I in Late the rise 'Ise der !es, ;ed Ch on ise [er lic se er s) n s. 85 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)129 rate or any other amount due, whichever is higher.] 83. Power of State Government in regard to relief in taxés.-(l) If on a complaint made to it or otherwise it appears to the State Government that any tax imposed by a Panchayat is excessive in its incidence on tax payer it may, after calling a report from the Panchayat in this regard, abolish any tax or suspend or reduce the amount or rate of any tax. (2) The State Government may, on its own motion or otherwise after giving the Panchayat an opportunity of expressing its view in the matter, by order, exempt from the payment of any tax in whole or in part any person or class of persons or any property or description of properties subject to such conditions as may be specified in such order

CHAPTER X - CONTROL 84. Inspection of works of Panchayats.-(l) The officer of the State Government duly authorised by the State Govemment in this behalf may, subject to such terms as may be prescribed. inspect the proceed- ings of a Panchayat. (2) The officers authorised under sub-section (l) shall, for lhe inspection of the . Panchayats, exercise such powers as may be prescribed. (3) -The" offiOe - bearers, and the officers and servants- of the Panchayat shall be bound to afford access to all such information and records as may be demanded by the inspecting authority. Rules:- The State Government has made the following rules in exercise of the powers conferred by this section. These Rules shall be found under Rules given separately. "Insl*ction of Proceedings Rules, 1995." COMMENTARY Recovery of loss to panchayat.- Where loss is caused to a panchayat by act of all panchas, loss is recoverable from all panchas and not from Sarpanch alone. Sarpanch cannot be directed to recover loss from rest of the panchas. Chhotetal Patel v. State 0fM.P., 1998 (1) 77: 85. Power to suspend execution of orders, etc.-(l)

The State Governrnent or the prescribed authority may by an order in Writing and -for reasons toft)e statee therein suvend the execution of any TCSöTutiöfi PäSSéd," öi-dö?• Feri-Hfssfon éihritea or prohibit the performance of any act by a Panchayat, if in his opinion,- (taj -guéh resolufion, -ordérj licence, permission or act has not been legally passed, issued, granted or authorised; (b) such resolution, order, licence, permission or act is in excess of the powers conferred by this Act or is contrary to any law; or '(PA)128 PANCHAYAT RAJ AVAM GRAVI SWARAJ ADHI., 1993 S. 77-A 4. "Janpad Panchayat (Imposition of Development Tax on Agriculture Land) Rules, 1999" I [77-A. Power to impose Tax. Subject to the provisions of this Act and to such conditions and exceptions as may be prescribed, every Gram Sabha shall impose the taxes specified in Schedule I-A. (2) A Gram Sabha may impose any of the taxes specified in Schedule 11-A.] 78. Power of State Government to regulate taxes. 'lhe State Government may make rules to regulate the imposition, assessment, collection and sharing of taxes under Section 77. (2) No objections shall be taken to any assessment nor shall be the liability of any person to be assessed or taxed be questioned otherwise than in accordance with the provisions of this Act or the rules made thereunder. Rules:- The State Government has made the following rules in exercise of the powers conferred by this section. These Rules shall be found under Rules given separately. "Regulation •of The Imposition, Assessment, Collection of Taxes Rules, 1995." 79. Appeal against taxation.-An appeal against any tax, imposed under Section 77 may be preferred to the prescribed authority in such manner and within such time as may be prescribed and the decision of such authority shall be final. Rules:- The State Government has made the following rules in exercise of the powers conferred by this section. These Rules shall be found uilder Rules given separately. "Manner and Limitation of Appeals against Taxation Rules, 1995." 80. Leases of market fee, etc.-The- Panchayat may by; public auction in the• prescribed manner, lease the collection of any fee specified in Schedule Ill. Rules:- Ihe State Government has made the following rules in exercise of the powers conferred by this section. These Rules shall be found under Rules given separately. "Gram Panchayat and Janapad Panchayat (Lease of Collection of Fees) Rules, 1995" 81. Recovery of arrears.-Any arrear of tax, or fee and fines imposed, or any amount due under this Act shall be recoverable by the Collector as if it were an arrear of land revenue. 2 [82. Penalty for evasion. -When a person is in default in making a payment of any tax, fee, rate or any other amount due, shall in addition to the amount of arrears, be liable, by way of penalty, to pay a sum of five hundred rupees or ten times the amount of such tax, fee, 1 Ins. by M.P. Act No.3 of 2001 126-1-20011. 2 Subs. by M.P. 26 of 1994 [30.5.941. PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)127 s. 77 realised by the State Government in the proceeding financial year]. Rules:- The State Government has made the following rules in exercise of the powers conferred by this section. These Rules shall be found under Rules given separately. "District Panchayat RaJ Fund Rules, 1998" 76-A. Distribution of amount amongst Panchayats.- (1) & (2) XXXI (3) The development tax realised under sub-section (3) of Section 77 from a Janpad Panchayat area shall be transferred to the concerned Janpad Panchayat and the Gram Panchayats within that Janpad Panchayat, in such proportion and manner as may be prescribed. (4) The amount pertaining to extra stamp duty, shall be paid to 3 [Janpad Panchayat and Gram Panchayat] as grant-in-aid subject to such rules as may be made in this behalf. (5) The amount realised in the fund pertaining to other taxes, duties, tolls, fees and other receipts specified under sub- section (2) of Section 76, shall be distributed among the Panchayats in such man- ner, as may be prescribed.) 77. Other taxes.-(l) Subject to the. provisions of this Act and to such conditions and exceptions. as may be prescribed every Gram Panchayat arui Janpad Panchayat shall impose the taxes specified in •Schedule I. (2) With the previous approval of the Janpad Panchayat a Gram Panchayat and with the previous approval of Ithe Zila Panchayat a Janpad Panchayat may impose any of the taxes specified in the Schedule 11. (3) A Janpad Panchayat may levy development tax on agriculture land. The tax so levied shall be payable in the same manner as land revenue. COMMENTARY Imposition of entry tax.- Entry tax on motor vehicles cannot be imposed by Gram Panchayat. S. N. Suderson & Co. v. Gram Panchayat Poniyo, 1998 (1) NmWN 155. Rules:- The State Government has made the following rules in exercise of the powers conferred by this section. These Rules shall be found under Rules given separately

1. Gram Panchayat Obligatory Taxes and Fees (Conditions And Excé>tionS) Rules, 1996.2. Giårn"Panchäyat 0131 i' Taxes and Fees (Conditions and Ex- ceptions) Rules, 1996. jåiiäpadå Panchayats 'Iheatre Tax (Regulation of Imposition, Assessment and Collection) Rules, 1996. 1 Ins. by MP 2 of 1997 [1-10-19981. 2 Sub-section (l) and (2) omitted by M.P. Act 23 of 2001 (10-100001). 3 substituted by M.P.

Act No. 26 of 2012 123-5-20121. s. 75 (PA)126 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 payable and collected so far as may be in the same manner as the land revenue. this Section the expression "tenure holder" "land revenue" and "rent" shall have the same "Government lessee, " meaning as assigned to them in the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959)]. Rules:- The State Government has made the following rules in exercise of the powers conferred by this section. These Rules shall be found under Rules given separately. "Panchayat (Enhancement of Cess on Land Revenue and Distribution) Rules, 1999" 75. Duty on transfer of property within block. -The duty imposed under the Indian Stamp Act, 1899 (No. 2 of 1899), on instrument relating to sale, gift [or mortgage) of immovable property situated within the block be increased by one percent on the value of such property or in the case of mortgage on the amount secured by the instrument: 1 [Provided that such extra stamp duty levied in respect of mortgage shall not exceed the amount of stamp duty thereon; Provided further that no extra stamp duty-is livable in respect of any instrument eiempted fröi-n stamp duty under: the •Indian-Stamp Act, 1899 or the rules made thereunder.] COMMENTARY Extra Stamp Duty levied in respect of mortgage shall not exceed the amount of Stamp Duty thereon. M/ s. APL International Ltd. v. State of M.P., AIR 2008 MP 254(DB.) 2[76. District Panchayat- Räj FUnd.-(1) 'lhere shall be constituted and operated in such manner as may be prescribed by the State Government, a separate fund at the district level by the name "District Panchayat Raj Fund" (hereinafter referred to as the "said Fund"). 3 The proceeds of development tax under sub-section (3) of Section. 77 along with such other taxes, duties, tolls,- fees and other receipts as may be specified by the State Government shall, after deducting the collection charges, as may be determined by the State Government from time to time, be credited -into the said fund.] (3) The proceeds of the extra stamp duty under section 75 shall first be credited to the Consolidated Fund of the State in such manner as may be prescribed and the State Government shall at the commen- cement of each financial year, if the Legislative Assembly by appropria- tiort made by law in this behalf so provides,- withdraw from the Consolidated Fund of the State an amount equivalent to the proceeds 1 Added by MP 2 of 1997 [7+-19971. 2 Subs. by MP 2 of 1997 [I-IO- 19981. 3 Subs. by M.P. Act 23 of 2001 (10-10-2001). s. 74 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)125 1. "Gram Panchayat (Powers and functions of the Secretary) Rules, 1999" 2. "Panchayat Powers and Functions of Chief Executive ()fficer) Rules, 1995" 73. Budget and annual Accounts.-(l) Every Panchayat shall prepare annually in such form and in such manner and by such date, as may be prescribed, budget estimates, of its receipts and expendiålre for the next financial year. (2) me budget estimates prepared under sub-section (i) shall be approved by such authorities and in such manner as may be prescribed. (3) The annual accounts and report of administration by panchayats shall be presented to the prescribed authority in the prescribed manner. Rules:- The State Gövernrnent has made the following rules in exercise of the powers conferred by this section. These Rules shall be found under Rules given separately. 1. "Panchayats (Budget Estimates) Rules, 1997". 2. "Zila Panchayats (Budget Estimates) Rules, 1997". 3. "Janpad Panchayat (Budget Estimates) Rules, 1997"

4. Gram Panchayat (Annual Accounts and Administration Report) Rules, 1998"

5. Janpad Panchayat and Zila Panchayat (Annual Accounts and Ad- ministration Report) Rules, 1998".6. "Zila Panchayats (Accounts) Rules, 1999" 7. "Gram Panchayats (Accounts) Rulesi 1999" 8. "Janpad Panchayats (Accounts) Rules, 1999" CHAPTER IX • TAXATION AND RECOVERY OF CLAIMS I [74. Power to levy Cess on land.-(l) Every tenure holder and Government lessee shall be liable to pay for each revenue year for the purpose of this Act, a cess _in respect of land held by hini Within the [Gram Sabha area,] at the rate of fifty paise on every rupee or part thereof exceeding fifty paise on the land revenue or rent assessed on such land. (2) A 3[Gram Sabha] may increase the rate specified in sub- section (1) to the extent of ten rupees through a resolution passed to this effect in the prescribed manners. .(3) 'Ihe cess levied under. sub-secupn• and (2) nieit •t" lé+iéd åhdéF éüb--séctiofl tf6fSe lion 77 Shåll be in addition to the land revenue or rent or any other cess or tax on such land under -the-•MadhYå PFadéSh*Lårid 19*5é (No. 20 of 1959) Or Under any other enactrnent for the tinie- being in force and shall be Subs. by MP 2 of 1997 [1-10-19981. 2 Subs. by M.P. Act 23 of 2001 (10-10-2001). 3 Subs. by M.P. Act 23 of 2001 (10-10-2001). (PA)1Z4 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 s. 71 3. Appointment of other officers & servants - Previous approval necessary.-A Panchayat cannot appoint a Secretary or C.E.O. of the Panchayat, but it can appoint such other offcers and servants'. A close reading of Sub-section (1) of S. 70 further makes it clear that the previous approval of the Prescribed

Authority is required not to a named officer or named servant but to the appointment of such officere other than the Secretary and servants as the Panchayat considers necessary for the effi- cient discharge of his duties. Manoj Kumar Yadav v. State of M.P., 2008(4) MPI--IT 22 = 2008(11) 70 [DB]. See also: Comments under Section 69. Rules:- The State Government has made several rules in exercise of the powers conferred by this section. These Rules shall be found under Rules given separately

71. Deputation of Government servant.-The State Government may depute to the service of the Panchayat such of its servants as it considers necessary. 'Ihe service conditions of such deputed servants shall be such as may be prescribed, by the State Government from time to time. COMMENTARY Unlawful Deputation.-Petitioner holding a cadre post in M.P. Ac- counts Services of the State Government, transferred to Zila Panchayat establishment on deputation without his consent. Transfér is unsustainable and is quashed. Respondents may have a right to post the petitioner in the Zila Panchayat as he is holding a cadre post in the State Government which permits posting of such an employee to the Zila Panchayat, but such posting would amount to transfer of the petitioner on deputation to the Panchayat as per the Panchayat Service (Recruitment and General Conditions of Services) Rules, 1999 and therefore, the same can be done only by Seeking. his consent and following the rules and procedure contemplated for posting of an employee on deputation. In view of the aforesaid, it has to be held that posting of-the petitioner in the establishment of Zila Panchayat is on deputation and the same Without-his consent is unsustainable. P.K. Jain v. State 0fM.P., 2010(3) MPIJ 340 2010(3) JIJ 137

72. Functions Of Chief Executive Officer and Secretary.-The functions of Secretary of a Gram Panchayat,' Chief Executive Officer of Janpad Panchayat and I [Chief Executive Officer of Zila Panchayat] shall be such as may be prescribed. Rules:- The State Government has made the following rules in exercise of the powers conferred by this section. These Rules-shall be found under Rules given separately. I Subs. by M.P. 26 of 1994 [30.5.941 for the words "Secretary bf Zila Panchayat". s. 70 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)123 Panchayat by adopting a resolution was not correct either on facts or in law. Ramlakhan Rawat v. State 0fM.P., 2000(2) MPLJ 176 = 280, [OVERRULED]. DevidayaZ Raikwar v. State of M.P., 2009(1) JIJ 7 = 2008(4) ryw1.J 647 = 2008(3) MPHT 5050B]. [5] In every Gram Panchayat there is only one post of Panchayat Karmi and there cannot be reservation in case of a single post. Lallu Koi v. State 0fM.P., 2008 (4) MPLJ 418 2009(1) MPWN 27. [6] As empowered by S.86(1), Gram Panchayats can make appointments of Panchayat Karmi after a period of thirty days. Lallu KOI v. State of M.P., 2008 (4) MPLJ 418 = 2009(1) MPWN 27. [7] Selection & appointment by C.E.O. not permitted.-For the purpose of S.69 prescribed authority is Collector and for - S.70 Collec- tor/Addl. Collector. Therefore, on failure to discharge the liability ofS.86(2) the process of selection and appointment of Panchayat Karmi must be made by them or under their close surveillance and approval but selection and appointment done since inception till completion by the Chief Executive Officer, without any approval of the prescribed authority. Such action cannot be recognized, akin to approval the act of prescribed authority and do not have the protection under the provisions of this Act as specified under sub-section (2) of Section 86 of the Act. Moreover as per the discussion made hereinabove, it is apparent that C.E.O. has acted with the bias of arbitrari- ness in the matter of preparation of selection list, therefore, also selection pahel and process of selection is liable to be quashed. Ramniwas v. State of M.P., 2008 (2) 297 = 2008(3) JLJ 136. [8] Powers of Collector u/s.86.-The Panchayat failed to comply direc- tions issued uJs.70 of appointing a Panchayat Karmi. In such a case, the Collector as the prescribed authority had the power under Sub-section (2) of S. 86 to authorise the Chief Executive Officer of Panchayat to appoint a Panchayat Karmi. Leelawati v. State of M.P., 2008(4) MPHT 470 = 2008(3) rvæwN 86 [DB]. 191 Proper order of Appointment is essential.-The resolution of a decision in a meeting is not the order which can be given effect to. There should be a proper order pursuant to the resolution for appointment to the post of Panchayat Karmi. Respondent No.5 has been permitted to work as Panchayat Karmi on the basis of resolution passed by the Gram Panchayat and approved by Gram Sabha. No legal order has been passed appointing him on the post of Panchayat Karmi. With regard to the next contention that the relatives, i.e. the brother and the upcle are elected Up Sarpanch and Sarpanch of the Panchayat is concerned, that also disqualifies the respondent No.5 for being appointed as Pancbayat Karmi. 'Ihe SDO has rightly rejectedthe -appeÜheVisi0h. •Bhotåiami VermÖv. State of Chhattis- garh, 2007(3) MPHT 25(CG). [10] Court cannot exercise suo motu powers.-Court cannot suo nzotu decide whether the resolution adopted by the Panchayat was in violation of Clause 3.4 of the Panchayat Karmi Yojna.

