(2014) 06 AP CK 0081

Andhra Pradesh High Court

Case No: Writ Petition Nos. 4205 of 2013 and 7543 of 2014

Kurapati Bangaraiah		APPELLANT
	Vs	
Government of Andhra Pradesh		RESPONDENT

Date of Decision: June 27, 2014

Acts Referred:

- Andhra Pradesh Municipalities Act, 1965 - Section 2, 2(22), 2(22a), 2(42a), 2A
- Andhra Pradesh Panchayat Raj Act, 1994 - Section 11, 14, 14(1), 143, 143(1)
- Constitution of India, 1950 - Article 125, 14, 141, 21, 226

Citation: (2015) 5 ALD 622 : (2015) 6 ALT 573

Hon'ble Judges: Ramesh Ranganathan, J

Bench: Single Bench

Advocate: K.S. Murthy, Advocate for the Appellant; P. Raghavendor Reddy, D. Bhaskar Reddy, V.V. Prabhakar Rao, SCs and B. Mahender Reddy, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Ramesh Ranganathan, J.
W.P. No. 4205 of 2013 is filed by 18 individuals questioning the action of the respondents in constituting Dubbaka Nagar Panchayat, with Dubbaka, Dharmajipet, Lachapet, Chervapur, Dumpalapally, Chellapur and Mallaipally Grampanchayat of Medak District, as illegal and unconstitutional. W.P. No. 7543 of 2014 is filed by five individuals questioning the action of the respondents in seeking to conduct elections for the posts of Chairman, Mandal Parishad, Dubbaka the members of the MPTCs in Dubbaka Mandal, the ZPTC, of Dubbaka and Chairman, Zilla Parishad, Medak District, while leaving out the Dubbaka, Dharmajipet, Latchapet, Chervapur, Dumpalapally, Chellapur and Mallaipally MPTCs from the present electoral process, as arbitrary, illegal and unconstitutional.

2. Facts, to the extent relevant, are that the Member of the Legislative Assembly, Dubbaka, ("M.L.A." for short) requested the Minister for Municipal Administration,

vide his letter dated 31.01.2012, to propose creation of a new Municipality at Dubbaka in view of the long pending demand from the public in his constituency. He enclosed thereto, a brief note submitted by the Revenue Divisional Officer, Siddipet for creation of a new Municipality in Dubbaka town and mandal. The Government, vide letter dated 11.04.2012, informed the M.L.A. that the proposal for creation of Dubbaka Municipality would be considered in the next phase, as the pre-election process i.e., identification of B.C. voters in all the urban bodies had already started. The MLA again addressed letter dated 03.11.2012 to the District Collector, Medak informing him that a proposal, for creation of Dubaka Municipality, had been submitted to the Government under the Indiramma Bata programme which was held at Dubbaka on 29.10.2012; the Government should consider creation of Dubbaka as a Municipality so that the on going development works, weaker section houses etc., may be taken up; and the subject villages had no objection to merge themselves to constitute Dubbaka Municipality. Along with his letter dated 03.11.2012, the M.L.A. enclosed the alleged agreements of 12 Gram panchayats to merge their villages for creation of Dubbaka as a Municipality. The M.L.A. requested the District Collector to recommend, creation of Dubbaka as a Municipality, to the government at the earliest.

3. In the meanwhile the Minister for Municipal Administration and Urban Development, vide U.O. note dated 01.01.2013, requested the Secretary, Municipal Administration to circulate the file regarding upgradation of Dubaka Gram panchayat as a Nagar panchayat. The Secretary to the Government MA & UD, vide memo dated 08.01.2013, forwarded a copy of the letter of the MLA dated 31.01.2012 to the Commissioner and Director of Municipal Administration, and informed him that the Government had agreed, in principle, to consider constitution of Dubbaka Gram panchayat as a Municipality subject to fulfilment of the parameters required for constitution of a Nagar panchayat/Municipality. The Commissioner was requested to send proposals, duly examining the parameters required for constituting a Nagar Panchayat/Municipality.