Whether there has been such a violation or not could be decided only after replies were filed by the respondents and not at the stage ofmotion or admission. Manoj Kumar Yadav v. State 0fM.P., 2008(4) MPHT 22 = 2008(11) MPWN 70 [DB]. s. 70 (PA)122 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 of prescribed authority appoint such other officers and servants as it considers necessary for the efficient discharge of its duties. (2) The qualifications, method of recruitment, salaries, leave, allowance and other conditions of service including disciplinary matters of such officer and servants shall be such as may be prescribed. COMMENTARY 1. Panchayat Karmi Yojna not notified in the Gazette and it is not rules.-The Panchayat Karmi Yojna under S.70 is not notified in the Gazette and not referable to rules under the provisions of the Act as the Scheme makes reference only to the provisions of sections 69 and 70 of the Act and not to the rule making power of the State Government. The conditions contained for appointment of offcers and servants in the scheme cannot be treated to be Rules prescribing qualifications, conditions etc. but only executive instructions to the Gram Panchayat. Ashok .Kumar Kaurav v. State 0fM.P., 1999 (2) 729=1999 (2) JIJ 273

2. Some cases related to Appointment of Panchayat Karmi.- [1} Appointment on merit basis is necessary.-Gram Panchayat Karmi appointed of voting not on merit basis of candidates in terms of the-schémé for- apPöiritméntOfPäfiChäYät• Käi•mi; geléction$rocess vitiated since the norms and the criteria fixed for the selection has not been followed by the Gram Panchayat. Prajapal Singh v. State of M.P., 2009(1) MPLJ 640 = 2009(1) MPWN 24 = 2008(5) MPHT 421. [2] Order and Resolution both are different terms.-lf Gram Panchayat passes a resolution to select a person on the post of Panchayat Karmi, it would amount to resolution not amounting to an order, but if it passes a resolution selecting and appointing a person thereby on the post of Panchayat Karmi such kind of resolution may amount to an ogder in substance and not merely a proceeding of Gram Panchayat and an appeal against it may be preferred before the S.D.O.Abdul Hussain Qureshi v. State 0fM.P., 2008 (4) MPLJ 546 = 2009(1) JIJ 320 = 2009(1) MPHT 322. [3] In Panchayat Karmi Yojna, there is no condition that a candidate must have latrine in order to qualify himself for being appointed on the post of Panchayat Karmi and this condition could not have been added as a mandatory qualification for the candidate seeking appointment on the post of Panchayat Karmi. Vishnu Dev Pandey v. "State of M.P., 2008 (4) MPI-J 232 14] Appeal shall •lie & Appellate AUthority have necessary powers.•Thé provisions of an Act cannot be interpreted by reference to the provisions of a- Scheme made by the Government to give effect to the provisions of the Act, but has to interpreted by reference to the provisions of the Act. Hence against an order of appointment of Panchayat Karmi issued by the Sarpanch pursuant to the resolution of the General Body of a Gram Panchayat an appeal would lie to' the S.D.O. under Section 91 of the Adhiniyam read with Rule 3 of the Rules of 1995. Held, obviously, while deciding the appeal, the Appellate Authority will have all necessary powers to grant relief in a case where he decides to allow the appeal and such powers ude bv will ttv.) run s. 70 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)121 an order passed by the SDO. Entire process was not initiated by the Gram Panchayat in appropriate manner and improperly the resolution was passed by the Gram Panchayat for making appointment of Panchayat Karmi. Such an act of Gram Panchayat cannot be approved. High Court in various cases found that improper procedure has been adopted by the Gram Panchayats for making appointments of Panchayat Karmis, so that such persons after their notification as Secretary of the Gram Panchayat, may act according to the choice of the concerned Sarpanch. This is not the object of makilig such a scheme and, therefore, the High Court will not hesitate in quashing-such proceedings. Rajkumar Kushwaha v. State of M.P., 2013(1) MPI.J 238 = 2013(1) NTWN 24 = ILR 2013 MP 53

7. Relative.-The meaning of the term 'relative' in both sections 40(1) and 69(1) in the absence of specific definition, refers refers only to father, mother, brother, sister, husband, wife, son, daughter, mother-in-law, father- in-law, sister-in-law, son- in-law and daughter-in-law but does not include uncle-in-law and co-sister of mother-in-law. Jamna Bai Mehra v. State of M.P., 2004 (4) r,,æL.J 274=2005 (1) MPWN 46=2004 (4) Nff'1--1T 471 (DB)

8. Withdrawal of additional charge.- A Panchayat Karmi was ap- pointed Panchayat secretary, an additional charge, in exercise of powers under sub-section (1). Petitioner committed irregularities of serious nature. Collector withdrawing additional charge pending result of enquiry. It is •proper. Hariom Singh Rajput v. State of M.P.; 2002 (3) MPI.J 204*2002 (3) MPHT 541

9. Competent Authority to pass the suspension order.-The petitioner, while working as Panchayat Karmi, was appointed as Panchayat Secretary, challenged his suspension order which was passed by the 'CEO, Janpad Panchayat and urged that the said order was passed in lack of jurisdiction by the CEO and CEO was not competent to pass such order. Held it is true that the Joint Director/Deputy Director, Panchayat and Social Welfare Department is the competent officer under S.69(1) of the Act and under the MP/C.G. Panchayat Service (Discipline and Appeal)-Rulesr 1999.- But the MP/CG Civil Services (Classification, Control and Appeal) Rules, 1966 are applicable to all the employees of the State Government including Panchayat Services and it provides for suspension under second proviso of the Rule 9, if the order of suspension is made by an authority lower then the Appointing Authority, such authority shall forthwith report to the Appoint- ing Authority the circumstances in which the order was made. The facts of reporting suspension to the JointlDeputy Director, Panchayat and Social Welfare Department, Raipur is borne out from the impugped order itself, which has been marked to the concerned authority. Therefore the impugned suspension order was properly passed. Ramnarayan Sahu v. State of Chhat- tisgarh, 2006(2) CGLJ (CG) 406 - 2007(1) NQI--IT 105 (CG). See also: Mooi Chand soni v. State 0fM.P., 2007(2) MPHT 133. See also: Comments under S. 70

70. Other officers and servants of Panchayat. Subject to the proVisions of Section 69 every panchayat may with previous approval (PA)120 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 s. 69 6. Second proviso (as inserted by M.P.Act 2 of 1997, w.e.f.7•1- 1997).Scope and against persons holding such post.-The second proviso inserted by M.P.Act 2 of 1997, w.e.f. 7- 1-1997 provides that a person shall not hold charge of Secretary if such a person happens to be relative of any office bearer of the concerned Gram Panchayat. Panchayat Secretary is an important functionary of the Gram Panchayat and he has to perform various statutory functions which include recording of minutes, proceeding and decision of every meeting of Gram Sabha. The legislature in enacting the aforesaid provision thought that any nexus between the office bearer ofa Gram Panchayat and the Panchayat secretary shall destroy the basic fabric on which the institution of Gram Panchayat is based or it may lead to corruption and nepotism and and such it enacted in mandatory form that a person shall not hold charge ofa Secretary ofGram Panchayat if such a person happens to be the relative of any office bearer of Gram Panchayat. A plain reading of the aforesaid provision makes it clear that con- tinuance of a person as a Panchayat Secretary is prohibited if such a person happens to be the relative of any office bearer of Gram Panchayat. Although there was no such impediment before 7-1- 1997 and there may be certain persons holding such offces even though they happen to be relative of some office bearer, in view of the provision now made, they cannot be allowed to hold charge of the Secretary any more. Use of the expression 'shall' in this proviso raises •a:preSijmptiöh thät •pröhibitiOn of a relative of m -office-bearer of any Gram Panchayat to hold charge of the secretary is imperative. Another reason of such interpretation is the negative expression in the proviso. The prohibitory or negative words are rarely directory. It means that Panchayat Secretaries who were appointed even prior to 7-1-19978 cannot be allowed to hold charge of the Secretary. They cannot be allowed to hold office even as Panchayat Karmis because Panchayat Karmi and Panchayat Secretary are different and distinct entity. Prahlad Singh Patel v. State 0fM.P., 2000 (1) MPHT 89=1999 (2) JIJ 374. 6-A. Bar against appointment of a Panch as Panchayat -Karmii-- - Specific provisions have been made under the Act for not allowing any person to join the services or to notify him as Secretary of the Gram Panchayat under S.69 of the Act where it is specifically said that a person shall not hold charge of Secretary of Gram Panchayat if such a person happens to be the relative of any offce bearer of the concerned Gram Panchayat. If a relative of the office bearer of Gram Panchayat is not to be permitted to hold the charge of the post of Secretary of the Gram Panchayat, how could a Panch of very same Gram Panchayat be appointed on the post as Panéhayat Karmi, which meant only and only. for notifying a äS Secrétary öfthé Gi•äfri" Päfiéhaja•t. Thé itsélf cÉeated uhder the Act was there against the petitioner and Collector rightly held that the — petitioner•wag -ineligible-tö•bé abfröihted ön'th@post of PånæchaYåt Ra•rrhi. Prahlad Das Tandia v. state 0fM.P., ILR 2013 MP 279. 6:B. Gross irregularities/improper procedure would be cure even in writ petition.-The Court cannot shut its eyes to the gross ir- regularities committed in the matter of appointment in case the same is brought to the notice in the Court even in a writ petition filed against such s. 69 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)119 = 2009(1) MPWN 27

4. Improper removal order from the post of Secretary.- [1] Without charge sheet removal order from service.-Without charge sheet removal order from service issued to Panchayat Secretaryæetitioner.• As per

M.P. Panchayat Servige (Discipline and Ap- peal) Rules, 1999 removal from service of Panchayat Secretary is a major penalty and procedure for imposing major penalty is provided in Rule 7. nms, the said order issued in contravention of Rule 7 hence not sustainable. Kailash Babu Rai v. State 0fM.P., 2008 (3) 648 = 2008(3) JIJ 392. [2] Without inquiry major penalty imposed. -Order of major penalty cannot be passed unless a formal inquiry is held. Unless the procedure laid down in Rule 7 of M.P. Panchayat Service (Discipline and Appeal) Rules, 1999 followed, Secretary of the Gram Panchayat cannot be removed or reverted from the post of Secretary, Gram Panchayat. Lalla Prasad Burman v. State 0fM.P., 2008 (3) 394 = 2008(3) MPHT 26 = 2008(2) rymwrv IOI.DB. [3] Opportunity of hearing is necessary.-Without giving oppor- tunity of hearing and without considering the reply of show cause notice penalty imposed. Order is illegal, as has been passed in violation of the instructions issued by the Government as well as principles of natural justice. Gram Panchayat, Bamrol v. Jagdish Singh Rawat, 2008 (3) MPLJ 127 2008(4) 132 = 2008(2) r•tNwN 102 DB. See also: Neelesh Dubey v. state 0fM.P., 2007(3) MPI.J 349 = 2007(4) MPHT 431. [4] Joint Director cannot issue notice.-Joint Director of Panchayat and Social Welfare cannot issue show cause notice regarding the withdrawal of power of Panchäyat Secretary. Notice issuing power and removing power both vests in the Collector who is appointing authority under S.69(1). Gram Panchayat, Bamrol v. Jagdish Singh Rawat, 2008 (3) MP I.J 127 2008(4) rvm--1T 132 - 2008(2) rvæwrv 102 DB

5. On behalf Oftfié-PähOhayät- thé Sarpanch cannot sue and file an appeal independently.-Under S. 11 Gram Panchayat being body cor- porate can sue and can be sued. The power shall not vest in Sarpanch but it will vest in the whole body of the Gram Panchayat and if the Panchayat wants to sue or to file axi appeal, the Panchayat has to pass a resolution authorising either to Sarpanch, or Up-Sarpanch or to any Panch or to file appeal or Writ Petition Or any other petition. Rule 3 of •the M.P. Gram Panchayat (Powers and functions ofthe Secretary) Rules, 1999t$byideS that executive power of Gram Panchayat shall vest in the PanchäYå\' Secretary, who will exercise the executive power, but in these Rules -also itis nowhere provided that who will sue 'on behalf of the therefore we are of view that Gram Panchayat is a body corporate, having power to sue or to be sued, and the Gram Panchayat has to authorise somebody to act on its behalf and without the resolution by authorising any-person to sue of behalfofthe Panchayat, the Sarpanch cannot sue and appeal independently. Gram Panchayat, Bamrol v. Jagdish Singh Rawat, 2008 (3) MPLJ 127 = 2008(4) MPHT 132 - 2008(2) MPWN 102 DB. (PA)118 I. 2. 3. 4. 5. 6. 6-A. 6-B. 7. 8

9. PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 COMMENTARY SYNOPSIS Scope of Sections 69 and 70. Limited powers of Collector. Prohibition a-pply only on the post of Secretary. Improper removal order from the post of Secretary. On behalf of the Panchayat the Sarpanch cannot sue and file an appeal independently. Second proviso (as inserted by M.P.Act 2 of 1997, w.e.f.7-l- 1997)-Scope and effect-Operative against persons holding such post. Bar against appointment of a Panch as Panchayat Karmi. Gross irregularities/improper procedure would be cure even in writ petition. Relative. Withdrawal of additional charge. Competent Authority to pass the suspension order. s. 69 1. Scope of Sections 69 and 70.-From the provisions in sections 69 and 70 it is noticed that both sections act iii distinct spheres; first in relation to the appointment of Panchayat Secretary while the second in relation to the appointment of other officers and senrants of the Panchayat. Section 69 .provides for appointment of-a secretary only by State Government . prescribed authority. Sub-section (1) does not grant any power to leave the matter of appointinent as Secretaryin the hands of any authority other than the prescribea authority or State Government. The Panchayat Karmi Yojna virtually transfers this power to the Gram Panchayat as appointment of Pa;.chayat Karmi is made by Gram Panchayat and by deeming provision introduced in the scheme, Panchayat Karmi is appointed as Secretary. The Panchayat Karmi Yojna has not been notified in the Gazette and therefore, the Gram Panchayat cannot act as a prescribed authority and by such general executive instructions, the requirement of making appointment by thé State GOVernrhéht Oi•- the prescribed authority under SéOtiöri 69 Cannot be circumvented. A Panchayat Karmi appointed under the scheme does not acquire the status of Secretary of the Panchayat under section 69(1) unless specifically appointed by a competent authority under that provision. Ashok Kumar Kaurav v. State 0fM.P., 1999 (2) 729=1999 (2) JIJ 273

2. Limited powers of Collector.-Collector is an appointing authority of the post of Secretary and Gram Panchayat is appointing authority of Panchayat Karmi under S.69 of the Act. Since the Collector is an appointing authority of the post of Secretaryorily thereforé he is empowered to suspend •a Secretary from

the post ofSecretary• and not 'from his post of Panchayat Karmi. Kamlesh Dubey v. State of M.P., 2009 (1) 545 -2009 (2) MPHT 372

3. Prohibition apply only on the post of Secretary.-Second proviso to Sub-section (1) prohibits a person from holding charge of Panchayat Secretary, if such a person happens•to be relative of any office bearer of the concerned Gram Panchayat but it cannot prohibits appointment of such person as Panchayat Kami. Lanu Koi v. State 0fM.P., 2008 (4) MPI.J 418 (PA)190 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28

29. PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 Poverty alleviation programme. Education including primary and secondary schools. Technical training and vocational education. Adult and non-fori-nal education. Libraries. Cultural activities. Market and fairs. Sch. Health and sanitation, including hospitals, primary health centers and dispensaries. Family Welfare. Women and Child development. Social Welfare, including welfare of the handicapped and mentally retarded. Welfare of the weaker sections, and in particular of the Scheduled Castes and Scheduled Tribes. Public distribution system. Mairitenance of community assets. Sch. PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)189 6. A temporary tax for special works of public utility. 7. •A tax for' the construction or maintenance of public latrine* and a general scavenging tax for removal and disposal of.refusé 8. Fees for bullock-cart stand and tonga stand

9. Fees for temporary structure or any projection over any public place or temporary occupation thereof.IO. Fees for grazing cattle over the grazing grounds vested in the Gram Sabha

11. Any other tax, which the State legislature has power to impose under the Constitution of India.] SCHEDULE 111 (See Section 80) LEASE OF COLLECTION OF FEES BY GRAM PANCHAYATS 1. A fees on persons exposing goods for sale in any market. or any place belonging to or under the control of Gram Panchayat or for the use of any building or structure therein

2. A fees on the registration of cattle sold in any market or place belonging to it under the control of the Gram Panchayat.'3. A fee for the use of sarais, dharamshalas, rest house_s_, slaughter hdtisés and •eiicåmpilig: groüfids. 4.•cA fee for bullock-cart stand or tonga stand

5. A fee for grazing cattle over the grazing grounds vested in Gram Panchayat

6. Any other fees imposed by Janpad Panchayat-.2. 3. 4. 5. 6. 7. 8. 10. 11. 12. 13. 14

15. SCHEDULE IV [See sub-section (1) of Section 531 AgFicültiiFé, "i"ncludihg agHcåltural exterisü)n. Land improvement and soil conservation. Minor irrigation, water management-and watershed develop- ment. Animal husbandry, dairying and poultry. Fisheries. Social Forestry and farrn forestry. Minor forest produce. Sliläll"écäle industffeS, {nélu'ding foéd processing industries. Khadi Mllage and Cottage industries.• • Rural Housing. -Drinking water. Fuel and fodder. mads, culverts', bridges, ferries, waterways .and other means of communication. Rural electrification, including distribution of electricity. Non-conventional energy sources. (PA)188 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 SCHEDULE 11 [See sub-section (2) of Section 771 Sch. A. OTHER'OPTIONAL TAXES FEES ETC. TO BE IMPOSED BY GRAM PANCHAYATS 3. A tax on the bullock-carts, bicycles, rickshaws used for hire within the limits of Gram Panchayat area. 2 5. A water rate where arrangements are made by the Gram Panchayat for regular supply of water

6. Fees for drainage where system of drainage has been introduced by the Gram Panchayat.3 8. A fees payable by the owners Of the vehicles other than motor vehicle, where such vehicles other than the motor vehicles enter •the Gram Panchayat area. 4 B. OTHER OPTIONAL TAXES TO BE IMPOSED BY JANPAD PANCHAYAT Fees for any licence or permissiop granted by the Janpad Panchayat under-the Act or föi use and öCcUpa-tion Of Ian-ds- or-other properties vested in or maintained by the Janpad Panchayat. 5[SCHEDULE 11-A [See Seétion (77-A)I OTHER OPTIONAL TAXES, FEES ETC. TO BE IMPOSED BY GRAM SABHA l. A tax on building not covered under Item I of-Schedule -_I-A

2. A tax on animals used for riding, driving, drought or burden or on dogs or pigs payable by .the owners thereof

3. Fees for the use of sarais, dharamshalas, rest houses, slaughter houses and encamping grounds

4. A water rate where arrangements are made by the Gram Sabha for regular supply of water

5. A tax on persons carrying on the profession of purchaser, agent, commission agent, weighman, or a measurer within the meaning of Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 (No.24 of

1973), in the area of Gram Sabha excluding the area of a Mandi. 1 2 3 4 5 Items 1 & 2 omitted by M.P.Act 3 of 2001. w.e.f.26-1-2001. Item 4 omitted by M.P.Act 3 of 2001. w.e.f.26-l-2001. Item 7 omitted by M.P.Act 3 or 2001. w.e.f.26-1-2001. Items 9 to 14 omitted by M.P.Act 3 of 2001. w.e.f.26-1-2001. Ins. by M.P.Act 3 of 2001, w.e.f.26-1-2001. Sch. 1 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 SCHEDULE 1 (See sub-section (l) of Section 77] A. OBLIGATORY .TAXES TO BE IMPOSED BY GRAM PANCHAYATS (PA)187 t t s .t e e 5. Market fees on persons exposing goods for sale in any market or at any place or any building or structure therein belonging to or under the control of the Gram Panchayat

6. A fees on the registration of cattle sold in any market or in any place belonging to or under the control of the Gram Panchayat.B. TAX TO BE IMPOSED BY JANPAD PANCHAYAT A tax on theatre or theatrical performances and other performan- ces of public entertainments. 3[SCHEDULE I-A [See Section (77-A)] OBLIGATORY TAXES TO BE IMPOSED BY GRAM SABHA property. Tax on the lands_ or. buildings or both,- the. capital. valUe of Which--ih-clüdi-nä the: value bf the land 'is mbre-then: -6ÖÖö Rupees other _than— (a) the buildings and lands owned or vested in the Union or State Government, Gram Sabha, Gram Panchayat, Janpad Panchayat. or Zila Panchayat. (b) the buildings and lands or portions thereof used exclusively for religious or educational purposes including boarding houses: 4 [Provided that in the case OJ Special Econqmic Zone, the Develop: ment Commissioner may impose property tax on the lands or buildings or both.] (2) A tax on private latrines payable by the occupier or owner of the buildings to which such latrines are attached when cleaned by Gram Sabha Agency. (3) A light tax, if light arrangements have been made by the Gram Sabha. (4) A tax on person, exercising any profession or carrying on any trade pr wit5in_the limits 2 3 4 iteriß I to bmitfed Item (7) inserted by MP Act 19 of 1997 [1-5-19971, omitted by MP 43 of 1997 {5--12-19971. Ins. by M.P.Act 3 of 2001, w.e.f.26-1-2001. Proviso added by MP Act 18 •of 2007 [25-5-2007}. (PA)186 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 S. 131 Provided further that, subject to the proceeding proviso anything done or any action taken (including any appointment, or delegation made, notification, notice, order, instruction or direction issued, rule, regulation, byelaws, form or scheme framed, certificate obtained, permit or licence granted, registration affected, tax imposed or fee or rate levied), under the repealed Act shall, in so far as it is in force immediately before the coming into force of this Act and is not incon- sistent with the provisions of this Act be deemed to have been done or taken under the corresponding provisions of this Act and shall con- tinue to be in force accordingly. unless and until superseded by anything done or any action taken under this Act. (2) The arrangement existing for the Gram Panchayat, Janpad Panchayat and Zila Parishad under Section 127 of the repealed Act shall continue, until the corresponding Gram Panchayat, Janpad Panchayat a nd Zila Parishad as the case may be, are constituted under this Act. (3) The Collector, shall apportion the assets and liabilities of the existing Gram Panchayat amongst the corresponding Gram Panchayat constituted under this Act according to the guideline issued by the State Government for the purposes. [(4) Thé usets and liabilities of existing Janpad Pa_nchayat and Zila. Parishad_ shall -stand transferred -to Jan-pad. Panchayat_and Zila Panchayat respectively constituted under this Act.] 131. Savings as to existing permanent employees. -Not- withstanding anything contained in this Act or any rules or byelaws made thereunder the pay and allowances, pension and retirement benefits of all permanent officers and servants or other employees of the Panchayat on the date on which this Act comes into force shall be existing pay and allowances, pension and retirement benefits

132. Power to remove difficulties.-(1) If any difficulty arises in giving efféct to the pro+isi6iiS"Of this ACt, -the-Stäte Government may; by order, do anything not inconsistent with the provisions thereof which appears to it to be necessary or expedient for the purposes of removing the difficulty: Provided that no such order shall be made under this section after the expiry of two years from the commencement of this Act. (2) Every order made under this Section shall be laid on the table of the Legislative Assembly. Subs. by M.P. 26 of 1994 130.5.941. S.: 130 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)185 Ashok Kumar Tripathi v. Union oflndia, 2000 (1) JIJ 208=2000 (2) MPHT 193 (DB). [5] Basis of reservation being population and figures taken from census of 1991. Reservation of seats may be more than 50% in a block or panchayat area. But overall extent of reservations in the whole of State in reserved categories should not exceed 50%. Ashok Kumar Tripathi v. Union of India, 2000 (1) JIJ 208=2000 (2) MPHT 193 (DB). [61 The Constitution itself has recognised necessity of special treatment and protection to the socially and the educationally backward classes or citizens like Scheduled Tribes, Scheduled Castes

and socially and economi- cally backward citizens. Article 14 of the Constitution permits, therefore, protective treatment to deprived classes of citizens vis-a-vis the forward and advanced. classes of the society. Ashok Kumar Tripathi v. Union of India, 2000 (1) JIJ 208=2000 (2) MPHT 193 (DB). 129-F. Powers of Janpad and Zila Panchayat.- Without prejudice to .the generality of powers conferred by this Act, the Janpad Panchayat or the Zila Panchayat, as the case may be, in Scheduled .Areas shall also have the following .powers. namely: (i) to plan, own and manage minor water bodies up to a specified water area; (ii) to-- exercise; :Contföl •oVer iriStit-u-tionS -and • functiönärieé --iri•- • social sectors transferred to them; (iii) to exercise control local plans resources and eXpéhditUre for such plans including tribal sub-plans; and (iv) to exercise and perform such other powers and functions as the State Government •may confer or entrust under any law for the time being in force.] CHAPTER XV - REPEAL 130. Repeal and sayings.-.(l) On and fronuthe date of commence- ment of this Act the Madhya Pradesh Panchayat Raj Adhiniyam, 1990 (No. 13 of 1990), shall stand repealed (hereinafter referred to as the repealed, Act): Provided that the repeal shall not affect:— (a) the previous operation of the repealed Act or anything duly done or suffered thereunder; or (b) ariy right. privilege, obligation or liability acquired, accrued or-incurred under the repealed Act: or (c) any penalty; for.feiture of punishment .incurred in respect of any offence committed against the repealed Act; or (d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, penalty, forfeiture or punishment as aforesaid and any such investigation, legal proceeding or remedy may be iqstituted, continued or en- forced, and any such penalty, forfeiture or punishment may be-imposed as if this Act has not been enforced: (PA)184 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 S. 129-E "In sub-section (1) of Section 129-E, after the second proviso, the following proviso shall be inserted, namely:- "Provided also that the Gram Panchayats in the Schedule9 areas which have no population of Scheduled Tribes shall be excluded in prescribed manner from allotment of seats or the offices as the case may be, reserved for Panchas or Sarpanchas belonging to Scheduled Tribes." COMMENTARY I. No Scheduled Area.-A district will not stand declared as scheduled area merely because its constituents have been declared as scheduled areas. Unless there is a declaration by the President in Part-C of the fifth Schedule an area cannot form a part of Scheduled Area. The district has a different unit for the purpose of election under Art. 243-M of the Constitution. The concepts of Zila Panchayat and reservation are different things. The con- stituents having already been declared Scheduled Areas are maintained as such. Section 129-E cannot override the Constitution. It has to follow it till the district as a area or unit is declared as a Scheduled Area for the purpose of election of Zila Panchayat. It cannot be regarded as a Scheduled Area by deductive or syllogistic process. State of Madhya Pradesh v. Ashok Kumar Tripathi, AIR 2008 M.P. 187 = AIR 2008 (NOC) 460 2. Reservation of seats in Scheduled Areas of more than 50%.- Provisions of the Panchayats (Extension to the Scheduled Areas) Act 40: Of 1996, of Séats in Scheduled: AreäG :for:- members excess of 50% of population of reserved categories hass benevolent aim of giving reserved categories training and chance of participating in local. self..• Government. Protective discrimination held justified. Ashok Kumar Tripathi v. Union oflndia, 2001 (4) MPLJ 206. Similarly reservations of 100% seats of Chairpersons in Panchaya!s in Scheduled areas for Scheduled Tribes is not discriminatory. Ashok Küinär Tripathi v. Union oflndia, 2001 (4) MPI-J 206

3. Chapter XIV-A, as introduced by Act 43 of 1997-Scope and purpose of provision.-[ll -S.4(-g-)- of the -Panchayats- (Extension to the Scheduled Areas) Act, 1996 (Central Act 40 of 1996) is in pari materia with the provisions of M.P.Act 43 of 1997 since they both are meant for reserva- tion of seats in the Panchayats falling in the Scheduled Areas. A9hok Kumar Tripathi v. Union oflndia, 2000 (1) JIJ 208=2000 (2) MPHT 193 (DB). [21 In the matter of reservation, principle of proportionate repre- sentation based on population of reserved categories has been adhered to. Departure has been made from it in giving them larger share o'self-gover- nance. AIR 1993 SC 477 and W.P.N0.1013 of-1996 Disting. Ashok Kumar Tripathi v. Union oflndia, 2000 (1) JIJ 208=2000 (2) Ln'HT 193 (DB). [3) Reservation of Scheduled Castes, Scheduled Tribes, Women and Backward Classes being 44% at the State level is not high, hence it is neither arbitrary nor excessive. Ashok Kumar Tripathi v. Union of India, 2000 (1) JLJ 208=2000 (2) MPHT 193 (DB). [4] More than 50% reservation in categories including Scheduled Tribes in Scheduled Areas and 100% reservations for Chairpersons not illegal. c a .h a n 0 n e s d S. 129-E PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)183 (vi) to control local plans, resources and expenditure for such plans including tribal sub-plans, and; (vii) to exercise and perform such other powers and functions as the State Government may confer on or entrust under any law for the time being in force. 129-D.

Functions of Gram Panchayat.- Without prejudice to the generality of powers conferred by this Act, the Gram Panchayat in Scheduled Areas, under the general superintendence, control and direction of the Gram Sabha shall also have the following powers, namely:- (ii) to manage village markets and melas including cattle fairs by whatever name called; (iii) to (vi) [x x x] (vii) to exercise control local plans, resources and expenditure for such plans including tribal sub-plans: and (viii) to exercise and perform such other powers and functions as the State Government may confer on or entrust under any law for the time being in force. 129-E. Reservation of seats.- (l) The reservation of seats for Scheduled Castes and Scheduled Tribes in every Panchayat in Scheduled -Areas shall be -in- preportiön- to- their-respective-population-- + in that Panchayat: Provided that reservation for Scheduled Tribes shall not be less than one-half of the total number of seats: Provided further that all seats of Sarpanch or President, as the case may be, of Panchayats at all levels in Scheduled Areas shall be reserved for members of the Scheduled Tribes. (2) The State Government may nominate persons belonging to such Scheduled Tribes as have no representation in a Panchayat in the Scheduled -Areas-at the •intermediate level- or-in a-panchayat—in-the Scheduled Areas at the district level: Provided that such nomination shall not exceed one-tenth of the total members to be elected in that Panchayat. (3) In a Panchayat in Scheduled Areas such number of seats shall be resewed for persons belonging to other backward classes, which together with the seats already reserved for Scheduled Tribes, and Scheduled Castes, if any, shall not eiceed three- fourths of all the seäts in that Panchayat. Applicability to Scheduled Area.-By Notfn. No.F. 1-8-97 -XXII-P- 2.- dated 20th March 1999, Pub.in Rajpatra Ext. dated 24th March, •1999, p.334,• the Governor of Madhya Pradesh has applied the Madhya Pradesh Panchayat Raj Adhiniyam, 1993 (1 of 1994), with the excep- tions and modifications as under:- 1 Omitted by M.P.Act 5 of 1999 [5-4-1999]. 2 Omitted by M.P.Act 5 of 1999 15-4-19991. (PA)182 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 S. 129-C as may be prescribed, and each such Gram Sabha may consist of a habitation or a group of habitations or a hamlet or d group of hamlets comprising a community and managing its affairs in accordance with traditions and customs. 1 1(3) The quorum of every meeting of Gram Sabha shall not be less than one-tenth of the total number of members of the Gram Sabha or five hundred members of the Gram Sabha, whichever is less.] (4) The meeting of "Gram Sabha" shall be presided over by a member of the Gram Sabha belonging to the Scheduled Tribes not being the Sarpanch or the Upsarpanch or any member of the Panchayat, to be elected for the purpose by the majority of the members present in that meeting. COMMENTARY Creation of new villages.-This section finds place in Chapter XIV-A which has overriding effect in respect of the provisions of the Act. Formation of new villages is a legislative function. No question of inviting suggestions or objection arises. 1995 MPLJ 152 Rel. Bechansingh v. State of M.P., 2000 (1) MPLJ 405=2000 (1) MPVnq 121. Rules:- The State Government has made the following rules in exercise of the powers conferred by this section. These Rules shall be found under Rules given separately. "Scheduled Areas Gram Sabha (Constitution, Procedure of Meeting and Conduct of Business) Rules, 1998" 129-0. Powers and Functions of Gram Sabha.- In addition to the powers and functions contained in Section-7, the Gram Sabha in Scheduled Areas shall also have the following powers and functions, namely:— (i) to safeguard and preserve the traditions and customs of the people, their cultural identity and community resources and the customary mode of dispute resolution: (ii) 21x x x) (iii) to manage natural resources including land, water and forests within the area of the village in accordance with its tradition and in harmony with the provisions of the Constitution and with due regard to the spirit of other relevant laws for the time being in force. (iv) [x x x] (v) to manage village markets and melas including cattle fair, by whåt ever name called, through the Gram Panchayat: 2 3 Subs. by M.P. Act 18 of 2007 '25-5-20071 for the following:- "(3) Not less than one-fifth or one thousand, whichever is less of the total number of members of the Gram Sabha shall form a quorum for meeting of the Gram Sabha and out of which not less than one-third shall be women -members." Omitted by M.P.Act 5 of 1999 [5-4- 19991. Omitted by M.P.Act 5 of 1999 [5-4-19991. 2k to to e- at se er ts er S. 129-B PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)181 Governor, who shall cause the said reports to be laid on the table of the Legislative Assembly.) I The social audit shall be performed by Gram Sabha regarding quality of community work and beneficiary oriented work executed in the Gram Sabha area in prescribed manner.] PREVIOUS PROVISIONS [Before substitution S. 129 was applicable as underl "S

129. Audit of Panchayats.-(l) There shall be a separate and independent Audit Organisation under the control of the State Govern- ment to perform audit of accounts of Panchayats. (2) The Audit Organisation

shall consist of such officers and servants, to be appointed by the State Government, asr the State Government may deem fit from time to time. (3) The manner of audit of Panchayat accounts, payment of audit fees and action on such audit reports shall be such as may be prescribed." Rules:- The State Government has made the following rules in exercise of the powers conferred by this section. These Rules shall be found under Rules given separately. "Panchayat Audit Rules, 1997' 2fCHAPTER SPECIAL PROVISIONS FOR PANCHAYATS IN THE SCHEDULEDAREAS 3 [129-A Definitions.- Notwithstanding anything contained in this Act and unless the context otherwise requires in this Chapter: (a) 'Gram Sabha" means a body consisting of persons whose names are included in the electoral rolls relating to the area of a Panchayat at the village level, or part thereof, for which it is constituted. (b) 'Village" means a village in the Scheduled Areas which shall -ordinarily-consist-of a-habitation or a group of habitations or a-hamlet• or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs. 129-B. Constitution of Village and Gram Sabha.- (l) The Goverfibr Shall be public notification specifr a "Village" for the purposes of this Chapter. (2) Ordinarily, there shall be a Gram Sabha for a "village' as defined in sub-section (1): Provided that if the member Of the.Gfam Sabha so desired, more •than-one Gram-Sabha maybe constituted ilia village, •in such manner A-- Ins. by M.P. Act 26 of-2012 123-5-2012). 2 Ins. by MP 43 of 1997 (5-12-19971. 80J€GSs.129-A to 129-P ins. by MP 43 of 1997 [5-12-1997]. (PA)180 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 S. 127 manner and the objections received have been considered. (2) On making of the order under sub-section (l) the Governor or the authority authorised by him may pass such consequential orders as may be necessary

127. Alteration in limits of Block and Zila Panchayat.-(1) The [Governor] may, by notification [change the headquarters of a block or] alter the limits of a block by including therein any local area in the vicinity thereof or by excluding therefrom any local area comprised therein: Provided that no such notification shall be issued unless a notice signifying such intention and inviting objections from persons likely to be affected by the alteration in the limits of the blocks by the date to be specified therein has been published in the prescribed manner and the objections received have been considered: 3 [Provided further that no such notification to change the head- quarters- of a block shall be issued e*cept to change such headquarters which exist outside the limits of the block to a place within that block.] (2) On the issuance of the notification under sub-section (I) the 4 (Governor] or the authority authorised by him may pass such conse- quential orders as may be necessary. (3) On the alteration of the limits of district, the State Government may pass such consequential orders in respect of Zila Panchayat as may be necessary.

128. Management of Government lands.-Any Government land transferred to a [Panchayat or Gram Säbhal shall be managed by such [Panchayat or Gram Sabha] in accordance with such rules as the State Government may make in this behalf. Rules:- The State Government has made the following rules in exercise of the powers conferred by this section: These Rules shall be found under Rules given separately. "Panchayat (Management of Government Lands) Rules, 1995" AUDIT 7 [129. Audit of Panchayats.-(l) The accounts of the Panch9yats shall be audited by the Director, Local Fund Audit and the Comptroller and Auditor General of India shall give technical guidelines and supervision over the audit of Panchayats. (2) The annual audit •report of Director, Local Fund Aucnc on Panchayats along with the annual teChnical inspection report of the Comptroller and Auditor General of India shall be submitted to the 1 2 3 4 5 6 7 Subs. by MP 39 of 1995. Ins. by MP 43 of 1997 15-12-1997]. [ns. by MP 43 of,1997'15-12-1'9971. Subs. by MP 39 of 1995. Subs. by M.P.Act 3 of 2001, w.e.f.26,,1-2001. Subs. by M.P.Act 3 of 2001, w.e.f.26-L-2001. Subs. by M.P. Act 26 of 2011. then amended by M.P. Act 26 of 2012. S. •126 PANCHAYAT RAJ AVAM GRAW SWARAJ ADHI., 1993 may be necessary. COMMENTARY (PA)179 I.Exclusion of Village Kumadi from the area of erstwhile Gram Panchayat Toogni. The objections of the villagers were duly considered by the Collector before the issuance of final notification. High Court cannot sit in appeal over the decision. Case Law considered. Lal.singh v. State of M.P., 2005 (1) MPI.J 348=2005 (2) MPHT 346=AIR 2005 NOC 250 MP

2. Notification under- Validity.-Publication of a notification should be effective and meaningful. If a notice is published in Gazette, inviting objections by a particular date and that date has already expired before the notification is received by the persons affected, it is a meaningless and invalid publication. Pranay Gupta v. State of M.P., 2004 (4) MPLJ 574=2005 (1) JLJ 295 (DB)

3. Requirement under the proviso is mandatory.-The object of requirement of publication of notice is to draw the attention of the residents of the area who are likely to be affected by the proposals, so that they can submit their suggestions or file their objection to the proposals, which on consideration may enable the authority concerned to take a proper decision in the matter, either by dropping the proposals or by proceeding in terms of the proposals: The delimitation changes made in exercise of powers under sub-section (1) will materially affect the residents of the area. Such changes as conte-miläted iii the sub-section are not to be made lightly or routinely either for political convenience or at the whims of the executive. There should-be proper application of mind and valid reasons for effecting such changes. Pranay Gupta v. State 0fM.P., 2004 (4) MPLJ 574=2005 (1) JLJ 295 (DB)

4. Alteration in limits of Gram Panchayat area-Change of Head Quarter-Amalgamation of two or more Gram Panchayat area to split up a Gram Panchayat.- These are legislative functions. They cannot be challenged in writ petition specially when the objections of the village people were considered-and overruled by the Collector. AIR 1995 MPIJ152", AIR 1990 SC 261 and 2002 (2) SCC 7 Foil. AIR 1987 SC 1239 Disting. Laisingh v. State of M.P., 2005 (2) MPHT 346=AIR 2005 NOC 250 (1) MPLJ 348. 5' Rules.- The State Government has made the following rules in exercise of the powers conferred by this section. These Rules shall be found under Rules.given separately. "Alteration of Limit, Dis-establishment or Change of Head- Quarters Rüles, 1994." 126. Di±stablishment of village.-(l-) The Governor or the authority authorised by him may, by an order in writing. disestablish a village: Provided that no such order shall be issued unless a notice of the proposal inviting objections from perSons likely to be affected thereby the date to be specified therein has been published in the prescribed (PA)178 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 S. 123 improper acceptance of nomination paper due to incornplete information in the declaration did not provide a ground to set aside the election. Siyawati v. Phoolwati, 2009(1) MPHT 301 2009(1) JLJ 431 = AIR 2009 (NOC) 425 MP 2008 (4) MPLJ 437 = 2009(2) MPWN 49

21. Rules:- The State Government has made the following rules in exercise of the powers conferred by this section. These Rules shall be found under Rules given separately. "Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995" 123. Power to expel person who refuse to pay fee. -When any fee has been imposed under this Act or the right to collect it has been leased thereunder, any person employed by the 1 [Panchayat or Gram Sabha] concerned or any person duly authorised in this behalf by it or by the lessee to collect such fees, may subject to the condition of the lease to collect the fee expel from the place for the use of which a fee is payable, any persons who is liable to pay the fee but refuses to pay it. 124. 2 [Panchayat or Gram Sabha] in default of owner or oc- cupier may execute work and recover expenses. -Whenever under the provision of this Act any work is required by the owner or occupier of any building or land and- default •is made in-the -execution such .- work the [Panchayat or Gram Sabha], whether any penalty is or is not provided for such default, may cause such work to be executed, and the expenses thereby incurred shall, unless otherwise expressly provided in this Act, be paid to it by the person by whom such work ought to'have been executed and in case of default of payment, it shall be recoverable as arrears of land revenue

125. Changes of headquarters of Gram Panchayat division, amalgamation and alteration of Panchayat area.-(1) The Governor or the authority authorised by him_may _by _ order _change_ the head- quarters of a Gram Panchayat or alter, the limits of a Gram Panchayat area by including within it any local area in the vicinity thereof or by excluding therefrom any local area comprised therein or amalgamate two or more Gram Panchayat areas and -from one Gram Panchayat area in their place or split up a Gram Panchayat area and from two or rnore Gram Panchayat areas in its place: Provided that no order under this section shall be made unless a proposal in this behalf is published for. inviting suggestions and objections in such manner as may be prescribed an objections are considered. (2) On the issuance of the order under sub-section (l) the Governor or the prescribed authority shall pass such conSequential orders as 1 Subs. by M.P.Act 3 of 2001. w.e.f.26-1-2001. 2 Subs. by M.P.Act 3 of 2001. w.e.f.26-1-2001. 3 Subs. by M.P.Act3 of 2001. w.e.f.26-1-2001. 2 1- v. n 'a s. •d m. he 'h Io if it te he 'd .9 ;o d. a h -It S. 122 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1992 (PA)177 of votes and passed order for setting aside election of the returned candidate. the order is bad. Election petition suffered from fatal defect. Arnarsingh U. Sub-divisional Officer, 1997 (2) MPLJ 192. Rule 11: Procedure not followed. -Addl. Collector called the relevant record and holding that Government dues were outstanding against the petitioner and declared

election as illegal. Hold, that procedure as envisaged under Rules 11 & 12 has not been complied hence the order passed by the Addl. Collector is privnafacie perverse, petition allowed and the matter is remanded back to the Addl. Collec- tor. Mohanlal Diwakar v. State of C.G., 2006(1) CGLJ 105. Rule 13: Withdrawal of petition.-tl] Mere filing of an application for withdrawal of election petition will not automatically result into withdrawal of election petition. Can be withdrawn only with the leave of the specified officer. This is a matter of common knowledge that in elections lot of pressure, threatening, money and muscle power are employed and this sometimes results into filing of a withdrawal ap- plication in the election petition. Thus, a power is given to the specified officer to éxamine the genuineness of such a request and if the said authority comes to the conclusion that in the facts and circumstances of the case, such a leave cannot be granted, it has a power to refuse the same. Kaqhaiyqlglt 1(4) MPLJ -201-2(1) JLJ-33. [21 See relative rule 13. Meena Singh' v. Prescribed Authority-Curn- Collector, 1998 (2) MPLJ 309. Rule 21: Recount of votes.- Consideration. -Mere rejection of an application under Rule 80 filed by the petitioner is not a sufficient ground for ordering recount of votes. Vidhyawati Lilhare v. Sub-Divisional OUicer-cum-Prescribed Of- Jicer, Lan,ji, Balaghat. 2010(1) MPLJ 115 2010(4) MPHT 92 = 29. Order of recount.-[l] An order of recount cannot be passed on mere asking. An issue should be framed, evidence be recorded and the question should be decided on going through such an evidence. Secrecy of votes cannot be lightly revealed. Udaysingh v. Himmatsingh, 1999 (1) JLJ 200. [2] Recount of votes cannot be ordered even on consent. Secrecy of voting cannot be broken lightly. Gajanan v. Ramcharan, 1997 (11) MP WN 3. Result materially affected or not • some cases.-fll Facts sup. ,.ÉresSed, election declared void.-The_nomination paper of a returned •candidate itself iS found to •haie bééif _beöaåée• Che returned candidate suppressed his some assets etc. Held, his result has been • obviously materially affected 'théreföYé his Election properly 'declared as void. Mehboob Khan v. Lallu Bhai, AIR 2009 (NOC) 532 = 2008 (4) MPLJ 198 - 2008(3) JIJ 307 = 2008(5) MPHT 95. [21 Returned candidate lady suppressed fact of having nine children and declare 5 children, it would not have caused any disqualification to her, therefore the result of the election is not materially affected and - the (PA)176 PANCHAYAT RAJ AVAM GRAM.SWARAJ ADHI., 1993 S. 122 the pleadings. The verification at the bottom of the affidavit verifies contents of the affidavit to the extent of narne of deponent, residence of the deponent and filing of the petition. Thus it amounts to non- compliance of the mandatory requirement of Rule 5. Ram Das Singh v. Balran Singh, 2007(2) MPHT 58 (CG). Rule 6: See also comnrnts under S.36. Rule 7: Deposit of security amount is essential.-[ll Fresh elec- tion petition filed by the petitioner by withdrawing the earlier petition. While filing the second election petition, security amount has to be deposited by the petitioner. Amount deposited with the first election petition cannot be treated as deposit of security for entertaining the second election petition. Election petition rightly disnlissed by the Election Tribunal for non-compliance of Rule 7 of the Rules. Roopa Singh v. State of M.P., 2012(2) MPIJ 435 = 2012(2) MPHT 502. [21 The respondent No. I has admittedly, deposited a sum of Rs. 500/- with the Tahsildar, who is not a specified officer as defined under Rule 2(d). Deposit of the security amount is a mandatory requirement as held by the Supreme Court in the case of M. Karunanidhi v. Dr. H.V. Hande and ors., 1983(2) SCC 473. The deposit of the security amount with any officer, other then the specified officer, may be Sub-ordinate Officer, does not satisfy the mandatory requirements of the -provisions of Rule 7 of the Rules. Ram Das Singh v. Balran Singh, 2007(2) MPHT 58 (CG). Rule S: Noh-compliance- Of RüIéS in ÉlectiÖn Petition. fSSüe- - of defect of non-compliance of the rules can be taken up by the Election Tribunal at any stage and it is not incUmbent upon the authority to do so only at the threshold. Bayula[Verma v. Additional Collector, Chhindwara, 2009(4) MPLJ 548 = 2010(1) MPHT 477. [2] Non compliance with Rules 3, 4 or 7. Prescribed Authority if after hearing the petitioner finds non-compliance of Rules 3, 4 or 7, it has no choice but to dismiss the petition. Divisiya w/o Naresh Paraste v. Shanta w/o Narayan Singh Pushäm, 2011(2) MPLJ 701. • [3] The provisions of Rules 7-and8 are - mandatory. Where security amount was not deposited along with the election petition, such a petition is liable to be dismissed. Udaysingh v. Himmatsingh, 1999 (1) JLJ 200. (b) But in a case where deposit was not made along with the election petition but made subsequently before expiration of the period of •limitation and also before cognizance of the matter was taken, the election petition does not suffer from a fatal defect. AIR 1986 MP 49 Disting. Ravi Thakur v. Shivshankar, AIR 1997 MP 136. See also Kailashnarayan v. Narndår', 1996 JIJ 3é1. (c) It is essential that an election petition should be signed and verified. Further it is essential that it should accompany as many copies of such a petition as there are respondents. Udåysingh v. Himmatsingh, 1999

(1) JIJ 200. (d) Where deposit of security amount was not made along with election petition and the S.D.O. took cognizance of it, directed .recount S. 122 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)175 dispute. The Election Tribunal erred in dismissing the election petition by holding that there is non-compliance of Rule 3 of the Rules. The impugned order passed by the Election Tribunal set aside. NatthLdal v. Shakuntalabai, 2011(2) MPLJ 424 = 2011(2) MPHT 153. [51 Neither the requisite copies of the Election Petition were filed nor they are signed. Non-Compliance of Rule 3 by the Election Petitioner. Election petition dismissed. Rakesh v. Returning Officer Panchayat Niruachan, 2012(4) MPI.J 458 = 2012(5) MPHT 194. [1] Failure to file copies of election petition- Petition to be dismissed.-[l] Where in compliance with the provisions of rule 3, election petition did not accompany as many copies of the same as there were respondents, the requirement being mandatory, such a petition was liable to be dismissed under the provisions of rule 8. Shivdhari Lakhesar v. Jaduman Bishwanath, 1999 (1) MPLJ 291. [2] See also: Udaysingh v. Himmatsingh, 1999 (1) JLJ 200. [3] Petition should be attested by the election petitioner. In its absence the petition is liable to be dismissed. Attestation by advocate would not save the petition. Omprakash Soni v. Ashokkumar, AIR 1996 MP 43. [4] Attested copies of documents supplied to respondents not signed by petitioner- Petition liable to be dismissed. Defect cannot be cured -after peflpd pf--lirnitetion. -V. Hemir -Singh,- 1996 (1) MPWN 1". -[51-EIect\on petition not rejected.-Petitioner herself was present at the time of presentation of the election petition before the specified officer and her thumb impression was taken on the right hand side corner of the said order sheet. Merely because endorsement made in the order sheet is that the petition was presented by her Counsel, it cannot be construed that the election petitioner was not presented at the time of presentation of the election petition and that she has not presented the election petition. In fact, the election petitioner was present before the specified officer along -with -her Counsel-When the election petition was presented. That being so, compliance of Rule 3(1) of the Rules of 1995 having been made and on-this ground the election petition can not be rejedted. Kailashi D. Bharosi, 2006(3) MPLJ 477 = 2006(3) MPHT 404. Rule 4: Where petitioner claims that he or any other person be declared elected in place of the returned candidate, he has to join only the contesting candidates as party and not those whose nomination has been rejected Or who Withdrew his nomination. Harishankar --Suryavanshi D. State of M.P., •1998 (2) Vidhi Bhaswar 225. Rule 5: Pleadings not verified.-Rule 5 prescribes that the elec- tion petition shall be signed by the petitioner and verified in the manner laid down in the CPC, for the verification of pleadings. In the present case on hand, admittedly, the petitioner has not complied with the mandatory requirement as prescribed under Rule 5(c) of the Rules, 1995. There is no verification of pleadings and the affidavit filed by the respondent No. I does not disclose source of information contained- in (PA)174 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 Ramswaroop v. Maharajsingh, 1997 (I) MP MTN 36. s. 122 19. Appeal and Revision.-Rules framed for election petitions etc. do not provide any•appeal or revision. Decision pronounced under Rule 23 has further been declared to be final under Rule 25. Hukumchand v. Dheerji, 2001 (1) JIJ 229

20. Comments under election petition Rules of 1995.,,Comments under M.P. Panchayats (Election Petitions, Corrupt Practices and Dis- qualification For Membership) Rules, 1995 are as follows:- Rule 3: A. Requirements of Election Petition. Extra copy of memorandum of Election Petition given to returned candidate/respon- dent No. 1 before Election Tribunal. It was not required to be signed and verified by the Election Petitioner. Natthulal v. Shakuntalabai, 2011(2) MPLJ 424 = 2011(2) MPHT 153. [2] Rule 3 only provides signing and attestation of copies filed along with the election petition. Election petition filed by the respondent 'vvas accepted by the authority in accordance with the provisions of Rule 3 and thereafter notice on the said election petition was issued to the appellant. Nothing on record to establish that a signed and attested copy of thé election petition was not sent to the appellant along with the notice. Appellant should have established this fact and as the best evidence which was available to the appellant was not produced by him, an adverse inference has rightly-been drawn against him. Addi- tional copy, i.e. an extra copy which was given to the counsel for thé appellant during the proceedings need not be signed and attested by the election petitioner as that is not the requirement of Rule 3. Shakuntalabai v. Nathulal, 2011(3) MPLJ 119 = 2011(5) MPHT 35. B. Maintainability of petition.-lll Election petition filed by respondent No. 6 was not duly verified and the security amount required to be deposited at the time of presentation of the petition. Petitioner not having complied with mandatory provisions of the Rules was not maintainable. Kana Mandal v. State of M.P., 2010(2) MPI.J 468 = 2010(3) MPHT 278: [21 Election

Petition not presented by the election petitioner by presenting it herself or through an authorized advocate. Election petition dismissed in view of provisions of Rules 3, 8 and 21. Kamlesh Nut v. Commissioner, 2012(4) MPLJ 385 = 2012(5) MPHT 127. [31 Copies of the election petition served on the respondent did not bear the signatures of the petitioner, were not verified and did not bear attestation as required by Rule 3(2). Election Tribunal rightly dis- missed the election petition. Baüulal Verma; v. Additional Collector, Chhindwara. 2009(4) MPLJ 548 - 2010(1) MPHT 477. [4] If a party is having the best evidence in his power and posses- siori hé is duty bound to produöe it in the Court in order to resolve the controversy ancl that party should not place reliance on the abstract doctrine of onus of proof that it was no part of his duty to produce it. Respondent No. I slun Ild have filed the copy of election petition served upon her along with Lhe summons in the court in order to resolve the S. 122 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)173 any opinion about the irnproper rejection or reception of the votes but only with a view to enable him to form such an opinion, he had proceeded to pass the order directing production of the ballot papers and for reacting of the votes. An order of recount cannot be granted as a matter of course, which is to be resorted to only upon satisfaction that material facts pleaded in the petition and supported by the contemporaneous evidence justify. such an order. Kailashsingh v. Narayansingh, 1999 (1) JIJ 342. See also: [4] Pushpendra Singh v. Padmakar, 1998 (1) JLJ 351. [5] Recount of votes cannot be ordered even on consent. Secrecy of voting cannot be broken lightly. Gajanan v. Ramcharan, 1997 (11) MP WN 3. [6] Also see Gayatri Bai v. Alka Sharma, 1997 (1) MPWN 98

16. Marking of ballot paper.-[l] Marking of ballot paper by mark other than the prescribed one- Vote is rendered void. Ravi Thakur v. Shivshankar, AIR 1997 MP 136. [2] Validity of ballot paper.-Putting of right symbol mark instead of cross mark - provision is directory & not mandatory.• Sub-rule 6(ii) of Rule 16 of M.P. Panchayat (Up-Sarpanch, President and Vice President) Nir- vachan Niyam, 1995 contemplates five category of cases in which the ballot paper is held to be invalid. Putting of any. other mark than the__one_prescribed indef (4) -bf -såld--ri.ilés--ie- ébntemilätéd"iii -thé - f6F declaring a ballot pgper as invalid. If only ma,rks are placed in a ballot peper in a manner to make it doubtful as to for which candidate the vote was intended to be given then the same becomes invalid. The grounds con- templated for declaring a vote as invalid does not indicate that a vote cast by putting any mark other than the cross mark is invalid, that being so, the requirement of putting cross mark is only directory in nature and not mandatory. Geeta Devi Yadav v. Archana, 2008 (1) MP I.J 261 = 2008(2) An-extra symbol mark was printed on the-ballot paper.--Held, when • it does not affected the election substantially then the Tribunal wrongly declared the election of petitioner as void. Smt. Kala Bai v. State of M.P., 2006(4) MPHT 243

17. Deficient amount of security deposited along with election petition- Before expiry of limitation, deficiency made good- Petition cannot be rejected.- Where an election petition was presented without sufficient amount of security deposit but the deficiency was made good within the period •preÉcribed for such presentation, the petition cannot be dismissed on the ground ofdeficient seeurity amount being deposited. AIR 1957 SC 363 & AIR 1957 SC 444 Foil. Kailashnarayan v. Namdar, 1996 JL.J 391. But where the full amount of security is not deposited, the.petition is liable to be dismissed. Mohan v. Shankarlal, 1996 (I) MP WN 126

18. Exparte order final.-Where the returned candidate after filing reply neither appeared nor adduced any evidence nor sought to get ex parte order set aside, the order becomes final and cannot be challenged. (PA)172 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 S. 122 error, If proof is furnished of some errors in respect of some ballot papers, scrutiny and recount cannot be limited to those ballot papers only. In Halebury's Laws of England it is observed that prima facie proof of error complained of must be given by the election petitioner and it must further be shown that the errors are of such magnitude that the result of the election so far as_it affects the returned candidate is materially affected, then recount is directed. The Supreme Court, in AIR 1975 SC 283, has said, "recount can be ordered where (i) all the material facts on which the allegations of ir- regularity or illegality are founded are pleaded adequately in the election petition, (ii) the Courtnribunal trying the petition is prima facie satisfied that the making of such an order is imperatively necessary to decide the dispute and to do cohplete and effectual justice between the parties. Ifthe order of recount is not in accordance with the law and on the basis of the material as required un&er the law tilting of election result on account of the recount, cannot be a ground for maintaining the order of recount and thereby declaration of the result. Order of recount by Tribunal and on basis of recount order of setting aside election held not justified. Bahoranlal v. Ganeshprasad, AIR 1999

MP 7. See also: [2] Suman Santoshkumar Patel v. Bhanwati Mahesh Pratap, 1999 (l) MPLJ 88. • In AIR-1989 SC 640, -Para •13,- it is- observed -åé-folloWs.-- "The settled position of law is that the justification for an order for examination of ballot papers and recount of votes is not to be derived from hind sight and by the result of the recount of votes. On the contrary, the justification for an order of recount of votes should be provided by the material placed by an election petitioner on the threshold before an order for recount of votes is actually made. The reason for this salutary rule is that the preservation of the safety of the ballot is a sacrosanct principle which cannot be lightly or hastily broken unless there is prima facie genuine need for it. The _right of a defeated candidate to assail the validity of an election result and seek recounting of votes has to be subject to the basic principle that the secrecy of the ballot is sacrosanct in a demOcracy and hence unless the affected candidate is able to allege and substantiate in acceptable measure by means of evidence that a prima facie case of a high degree of probability existed for the recount of votes being ordered by the Election Tribunal in the interests of justice, a Tribunal or Could should not order the recount of votes." In the instant case there was nothing beyond the pleading of the parties on record to enable the specified officer to form an opinion as required by Rule 21 of the Rules that there was in fact an improper acceptance or rejection of the votes or refusal of any vote or reception of any vote which was void. In fact the specified officer has proceeded to order the recount merely to ascertain whether or not the allegations contained in the election petition with regard to the improper rejection or reception of the votes were true or not. This clearly indicates that the specified officer had not formed S. 122 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)171 a concise statement of material facts and clear evidence in support of the facts pleaded. Small margin of victory by itself is not a ground for ordering recount. A roving and fishing inquiry is not permissible while directing recount of votes. The requirement of maintaining secrecy of ballot papers has to be kept in mind before directing a recount. The requisites for ordering re-count are a prima facie case and pleading of material facts detailing thc irregularities in counting of votes. Birjha Bai v. State of M.P., 2008 (2) MPLJ 591 2008(1) MPHT 203 - AIR 2008 (N00) 2806 MPDB]. [8] Recounting order was not proper since the Tribunal failed to ap-preciate factual sqenario in proper perspective. Further more, delegation of power of recount to a Committee and non- verification of ballot papers "by Tribunal itself, is illegal and impermissible in absence of any such provision. Snit. Sampat- Devi v. S.D.O. cum Prescribed Authority Niwadi, Tikamgarh, AIR 2007 (NOC) 2652 MP = 2007(3) 462 = 2007(3) JLJ 301 [DB]. [9] Recounting of votes and invalidation of votes.-As far as advert- ing into the merit with regard to recounting of votes and invalidation of votes are concerned, these questions could be decide only after issues are framed and evidence is recorded. Ravindra Singh v. SDO cum Prescribed Authority, Datia, 2006(3) MPLJ 570 = 2006(3) MPHT 150. [10] See also: Ramavtar Budhouwa v. Sint. Susheela Singh, 2007(1) JLJ 54; -Råfik O: -eJIJ244;- Rantavtar Budhouwa v. Smt. Susheela Singh, 2007(1) JIJ 54; Rooprani (Sint.) v. Sub-Divisional Officer, Damoh, 2007(3) JLJ 173. [11] Recounting of votes in panchayat election.-ln an election petition before the Tribunal, there was no allegation whatsoever that during the process of initial counting there was non-supply of adequate light and there was illegality in the counting of votes on that score. Filing of an application for recount does not necessarily mean that the election petitioner can ask for recount of votes before the Tribunal on the ground that his application -for- recount-was- -not-entertained.- There- h-a•s• •to-be-an imperative necessity and a foundation has to be made by bringing adequate material on record and adducing cogent evidence. There was nothing in evidence that irregularities or illegalities committed by the Returning _ Officer. In the absence of such material, the election Tribunal had fallen into gross error by directing recounting of votes. AIR 1997 SC 3072, AIR 1964 SC 1249, AIR 1966 SC 773, AIR 1972 SC 1251, AIR 1973 SC 215, AIR 1975 SC 283, 376 & 701, AIR 1980 SC 200, AIR \1984 SC 396, AIR 1993 SC 367, -(1999) 4 SCC 508, (2000) 8 SCC 355 & (2001) 3 SCC 81, Rel. Chandrawati .v._ Vijay Rajkumari, 2002Å4) JIJ 232

15. Order of recount-Order made on the result of illegal order of recount liable to beset aside.41] In AIR 1982 Supreme Court-1569, it is observed that when a petition is for relief of scrutiny and recount on the allegation of misconduct, the petitioner has to offer prima facie proof of errors in counting and if errors in counting are prima facie established a recount can be ordered. If the allegation is of improper rejection of valid votes which is covered by the brodd spectrum of scrutiny and recount because of misconduct, petitioner must furnish prima facie proof of such (PA)170 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI, 1993 S. 122 vvllich it must discharge in accordance with law. Asim Saha v. Collector, Kan.ker,

2001 (1) MPHT 6 (CG). (4.1 Recounting of votes- Permissibility.-The difference of votes polled by the winning candidate and the one who lost was of one vote only. It was contended by the candidate who lost that her legal votes were rejected, hence order of recounting by the Sub- Divisional Officer is quite quite proper and he has done justice in the cause. Ramrati v, S.D.O., Sidhi, 2005 (B) MPLJ 101. 15] Recounting order proper.•(i) The pleadings and proof in the ma tter ofrecount have relevance for the purpose of determining the question of jurisdiction to permit or not to permit recount. Since the polling and counting both performed in absence of sufficient light therefore recounting order was proper. Rajesh Kumar Banshkar v. Malti Parmar, AIR 2009 (NOC) 751 (M.P.) = 2009(2) MPHT 391 = 2008 (4) MPLJ 375 = 2009(1) MP WN 11. See also: Ramavtar Budhouwa v. Smt. Susheela Singh, 2007(1) JLJ 54. (ii) of votes was only 17. Electricity failed twice and votes were counted in candle light. Sufficient circumstances to order for recount. Rakib Mohanz,nad v. District Collector, AIR 2003 MP 39=2002 (3) MPLJ 415=2002 (5) MPHT 487 (DB). (iii) In counting, difference •of votes was only one, allegations made that valid votes were rejected and prayer for recounting made, petitioner objected that elec$ion. petitipn:nqt but the S.D.O. found it_properly verified. Held, that recounting order was propei• after considering evidence on record. No interference called for. Ram .Råti v. Sub-Divisional Officer, Sidhi, 2005(4) MPHT 74 = 2005(3) JLJ 48. [61 In ex parte proceedings recounting order by tribunal.-No issue framed by the Election Tribunal because the proceedings were ex parte still Tribunal recorded evidence and found that earlier two applications for recounting before Presiding Officer and before Returning Officer not con- sidered and no order was issued on both applications. Result of counting of votes 'Vas also equal and matter decided by drawing lots. Held, no fault in recounting oi•der by Tribunal. Shivan Lal v. SI).O.• (Rév.),- Mültåi,- 2006(4) 401. 17} Recounting order not permissible.-(i) Tribunal directed recount- ing of votes for the reason that volume of rejected votes was very high and 2173 votes were rejected. Held, order of recounting of votes is not permissible only for the reason of high volume of rejected votes when there is no specific irregularity in the counting is pointed out and unless no sound legal reasons found. Kanzlesh Bai v. Upper Commr. Bhopal & Hoshangabad, 2008 (2) MPI,J 558 = 2008(2) MPI-IT 466 = AIR 2008k(NOC) 1318 MP. (ii) The petitioner not stated about any irregularity or illegality in respect of poling in booth No.20. Nothing has been brought on record. The question *that emerges for consideration is whether there is adequate plead- ings and ample evidence to direct recount of votes. An order for recount cannot be ordered as a matter of course unless the electipn petition had laid the foundation and there is clinching evidence to support the case set up by the election petitioner. An election petition seeking a recount must contain s. 122 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)169 MPLJ 121=2002 (3) MPHT 547

12. Aggrieved person.-Locus standi of a person to challenge the order on an election petition, passed by the election tribunal stands on a different pedestal than that of public interest litigation. It is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. The meaning of the expression 'person aggrieved' may vary according to the context of the statute and the facts of the case, nevertheless, normally 'personal aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced, which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something. In the instant case no decision against the petitioner had been pronounced and he was not deprived of anything. He wa.not a candidate in the election. The petitioner did not appear at the trial of the election petition although he claimed to be an election agent of the returned candidate and woke up for the first time by filing this writ petition. Therefore, the petitioner was not a person aggrieved to maintain the writ petition. Bhushan Ramzal Kashyap v. S.D.O.Janjgir, 1998 (2) MPLJ 710

13. Setting aside of election.-[l] Election once held can be set aside by an election petition only which is allowed on its merits. Udaysingh v. Himmat Singh, 1999 (1) JLJ 200. . [2] Disqualification under S. 40 of the Ac't- and was removed from the post of Sa-rpahch because he did not pay the dues recoverable by the Panchayat. He did not filed the nomination

form indicating in the declaration that the money was due to him. Subsequently, he contested an election of Jila Panchayat by suppress- ing the fact of his disqualification and was elected. Held, it is mentioned in the provisions of S.36 itself that he is not entitled to hold the office as he was not eligible to contest the election. When the fact is absolutely tell-tale and clear then it does not require any inquiry. His election therefore is declared illegal. AIR 1999 SC 1723 and AIR 2003 SC 2128 Relied. Suresh Choudhary v Verma; 2006(3) MPI.J 506 - 213. - 14. Election petition-Recount of votes.-[ll To make out a case seeking direction for recount, the facts must be pleaded and it should be supported by material particulars. Until & unless prima facie satisfaction of the Court is recorded, secrecy of the ballot papers ought to be maintained. Merely on vague allegations recount can not be directed. Ganesh Ram Gayari v. Bagdiram, 2013(2) MPLJ 447 = ILR 2013 MP 1793. [21 Held. mere rejection of an applicaUon under Rule 80 of Nir-vaél-iaf)" NiYäni filéd •by-the Not •a' Stiffiéiéfit for ordering recount of votes. Vidhyawati Lilhare v. Sub-Divisional Ojicer- Lar!jtBataghät; 2010(1) MPLJ 115 2010(4) MPHT 92 = 2010(2) JLJ 29. [3] When a plea is. accepted by the Election Tribunal regarding rejection or acceptance of certain votes, then it is the paramount duty rather pious duty of the Tribunal to itself count and recount the votes. The power to recount cannot be delegated to third parties as it is the duty of the Tribunal (PA)168 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 S. 122 the petitioner in writ petition such as seeking declaration as duly elected and claiming right to function as such. Sugnabai v. Election Officer, 1996 JIJ 48=1996 MPLJ 184

9. Nomination paper rejected- Remedy.- Where any nomination paper is rejected by-the Returning Officer under Rule 35, his order is final subject to revision, if any, under rule 36. The Election Commission has no jurisdiction to reyiew' such an order either on any application or suo motu. The remedy lies in an election petition only under the provisions of this section. State Election Commission M.P. v. Ras Bihari, 1995 JLJ 651=AiR 1995 MP 245 (DB)

10. Petition not attested by election petitioner- Effect.-[l] Where election petition was not attested by the petitioner as required by sub-rule (2), the provision of the rule being mandatory, failure would lead to sum- mary dismissal of election petition. Attestation by Advocate would not save the petitioner. Dr. Omprakash Soni v. Ashok Kumar Bhargava, AIR 1996 MP 43. [2] The provisions are mandatory. Attested copies ofdocuments supplied to respondents not signed by petitioner. Petition liable to be dismissed. Defect cannot be cured after expiry of period of limitation. Amolsingh v. Hameersingh, 1996 (1) MPWN 122. [3] Petition properly of the copy of the election petition which was accompanied with the petition and was supplied to the petitioner, revealsihat on each and eyery page the third respondent-has put . her signature. In the circumstances, mere non-mention of 'true copy' would not be sufficient to hold that the Rule 3(2) of the Rules has not been complied with. Ku. Parwati Bai Thakur v. State 0fM.P., 2007(3) MPHT 63. (b) Photo copy of petition supplied to the respondent was signed by the petitioner but not mentioned words "attested true copy" held it is substantial compliance of Rule 3(2) and not liable to dismiss under Rule 8. Mrs. Indira Singh v. Mrs. Anjana Sharma, 2006(4) MPHT 152. (c) Signatures found but "true copies" or "attested as true copy not mentioned held it is proper presentation..Subba Rao v.-Member, Election Tribunal, AIR 1964•SC 1027 & Rameshwar Dayal Arale v. Munna Singh Bhadoria, AIR 1992 MP 161 [Relied on.] Ravindra Singh v. SDO cum Prescribed Authority, Datia, 2006(3) MPLJ 570 = 2006(3) MPHT 150

11. Trial of petition.-[l] Trial of election petition should be by some judicial officer or by an officer higher than the Sub- Divisional Officer. The specified Officer should have minimum knowledge of election law. Udaysingh v. Himmat Singh, 1999 (1) JI_J 200. [2] Age of returned candidate cannot be 'decided solely on the basis of the age shown in the electoral roll. Other evidence adduced should also be considered. Fakhruddin v. Fazal Khan, 1997 (1) MPWN 145. [3] Election petition and written statement thereto may be allowed to be amended. Parties should be given full opportunity to plead and prove their case. Chhaganlal v. Ramchandra, 1998 (1) -Vidhi Bhaswar 243. (4] Framing of issues and recording of evidence are necessary for proper adjudication of an election petition. Kalka Prasad v. Ramjilal, 2002 (3) S. 122 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)167 tion, amendment proposed and election petitioner moved an application seeking leave to join the two candidates of the election Respondents No.2 & 3. Since the limitation of 30 days from the date of result of election has béen prescribed, an Election Petition against the aforesaid persons Resp. No. 2 & 3 herein would be barred by limitation on the date of presentation of the application for their joinder by way of amendment.

Mohammad Isha v. Vasudeo, 2008 (1) MPLJ 547. [2] Chunge of relief or something new, by amendment applica- tion. not provcd.-Petitioner seeking amendment of material particulars so that correct particulars of election petition may come into notice of the Tribunal. Relief which was prayed initially by petitioner was that "the election petition filed by the petitioner be allowed, recounting be made and election petitioner be declared as elected member". It cannot be said that it is a change of relief or something new has been prayed. In initial prayer, declaration of election of respondent as void was implied. By amendment prayer was made specifically. Order allowing application for amendment is therefore proper. Ajay Markam v. Addl. Commissioner, AIR 2007 (NOC) 829 MP

8. Writ Petition.-[l] Availability of an alternative is not always an absolute bar for maintainability of writ petition. Sukhnandan Patel v. State 0fM.P., 2003 (1) MPLJ 220=2003 (2) JIJ 74. [2) Order of Single Judge against petitioner amply supported by plead- ings and- evidence on-record. Order confirmed. -Ramnivas v. .Pooran, AIR- 2002 MP 31=2001 (3) MPHT 347 (DB). [31 In election of Vice-President of Zilla Panchayat, where nomination paper of the petitioner was not accepted, he should have agitated the matter by filing election petition to the Tribunal. Writ petition dismissed. Nanhe Bhai Singh v. State 0fM.P., 2002 (4) MPM 161. [4] In an election to the post of Vice-President in reserved category of Scheduled Tribe, there was serious dispute with regard to social status of returned candidate. No such objection was raised by the other candidate at the time scrutiny of nomination paper- before-the Election Officer. Proper remedy was to approach the Election Tribunal to determine social status of the returned candidate. No writ lies. Ashok Kumar Rawat v. State of M.P., 2002 (4) MPLJ 446=2002 (4) MPHT 246. [4A] Direct writ petition when justified.-Despite alternative remedy a writ petition may be preferred directly :- (i) where the Court or the Tribunal lacks inherent jurisdiction; or (ii) when a writ is for enforcement soffundamental rights; or (fii) there is a violatiorL of principal of natural justice ; or (iv) Wheru vires• df the Act is in question. The Inand4!pry eÆØn.t.ofthe prev«isipn.could ue,rßlaxpd .01,11y if jt could be shdWn• that no prejudice was caused to the party complaining. Ramesh Soni v. State 0fM.P., 2008 (1) MPI.J 207. 15] No challenge to election by writ petition.- The section con- templates challenge of election only by election petition. It cannot be challenged by way of a writ petition and as such no relief can be claimed by (PA)166 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 S. 122 Petition liable to be dismissed. Rama Banjara v. Kanchhedilat, 1998 (I) MPWN 63. [2] Where petitioner claims that he or any other person be declared elected in place of the returned candidate, he has to join only the contesting candidates as party and not those whose nomination has been rejected or who withdrew his nomination. Harishankar Suryavanshi v. State of M.P., 1998 (2) Vidhi Bhaswar 226, [8] Apart from other prayers, where the petitioner algo prays in the petition that he be declared elected, it is not necessary that such candidates who withdrew their nominations be also made party to such petition. Devram v. sadu, 1996 JIJ 240. 6-A. Burden of proof. -Ill It is settled law that where the election petition is filed by the election petitioner contending that the returned candidate was disqualified to be elected on the ground that she was below the prescribed age, it is for the election petitioner to establish that the returned candidate was disqualified and not the candidate. Basanti Bai v. Premwati Bai, 2012(4) MPLJ 257 = 2012(5) MPHT 386. [2] Contents of petition & its proving.-Burden to prove case on the basis of proper pleading is on the election petitioner. Impugned order of Tribunal passed in mechanical manner declaring the election is invalid and directing for recounting of votes set aside. Ifthe contents of election petition are examined in justaposition to the evidence led by the election petitioner, it would be clear that the pleadings are not supported with the-high-degree of evidence which is required in an election matter to support the pleading. The burden to prove the case is always on the shoulder of the election petitioner. If election petitioner fails to prove the allegation to the hilt on the basis of proper pleadings and evidence of a very high degree, merely on the basis of suspicion, election cannot be declared illegal and sacrosancity of votes cannot be permitted to be destroyed. In this view of the matter, the method adopted by the Election Tribunal in shifting the burden of proof on the present petitioner cannot be upheld. The Tribunal in a mechanical manner declared the election as invalid and directed for recounting. The said order is set aside and -the-petition is allowed. Hanuman Singh -v. State 0fM.P., 2012(3) MPLJ 191 2012(5) MPHT 162

7. Remedy when available.-(l) The remedy of filing election petition is available only when the election is notified. Sugnabai v. Election Officer, 1996 JLJ 48 = 1996 MPLJ 134. (2) Petition not necessary when person disqualified for the post of office bearer.-Respondent No. 7 disqualified for being office bearer of Panchayat on ground ofnon disclosure that he had been convicted for offence of murder, this fact not

denied by him. He raised objection that he could be disqualified only by way of filing election petition. Held, that Article 243-0 cannot destroy basic structure of judicial review under Article 226 of the Constitution. High Court is not prevented from declaration as to qualifica- tion under Article 226. Election of member set aside. Ramkumar v. State of M.P., 2013 (4) MPLJ 207 = 2013(4) 161 = ILR 2013 MP 1578. 7-A. Amendment application.-[ll Seeking amendment for joinder - Barred by limitation.-After 3 months from the date of Notification of elec- S. 122 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)165 totally inconsequential. Rejection of nomination paper is a ground for filing election petition under Hule 21 of the rules but said rule has to succumb to the letter and spirit of language employed under S. 122 of the Act which bars filing of election petition in absence of notification. When the Act does not permit filing of petition, rule renders no assistance to the person aggrieved. Ajab Rao v. State of M.P., AIR 2001 M.P. 296=2001 (3) MPLJ 251=2001 (4) MPHT 461. [3] Procedure to be followed by S.D.O. if petition is incompetent- .-When an election petition was not duly constituted is filed before the S.D.O. and the S.D.O. finds that the question raised in the petition can be con- veniently decided by a higher officer in exercise of the powers under S.36 then a reference certainly could be made by him because S.36(3) clearly provides that the Collector may give his decision either on an application made to him by any person or on his own motion. Bhuvaneshwar Prasad v. State 0fM.P., 2009(1) MPLJ 434 (DB) = AIR 2009 (NOC) 24'iMP (DB) = 2008(5) MPHT 72 (DB) = 2008(3) JLJ 293. 14] Invalid Dismissal.-On the ground of pre-mature and election has not been notified.-Counting of votes took place and results declared there were irregularities in it. The SDO did not care to find out as to when and in what manner the result was declared and election was notified. He simply mentioned-in the order that as- the. election is not notified and the election- petition filéd before •notificåtiÖn- is- pré-m-a€ure. There is no enquiry by the election tribunal with regard to the fact as to when and in what manner the election results and the election itself was notified. Held that the SDO not considered all questions and has dismissed the petition even without in- dicating a date when the election is said to have been notified and the results were declared. Instead of considering the question properly after conducting proper enquiry action taken for dismissing the election petition only on the ground that election in not notified was not proper. The order of SDO has to be quashed. Ravindra Singh v'. SDO cum Prescribed Authority, Datia, 2006(3) MPLJ 570 MPHT 150. [5] Election petition not maintainable when vacancy was filled up as provided under S.38.-No election petition is maintainable when a vacancy is filled up in accordance with the provisions contained in S.38. Order passed by specified officer setting aside the election of Sarpanch under S.38 was set aside by Collector in exercise of his revisional powers. Order of Collector not bad in law. Shivkumar v. Collector, Mandla, 2001 (2) MPLJ 464 = AIR 2001 NOC 107 MP = 2001 (5) MPHT 619. [6] Petitipnjncompetent.-Where a petition is held to be incompetent, any finding given in such petition cannot"be •held -to -be final. Anjana v. State 0fM.P., 1998 (2) JIJ 328. 5-A. Disposal of Election Petition.-ln sub-sectioh (3) it is provided that petition shall be enquired into or disposed of within six months according to such procedure as may be prescribed

6. Parties to petition.-[l] Petitioner claiming to have been duly elected and seeking such declaration against the returned candidate in an election petition. He did not join other candidates as parties to such a petition. (PA)164 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 S. 122 [I-Cl There is a satutory bar provided in admitting election petition beyond period of 30 days from the date of notification, Provisions of Section 5 Limitaion Act are not applicable in such proceedings. Order admitting petition condoning delay on extraneous consideration without there being any explanation for the delay would be contrary to statutory provisions and cannot be sustained. Kalka Prasad v. Ramjilal, 2002 (3) MPLJ 121=2002 (3) MPHT 547. [2] The limitation prescribed for filing of election petition cannot be extended. Provisions of Limitation Act, including its section 5, do not apply to such presentation. Kishan Singh v. Harveer Singh, 1998 (I) MP WN 83. 4-A. Scope ofS. 122.-A perusal of S. 122 of the Act shows that a complete code has been provided for challenging of an election by way of an election petition. Satya Narayan v. AddL Commr., Ujjain, 2008 (1) MPIJ 505 = AIR 2008 (NOC) 1032 MP

5. Election petition: [1 ! Election petition towards reserved seat.-The seat was reserved for S.T. whereas the petitioner belonged to O.B.C. Case of petitioner was that petitioner was Sahu by caste and after leaving her husband who was Sahu by caste had started living with a person who was Panika by caste. Held, it is clear from affidavit filed by petitioner before High Court described her as Savitri Sahu @ Suparnakha w/ o. Shivlal Panika. Though, an explanation given by the learned counsel that -it was the

mistaké of the wrong affidavit.was However, there is no material on record to establish that any action has been taken against the respective counselfor their alleged mistake in allegedly changing the identity of the petitioner. In absence whereof, it has to be accepted that Savitri Panika and Savitri Sahu @ Suparnak- ha are one and same. Therefore findings given by prescribed authority that petitioner belongs to Sahu caste cannot be faulted with. Savitri Panika D. State of M.P., ILR 2013 MP 2370. [I-Al Election Petition filed by unauthorizedperson.-Petition filed by the öetitioner's Advocate who-was -not specifically authorised to do so, election petition liable to be dismissed. Kamlesh Nut v. Commr., Revenue Division, Shahdol, 2013(1) MPWN 6. [2] Election petition- Maintainability- Rule 90 of Nirvachan Niyam-Rejection of nomination paper of a single candidate-No notification-Held petition not maintainable.-Where there was solitary candidate for election to office of Sarpanch/Panch and his nomination form was rejected, there Could be no election petition as there would be no declaration of result of election and condition# prescribed by rule 90 would not be fulfilled. Once the nomination paperS were rejected there was no election and there was no 'returned candidate. In absence of returned candidate there could not -hqye been deglaretion of ghe result and as a consequence thereof there could not have been notification as envisaged under rule 90 of Nirvachan Niyam, 1995. In absence of the notification as per law laid down in Rule 90, the application before Che specified officer was incompetent. It well settled in law that when a proceeding is incompetent and not maintainable before the authority the findings given by him are S. 122 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)163 [31 Rule 9 does nowhere say that the copy required to be verified under Rule 3 is only to be served upon the respondent'. However a juxtapose reading of Rule 9 with Rule 3 we must observe that the copies submitted under Rule 3(2) must only be supplied to the party/respondent after they put their appearance in the Court. Lata Patte v. Smt. _KamZesh Gautæn, 2008 (1) MPLJ 388. 14] As far as the presentation ofelection petition is concerned, provisions of relevant rules 3 and 8 are quite clear. An election petition under rule 3(1) should be presented by the petitioner personally or by a person duly authorised in writing in this behalf by the petitioner. Where a petition was presented by the lawyer of the petitioner who was not so authorised ; presentation of petition is not proper and under the provisions of rule 8, such a petition is liable to be dismissed. Suman Santoshkumar Patel v. Bhanwati Mahesh Pratap, 1999 (1) MPLJ 88. [51 A voter of the constituency can alone file an election petition. But where petition is neither filed in time and security also is not furnished, such a petition cannot be entertained. Anjana Mulkawar v. Bhanu Yadav, 1997 (2) JLJ 78. [6] Verification of Election petition. Substantial compliance.- The object of verifying the pleading is fix on the party responsibility about truthfulness of its contents and the same Rule has been made applicable to the election petition filed-under S. 122 of the PanchayatAct.-When _thqfacts- are Vei•ihéd by åffidavit, then •thö rule has been Substantially compiled with. Ramrati v. S.D.O., Sidhi, 2005 (3) MPLJ 101

4. Limitation.-[l] Effective date for starting limitation as prescribed in section 122(2) is the date of the notification of the election. Election petition cannot be admitted beyond the period of thirty days from the notification of the election. Only consequence Of causing the delay in filing the election petition would be its dismissal. Mumbi Bai v. State of M.P.. 2012(2) MPLJ 456 = 2012(2) MPHT 305. [I-A] Election petition barred by limitation.-Filing of the elect_ien petition after expiry of thirty days is not maintainable being barred by limitation and even if the S.D.O. issued notices to the parties, the same would not confer any jurisdiction upon him because he has no jurisdiction to condone the delay and proceed further with the matter.Bhuvaneshwar Prasad v. state 0fM.P., 2009(1) MPLJ 434 (DB) AIR 2009 (NOC) 242 MP (DB) = 2008(5) MPHT 72 (DB) = 2008(3) JLJ 293. [I-Bl An election petition was maintainable within a period of 30 days. Elections had been held on January 29, 2005. The election petitioner filed the electipn petition on February 28, 2005. As per the provisions of the General' CläuSés- day On whith the erettiöfis wä•é held-in January 29, had to be excluded for computing the period of limitation. Thus, the • election petition had been filed-within the •per'iöd -of limitation . Even otherwise it is fairly informed by the learned counsel for the parties that February 27, 2005 was a Sunday. Thus, the election petition had been filed on next opening day i.e. February 28, 2005. Satya Narayan v. Addl. Commr., Ujgin, 2008 (1) rvæLJ 505 = AIR 2008 (NOC) 1032 MP. '+ i See also: Mohammad Isha v. Vasudeo, 2008 (1) MP IJ 547. (PA)162 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 S. 122 1. General interprétation.-[l] It has been specifically provided that an election conducted or contested under the provisions of this Act can be called in question only by an election petition filed in the prescribed manner under this Act and none else. It is also provided that such an election petition shall be presented to the following officers:- (i) Sub-Divisional Officer in the

case of Gram Panchayat; (ii) Collector in the case of Janpad Panchayat; and (iii) Divisional Commissioner in the case of Zila Panchayat. [2] Sub-section (2) makes provision to the effect that the election petition as aforesaid should be presented within 3() (Thirty) days of the election being notified. [2-AI By amending Act 26 of 2012, w.e.f. 26-5-2012, it is provided that such petition shall be enquired into or disposed of within six months according to such procedure as may be prescribed. [3] Notification of election.-(l) Rule 90 of the Nirvachan Niyam, 1994 makes provision for notification of election. It also prescribes the manner in which such election is to be notified. (2) Rule 47 does not relate to pf ele_ction but it-relates to-declåration of candidate elected unupposed. Pramilabai v. Sub-Divisional Officer, Bareli, 1999 (2) MPLJ 209. (3) The limitation of 30 days för filing election petition would start from the date when such election is notified in the manner prescribed by Rule 90. It is not to be reckoned from the date of declaration of result either of an unopposed candidate or that of a candidate who won in the_contest. Pramilabai v. Sub-Divisional Officer, Bareli, 1999 (2) MPLJ 209

2. Jurisdiction to hear election petition.-ln the case of Janpad Panchayat, election pe_tition is_to_ be_heard by .the Collector. He can transfer the same for hearing to the Additional Collector. Rajkumar Shivhare v. Anand Kumar, 2000 (2) JIJ 121=2000 (3) MPLJ 391

3. Presentation of election petition.-Ill Invalid presentation.-The election petition was not presented by the petitioner but it was filed by somebody else. Therefore, a election petition presented contrary to the provisions of sub-rule (1) of Rule 3 is not maintainable and has to be dismissed in view of the mandatory requirement of Rule 8 of the Rules, 1995. Geeta Devi Yadav v. Archana, 2008 (1) MPLJ 261 = 2008(2) JLJ 34. [I-A] Vakalatnama does not authorise an Advocate in writing to present . the election petition before the Competent Authority. Urmila Devi v. Return- ing Officer (Panchayat), 2008(4) MPHT 410 = 2008(3) MPWN 92. [2] Enclosement of receipt not compulsory in each case.-Rule 7 does not say that an election petitioner is bound and obliged to file a copy of the receipt along with the election petition. If the Presiding Officer receives the security cost in cash and does not issue the receipt immediately there- after, then such a lapse or inaction on- the part of the Presiding Officer or his office, election petitioner cannot be allÖwed to suffer. Lata Patel v: Smt. Kamlesh Gautam, 2008 (1) MPLJ 388. s. 122 (ii) (iii) PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI.. 1993 (PA)161 in case of [Gram Panchayat or Gram Sabhal to the Sub- Divisional Officer (Revenue; in case of Janpad Panchayat to the Collector; and in case of Zila Panchayat to the Divisional Commissioner and not otherwise. (2) No such petition shall be admitted unless it is presented within thirty days from the date on which the election tx x x] in question was notified. 3 [(3) Such petition shall be enquired into or disposed of within six months according to such procedure as may be prescribed.] 2. 3. 4. 5. 5-A. 6. 6-A. 7. 7-A. 8. 9. IO. 11. 12. 13. 14. 15. 16. 17. 18. 19

20. COMMENTARY SYNOPSIS General interpretation. Jurisdiction to hear election petition. Presentation of election petition. Limitation. scope of S

122. Election Petition. Electiop_ Pepitipn. Parties to petition. Burden of proof. Remedy when available. Amendment application. Writ petition. Nomination paper rejected-Remedy. Petition not attested by election petitioner-Effect. Trial of petition. Aggrieved person. Setting aside of election. Election petition-Recount of votes. Order of recount-Order made on the result of illegal order of recount-liable to be set aside. Marking of ballot paper. Deficient amount of security deposited along with election peti- tion-Before expiry of limitation, deficiency made good- Petition cannot be rejected. Expartemer..final. Räiisio.n. Comments under Election petition Rules of 1995. 1 2 3 Subs. by M.P.Act 3 of2001. w.e.f.26-1-2001. Omitted by M.P. 26 of 1994 !30.5.94}. Subs. by M.P. Act No. 26 of 2012 was as follows: "Such petition shall be enquired into or disposed of according to such procedure as may be prescribed." (PA)160 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI.} 1993 S. 118 118. Records of I [Panchayat or Gram Sabhal open to inspec- tion.- Subject to rules made under this Act and on the payment Of such fee as may be prescribed the records of [Panchayat or Gram Sabha] or any committee thereof, shall be open to inspection to such person, as may desire it and certified copies thereof shall be given to such person as may.apply for them on payment of such fee as may be prescribed. Rules:- The State Government has made the following rules in exercise of the powers conferred by this section. These Rules shall be found under Rules given separately. "Inspection of Records and Copies Rules, 1995" 119. Method for serving documents, etc.-Save as otherwise provided in this Act the service Of any notice or other documents under this Act or under any rule, byelaw or order made thereunder shall be effected in the prescribed manner.

Rules:- The State Government has made the following rules in exercise of the powers conferred by this section. These Rules shall be found under Rules given separately. "Panchayat (Method of Service of Notice and Document) Rules, 1995" 120. Entry for purposes of Act, etc.-It shall be lawful for the office • bearers ofa [Panchayat or Grayn Sabha] pr officer authorised _by such [Panchayat Or Gram Sabha] in this behalf•tö enter in cofinecfiön with' any work relating to the 5 [Panchayat or Gram Sabhal between sunrise and sunset with such assistants as he may deem necessary into and upon any building or land: Provided that no building or land which may be occupied at the time shall be entered unless a written. notice of twenty four hours has been given to the occupants: Provided further that Iin the case of building used as human dwelling due regard shall be paid to the social and religious customs. of the occupiers

121. Bar to interference by Courts iii electoral matters.-The validity of any law relating to the delimitation of constituencies or the allotment of seats in such constitueficies, made or purporting to be made under this Act shall not be called in question in any Court

122. Election petition.-(l) An election 6 [x x xl under this Act shall be called in question only by a petition presented in the prescribed manner: - 1 2 3 4 5 6 Subs. by M.P.Act 3 of 2001. w.e.f.26-1-2001. Subs. by M.P.Act 3 of 2001. w.e.f.26-1-2001. Subs. by M.P.Act 3 of 2001. w.e.f.26-1-2001. Subs. by M.P.Act 3 of 2001. w.e.f.26-1-2001.. Subs. by M.P.Act 3 of 2001. w.e.f.26-1-2001. Omitted by M.P. 26 of 1994 130,5.94]. S. 117 PANCHAYAT RAJ AVAM SWARAJ ADI-11., 1993 (PA)159 sub-section or divert such land to a purpose other than the purpose för which it has been acquired

114. Central Government or State Government not to obtain licence or permission.-Notwithstanding anything contained in this Act or any rules or byelaws made thereunder the Central Government or State Government shall not be required to obtain any permission or licence in respect of any property of such Government or any place in occupat*on or under the control of such Government

115. Power of Panchayat •to borrow money.-Subject to the restriction contained in any enactment for the time being in force relating to raising of loans by local authorities a Panchayat may, with the previous sanction of the State Government raise a loan for carrying out the purposes of this Act: Provided that nothing contained in the Local Authorities Loans Act, 1914'(No. 2 of 1914) or the Madhya Bharat Local Authorities Loans Act Samvat, 2007 (1950) (No. 64 of 1950) and rules made under the aforesaid enactment shall apply in respect of loan taken from the Government or any other authority constituted under any law for the time being in force and which is in receipt of a grant from the State Government. Rules:- The State Government has made the following rules in exercise of the powers conferred by this secfion. These Rules shall be found under Rules gi#en sepatätely;. "Panchayat (Logns from Government or Financial 1999" 116. Writing off of irrecoverable sumsand unusable material.- The irrecoverable sums due to Panchayats and such material as may not be useful shall be written off in the prescribed manner. Rules:- The State Government has made the following rules in exercise of the powers conferred by thiS section. These Rules shall be found under Rules given separately. "Irrecoverable Sums Rules, 1995" 117. Prohibition of-remuneration to members. -No member of a Panchayat shall be granted any remuneration or allowance of any kind whatöoéVer by the panchayat except in accordance with the rule iiiåde- in this behalf. Rules:- The State Government has made the following rules in exercise of the powers conferred by this section. These Rules shall be found under Rules given separately. L-Züa P.an.chayat Members (Travelling. and .öther. Allowances),• Rules 1995. 2. 'Janapada Panchayat Members (Travelling and other Allowances), Rules 1995

3. Gram Panchayats (Travelling Allowance and other Allowances) Rules, 1995.(PA)158 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 S. 109 (3) Nothing in this section shall be deemed to apply to any suit instituted under Section 38 of the Specific Relief Act, 1963 (No. 47 of 1963)

109. Certain suits against members officers etc.to be defended at cost of I [Panchayat or Gram Sabhal.- With the previous permission f the Collector suit against any office bearer. officer or servant of a 9 IPanchayat or Gralli Sabha] arising out of anything done or any action taken by him under this Act or the rules or byelaws made thereunder, shall be defended by the 3[Panchayat or Gram Sabha] concerned on behalf of such person and the expenses incurred on such defence shall be paid out of the funds of the 4[Panchayat or Gram Sabhal concerned

110. Bar of other proceeding in respect of tax etc.-(l) No objection shall be taken to any valuation, assessment or levy in any manner other than the manner provided in this Act and the rules made

thereunder. (2) No suit for damages or for specific performance shall be main- tainable against any (Panchayat or Gram Sabha] or any office bearer, officer or servant thereof, on the ground that any of the duties specified in this Act have not been performed

111. Members and servants of Panchayat to be public servant.- Every office bearer of Panchayat and every officer or servant thereof shall be deemed to be public servant within the meaning of Section 21 of the Indian Penal Code, .1860 (XLV of 1860)1 112. Vacancy or defect in constitution of procedure etc. not to invalidate act of Panchayat. -No act of Panchayat shall be invalid merely by reason of— (a) any vacancy in or defect in the constitution thereof; or (b) any defect in the election. co-option or appointment of a person acting to be a office bearer, thereof; or (c) any inegularity in its procedure not effecting the merits of the case

113. Acquisition of land.-(l) Where any land is required for the purpose of this Act and the Panchayat is unable to acquire it by agreement, the State Government may at the request of the Panchayat and on the recommendation - of the Collector proceed to acquire it under the provisions of Land Acquisition Act. 1894 (No. 1 of 1894) and on payment by the Panchayat of compensation awarded under that Act. and all oüler charges incurred by the State Govemment in connection with the proceedings, the land shall vest in the Panchayat on whose account it has been so acquired. (2) The Panchayat shall not without the previous sanction of the State Government transfer- any land which has been acquired under 2 3 4 5 Subs. Subs. Subs. Subs. Subs. by M.P.Act 3 of 2001, w.e.f.26-1-2001. by M.P.Act 3 Of 2001. w.e.f.2&1-2001. by M.P.Act 3 of 2001, w.e.f.26-1-2001. by M.P.Act 3 of2001. w.e.f.26-1-2001 by M.P.Act 3 of 2001. w.e.f.26-1-2001. S. 108 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)157 information shall, on conviction be punished with •a fine which may extend to two hundred fifty rupees

105. Prohibition of bidding.-(1) No member or servant of a Panchayat or any officer having any duty to perforrn in connection vnth the sale of movable or immovable property under this Act shall directly or indirectly bid for Or acquire interest in any property sold at such sale. (2) Any person who contravenes the provisions of sub-section (l) shall on conviction, be punished with fine which mey extend to two hundred fifty rupees and if he is an officer or servant of a Panchayat, he shall also be liable to be removed from service

106. Procedure to make good the damage to any Panchayat.-lf• through any act, neglect or default on account of which any person shall have incurred any penalty imposed by or under this Act and any damage to the property of any Panchayat have been cause by any such person, he shall be liable to make good such damage. as well as to pay such penalty and the value of the damage, shall in case of dispute, be determined by the Magistrate, by whom the person incurring such penalty has- been convicted and on non-payment of such value on demand, the; same shall be recoverable as arrears of land revenue

CHAPTER XIII - MISCELLANEOUS 107. Indemnity for acts done in good faith.-No -suit shall be maintain-alple- against- any I -Gram- Sabha] -.or -any committee! or any office bearer, officer or servant thereof or any person acting under the direction of any such 2 [Panchayat or -Gram Sabha]; its committee; office bearer, officer or servant in respect of anything in good faith done or intended to be done under this Act or under any rules or byelaws made thereunder. COMMENTARY Applicability.-Bär of suit, does not apply in a case where there is demand of bribe by_ the Panchayat Officers. In such_cases such ofrers act in their personal capacity. Harisingh v. Rameshchand, 1997 (11) MP WN 53

108. Bar of suit in absence of notice.-(l) No suit shall be instituted against any [Panchayat or Gram Sabha] or any office bearer, officer or servant thereof or any person acting under the direction of any of the authorities, mentioned in this Act for anything done or purporting to be done under this Act unless a notice under Sééfib*rf80iö'f ffié*Civil' Pi:oöédüi-e- Cöde,- '1908* (N.ö. • V of 1908) duly served. (i) Every such suit shall be dismissed unless it is instituted within six months from the date of the accrual of the alleged cause of action. 1 Subs. by M.P.Act 3 of 2001. w.e.f.26-1-2001. 2 Subs. by M.P.Act 3 of 2001, w.e.f.26-1-2001. 3 Subs. by M.P.Act 8 of 2001, w.e.f.26-1-2001. (PA)156 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 S. 101 under Section 168 of the Indian Penal Code, 1868 (XLV of 1868). C ENT ARY Bar-interpretation.-The writ petition contending that on the date of the grant of fishing right of the 5th respondent- society, its President, namely Punit Ram was a Panch of said Janpad Panchayat and therefore the bar enacted in S. 100 was attracted. Held, that Section 100 of the Adhiniyam provides that if a member or office bearer or servant of Panchayat knowingly acquiree directly or indirectly any-personal

share or interest (emphasis supplied) in any contractor employment with, by or on behalfofa Panchayat without the sanction Ofor permission of the prescribed authority, he shall be deemed to have committed an offence under S. 168 of the Indian Penal Code, 1868. 'What is prohibited under S. 100 of the Ad- hiniyam is that a member or office bearer or servant of the Janpad Panchayat under any contract or arrangement is not entitled to acquire either directly or indirectly any interest or right. It is nobody's case that under any contract between the 3rd Respondent Janpad Panchayat and Punit Ram, the then President of the 5th Respondent -Cooperative Society, he had acquired any personal share or interest and, therefore, he is liable to be punished as envisaged under S. 100 of the Adhiniyam. A Co- Operative Society registered under the M.P./C.G. C.åCOp. Societies Act, 1960 has a distinct and separate legal entity than the per- sonality of the members constituting it. The bar contained in S.. 100-of the - Adhiniyam cöüld iiöt bé applied to the faces of this case. Smi. Jaitrinbai Dheamar v. State 0fC.G., 2006(2) CGI.J 44

101. Wrongful restraint of officers etc.-Any person who prevents any officer or servant of a Panchayat or any person to whom such officer or servant has, lawfully delegated his powers of entering on or into and any place building or land from exercising his lawful powers of entering thereon or therein, shall be deemed to have committed an offence under Section 341 of the Indian Penal code, 1868 (No. N.,v Of 1868)

102. Prohibit against obstruction of member of Panchayats.- Any person obstructing any member, office bearer or servant of a Panchayat or any person with whom a contract has been entered into by or on behalf of a Panchayat in the discharge of his duties or anything shall on conviction be punished with a fine which shall extend to two hundred fifty rupees

103. Prohibit against.removai:of obliteration notice.-Any per- son who without authority in that behalf removes, destroys, defaces or otherwise obliterates any notice exhibited or any sign or mark erected by, or under the order of a Panchayat of any of its officer shall on conviction be punished with a fine which may extend to fifty rupees

104. Penalty for not giving information or giving false informa- tion.-Any person required by this Act or the rules ma e thereunder or notice or other proceedings issued thereunder to furnish any informa- tion omits to furnish such information or knowingly furnishing wrong S. 100 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)155 "Bye-laws Rules, 1994." 97. Model byelaws.-(l) The State Government may from time to time make model byelaws for the guidance q; I [Panchayat or Gram Sabha]. (2) The State Government may direct 2 [Panchayat or Gram Sabhal to adopt model byelaw after modifying the same to suit the local conditions. (3) -If the 3[Panchayat or Gram Sabhal falls to comply with •a direction under sub-section. (2) within six months the State Govern- ment may apply •to such 4 [Panchayat or Gram Sabha] such model byelaws. (4) The provisions of sub-section (4) of Section 96 shall apply to the adoptions or application of byelaws under this section

CHAPTER XII - PENALTY 98. Penalty for acting as panch, Member, Sarpanch, Up-Sar- panch, President, Vice-President when disqualified.-(l) Whosoever acts as a panch or member of Panchayat knowing that he is not entitled or has ceased to be entitled to hold office as such. shall on conviction be punished with a fine which may extend to fifty rupees for every day on which he sits or votes as such panch or member. (2) Whoever acts as sarpanch or Up-Sarpanch, President or Vice- President, -khowilig th'åt •he- is not-entitled-of-hag-:ceasea -t•6 -be entitled to hold office as such shall, on. conviction, be punished with a fine which may extend to one hundred rupeeé for every day on which he acts or functions as such. 5 Any person whose term of office has expired or who has tendered resignation or against whom a no confidence motion has been passed or who has been removed from an office of the panchayat fails to hand over forthwith any record, article or money or other properties vested in or belonging to the Panchayat which are in his possession or control to -his successor in office shall-on conviction be - punished with a fine which may extend to rupees two thousand.} 99. Penalties for interested Members voting.-Whosoever, having interest in any matter under consideration of a Panchayat votes in that matter shall, on conviction, be punished with a fine which may extend to two hundred fifty rupees

100. Penalty for acquisition by a member, office-bearer or servant of interest in contract.-lf a member or office bearer or •servant of Panchayat knowingly acquires, directly or indirectly any share .or - interest in-any.contract or employment with.,-by or on behalf of a Panchayat without the sanction of or permission of the _ _pr»crihed authority, he shall be deemed,to have.committed an. offence I 2 3 4 5 Subs.

Subs. Subs. Subs. Subs. by M.P.Act 3 of 2001, w.e.f.26-1-2001. by M.P.Act 3 of 2001. w.e.f.26-1-2001. by M.P.Act 3' of 2001, w.e.f.26-1-2001.• by M.P.Act 3 of 2001, w.e.f.26-1-2001. by M.P. 26 of 1994 130.5.941. (PA)154 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 MPLJ 391

CHAPTER X1 - RULES AND BYELAWS s. 95 95. Power to make rules.-(l) The State Government may make rules for carrying out the purposes of this Act. (2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the matters which under any provision of this Act, are required to be prescribed or to be provided for by rules. (3) All rules shall be subject to the condition of previous publica- tion. (4) All rules shall be laid on the table of Legislative Assembly. (5) In making any rule, State Government may direct that a breach thereof shall be punishable with fine which may extend to two hundred fifty rupees and in the case of continuing breach with a further fine which may extend to five rupees for evelY day during which the breach continues after the first conviction. COMMENTARY Rules:- 'Ihe State Government has made the following rules in exercise of the powers conferred by this section. These Rules shall be found under Rules given separately. 1. "Panchayats (Correspondence) Rules, 1995" 2. "Zila Panchayat (Business) Rules, 1998" 3. "Gram Panchayat (Registration of Coloniser Terms and Conditions) Rules, 1999". 4. "Panchayat (Purchase of Material and Goods) Rules, 1999" 96. ByeläÄiS.Z(I) Æ 1 [PariOhayat Of G}åm Sabha] may make byelaws consistent with this Act and rules made thereunder. (2) In -making byelaws under sub-section (1) the 2 [Panchayat or Grain Sabhal may direct that a breach thereof shall be punishable with a fine which may extend to two hundred fifty rupees and in the case of the continuing breach with a further fine which may extend to five rupees for every day during which the breach continues after the first conviction. (3) A byelaw shall not come into force until it has been confirmed by the prescribed authority. (4) The manner of making byelaws and their approval shall be such as may be prescribed. Rules:- The State Government has made the following rules in exercise of the powers conferred by this section. These Rules -shall be found under Rules given separately. 1 Subs. by M.P.Act 3 of 2001. w.e.f.26-1-2001. 2 subs. by M.P.Act 3 of 2001. w.e.f.26-1-2001. s. 94 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)153 disqualified and no action as contemplated under S. 92(1) was taken against him. Gendalal v. state 0fM.P., 2006(3) MPIJ 360 rwm-1T 38

3. Difference of proceedings under Ss.92 and 40.-Proceedings under section 92 are quite different than that of section 40. No action of removal of a Sarpanch of the Gram Panchayat can be taken by the prescribed authority in the proceedings initiated under section 92. Maya Choudhary v. stat& of M.P., 2012(2) MPLJ 90 = 2012(5) MPHT 240

4. Rules:-The State Gövermnent •has made the following rules in exer- cise of the powers confered by this section."Panchayat (Recovery of Records, Articles and Money) Rules, 1995" 93. Delegation of powers. -(1) The State Government, may by notification, delegate to or confer on any officer subordinate to it or to any Panchayat all or any of the powers conferred upon it by or under this Act, except the powers relating to framing of rules. (2) The powers delegated under sub-section (l) shall be exercised in accordance with the general or special order issued by the State Government in this behalf. (3) The State Government may by notification prescribe various authorities -under -this -Act

94. General power of control.-ln all matters connected with this Act or the rules made thereunder all officers empowered to act by or under this Act shall be subject to the same control by the same authority under whose administrative control they norrnally perform the functions of their office. COMMENTARY 1. Natural justice.-Appointment of Shiksha Karmis Grade-Ill. The select _ list prepared by the Committee was_ objected to and the Collector exercising his jurisdiction under Rule 5 of the Rules of 1995, cancelled the appointments and ordered for preparation new revised select list. He gave no opportunity of hearing to the candidates selected but omitted. Earlier list was prepared in violation of prescribed rules and norms. Order of selection Committee not appealable. Collector had jurisdiction to revise list but opportunity of hearing ought to have been given to the affected candidates. Arti Bhatnagar v. state 0fM.P., 2000 (2) MPPJ 151 (DB)

2. Hearing of election petition in case of Janpad Panchayat- Jurisdiction of Additional Collector.- Vndpr this section an election petitiöfi in-cagerofJahÖad-Pånéhäyat ISto bé presented-before the Collector. In view of section 17(2) of the M.P.Land Revenue Code, an Additional Collector can not onlj efercise such powerg discha•rge such duties conferred on the Collector byor under the Code, but he can

also exercise the power of the Collector under any other enactment, in case, Collector of the District by his Order in writing directs him to do so. Therefore, the Addi- tional Collector has jurisdiction to hear the election petition in case it is transferred to him. Rajkumar Shivhare v. Anana Kumar Tiwari, 2000 (3) (PA)152 PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 s. 92 authorisedly in his custody any record or article or money belonging to the Panchayat I [or Gram Nirman Samiti and Gram Vikas Samiti] [or committee of Gram Sabha], he may, by a written order, require that the record of article or money be delivered or paid forthwith to the Panchayat [OF Gram Nirrnan Samiti and Gram Vikas Samitil [or committee of Gram Sabha], in the presence of such officer as may be appointed by the prescribed authority in this behalf. (2) If any person fails or refuses to deliver the record or article or pay the money as -directed under sub-section (1) the prescribed authority may cause him to be apprehended and may serid him with a warrant in such form as may be pre>cribed, to be confined in a Civil Jail for a period not longer than thirty days. (3) The prescribed authority may— (a) for recovering any such money direct that such money be recovered as an arrear of land revenue; and (b) for recovering any such record or art icles issue a search warrant and exercise all such powers respect thereto as may lawfully be exercised by a M. tgistrate under the provisions of Chapter VII of the code Crimindl Procedure, 1973 (No. 2 of 1974). (4) No- action- under sub-section or _(2) or--(3) shall be taken unless a reasonable opportunity has been given to the person con- cerned to show cause why such actiori should not be taken against him. 5 [(4-A) The case pertaining to recovery of any record or article or money initiated by the prescribed authority shall be disposed of within six months from the date of initiation.] (5) A person against whom an action is taken under this section shall be disqualified to be member of any Panchayat [or Gram Nirman Samiti and Gram Vikas Samiti) [or committee o_f Gram Sabha] for a period of [six] years commencing from the initiation of such action. COMMENTARY 1. I)isqualified person.- A person against whom an action is taken under section 92 shall be disqualified to be a member of any Panchayat for a period of six years and his nomination paper cannot be accepted. Uttam Singh v. Bharatial Yadav, 2002 (2) 483

2. Not Disqualified.-On receipt of notice under Sub-Section (4) of excess expenditure, petitioner Sarpanch imhediately deposited the excess amount and proceedings against him were dropped therefore he' is not 2 3 4 5 6 7 8 Ins. by M.P. Act 16 of 2004. w.e.f. 1-1-2005. Iris. by M.P. Act 18 of 2007 w.e.f. 25-5- 2007. Ins. by M.P. Act 16 of 2004, w.e.f. 1-1-2005. Ins. by M.P. Act 18 of 2007 w.e.f. 25-5-2007. Ins. by M.P. Act No. 26 of 2012 [23-5-20121. by M.P. Act 16 of 2004, w.e.f. 1-1-2005. As. by MP Act 18 of 2007 w.e.f. 25-5-2007. Subs. by M.P. 26 of 1994 130.5.94] for the word "five". PANCHAYAT RAJ AVAM GRAM SWARAJ ADHI., 1993 (PA)151 s. 92 2009(1) MPWN 24 = 2008(5) MPHT 421. [8] Appointment order of Panchayat Karmi issued by the Sarpanch of Gram Panchayat is appealable and a Revision under the Rules did not lie at all. Rajkumari Rai v. State 0fM.P., 2009(1) MPLJ 203 = 2009(1) MPWN 107. See also: Abdul Hussain Qureshi v. State of M.P., 2008 (4) MPI-J 546 = 2009(1) JIJ 320 = 2009(1) MPHT 322. [9] Appointment made by the Janpad Panchayat is amenable to the appellate jurisdiction of the Collector under Section 3 and the order of the Collector is further subject to revision before the Commissioner under Rule 5. Shyama Dwivedi v. State 0fM.P., 2009 (1) MPLJ 456. [10] No appeal or revision lies against the proceedings of Gram Panchayat. Ramlakahn Rawat v. State 0fM.P., 2000 (2) 176=2000 (1) JLJ 280. [11] Rules framed under section 91 of the Act do not provide any remedy of appeal or revision against the proceedings of the Panchayat. Under the Rules_ any order passed by Gram Panchayat in pursuance of the resolution iS appealable and no revision is maintainable against the proceedings of Panchayat. 1999(2) MPLJ 62=1999 (1) JLJ 146 Foil. Ramlakahn Rawat v. State 0fM.P., 2000 (2) MPLJ 176=2000 (1) JLJ 280. [121 The Legislature has not empowered the authorities to cancel or set aside any resolution of:Panchayat inappeal. or revision.}However;• any order passed by the Authority under sub-section (2) of section 85 of the Act which is subordinate to the Officers mentioned in Rule 3 of the M.P.PanchayatS (Appeal and Revision) Rules, the order shall be appealable and thereafter revision shall lie against the appellate order. Raml.akahn Rawat u. State of M.P., 2000 (2) MPLJ 176=2000 (1) JIJ 280. [13] From the scheme of the Act, it is apparent that any resolution passed by Panchayat is neither appealable nor revisable. Resolutions of Panchayats cannot be set aside. However, orders passed by Panchayats shall be appealable under Rule_3 _oC the afovesaid rules and after order_ in appeal, it shall be revisable under Rule 5 of the Rules. Ramlakahn Rawat v. State 0fM.P., 2000 (2) MPLJ 176=2000 (1) JIA 280. [14] Where a motion of no confidence is passed or failed, no appeal or revision lies

against•it, since it is neither an order nor any proceeding in any pending case. 1998 (2) JLJ 267 Relied on. Ramnath Kaushik v. State of M.P., 1999 (1) JIJ 146

5. Jurisdiction of S.D.O.- Removal of panchayat Karmi cannot be ordered by S.D.O. Satendra Singh v. S.D.O. Lahar, 1998 (1) MPWN 44. -6. Rules.-The State Gövernment has made the following -vules in exer- cise of the powers conferred by this section. These rules shall be found under Rules given separately. "Appeal and Revision Rules, 1995" 92. Power to recover records articles and money. -(1) Where the prescribed authority is of the opinion that any person has un-