4. The Special Secretary to the Government vide memo dated 15.01.2013, while drawing his attention to the letter of the M.L.A. dated 31.01.2012 and the memo of the Secretary dated 08.01.2013, requested the Commissioner and Director of Municipal Administration to expedite the proposal for further action to be taken in the matter. The Commissioner of Municipal Administration, vide letter dated 17.01.2013, informed the District Collector that a representation was submitted by the Dubbaka M.L.A. on 31.01.2012; the Government had agreed, in principle, to consider constitution of Dubbaka Grampanchayat as a Municipality subject to fulfillment of the parameters; proposals for constituting it as a Nagar panchayat/Municipality should be sent; and the particulars, as required under the Andhra Pradesh Transitional Area and Smaller urban Areas (Fixation of criteria) Rules, 2013; (notified in G.O.Ms. No. 16 dated 16.01.2013) (hereinafter called the "2013 Rules"), be furnished regarding Dubbaka Gram panchayat and other Gram

panchayats as proposed by the M.L.A. for merger, and to constitute Dubbaka as a Nagar panchayat/Municipality; and to offer specific remarks in the matter.

5. The District Panchayat Officer, Medak informed the District Collector, Medak, vide letter dated 18.01.2013, that the MPDO had submitted resolutions and information relating to the 12 gram panchayats proposed for constitution of Dubbaka Municipality duly merging the gram panchayat; as per the information given by the Mandal Parishad Development Officer, Dubbaka, five gram panchayats were located at a distance of more than 3 kms; it was not feasible, therefore, to merge these five gram panchayats for constitution of Dubbaka Nagar panchayat/Municipality, in terms of G.O.Ms. No. 16 dated 16.01.2013; after excluding these five gram panchayats from the list of 12 gram panchayats as proposed by the M.L.A., seven gram panchayats could be considered for merger, and constitution of the Dubbaka Nagar panchayat/Municipality as it was feasible under the Rules notified in G.O.Ms. No. 16.01.2013; and necessary proposals may be submitted to the Government for upgradation of these seven gram panchayats into Dubbaka Nagar panchayat, while merging the gram panchayats, keeping in view the fast development of gram panchayats. To his proposal dated 18.01.2013, the District Panchayat Officer enclosed the letter of the M.L.A., the alleged resolutions of the gram panchayats, and information relating to these gram panchayats in the prescribed proforma in Annexures I to VIII.

6. Annexures I to VIII include the alleged resolutions of the gramsabhas of six other villages, and the alleged resolution of Dubbaka grampanchayat. The gram sabha resolutions were attested by the respective Special Officers and the Panchayat Secretaries. The District Collector, in turn, addressed letter dated 21.01.2013 to the Commissioner & Director of Municipal Administration requesting him to consider creation of Dubbaka Nagar Panchayat/Municipality duly merging seven gram panchayats; and the resolutions of the gram panchayats, and information regarding these gram panchayats, were being submitted, in the prescribed proforma in Annexure I to VIII, gram panchayats wise. What was, in fact, submitted was not the resolutions of the seven gram panchayats, but the resolution of Dubbaka Gram panchayat dated 02.11.2013 consisting of its Special Officer and Executive Officer; and the gram sabha resolutions of Dharmajipet, Lachapet, Chervapur, Dumpalapally, Chellapur and Mallaipally gram panchayats attested by the Special Officers and the Panchayat Secretaries of the respective gram panchayats.

7. The Commissioner & Director of Municipal Administration, vide letter dated 23.01.2013, informed that the Dubbaka gram panchayat would be converted, duly merging the surrounding gram panchayats, to that of a Nagar panchayat as the norms prescribed in G.O.Ms. No. 16 dated 16.01.2013 were satisfied. He requested the Government to take necessary action in the matter, and to issue suitable orders. Pursuant thereto G.O.Ms. No. 33 PR & RD dated 31.01.2013 was issued, in the exercise of the powers under Section 3(2)(f) of the A.P. Panchayat Raj Act (hereafter

called, the 1994 Act) read with Rule 12(1)(i) of the Andhra Pradesh Gram Panchayats (Declaration of Villages) Rules, 2007 notified in G.O.Ms. No. 542 dated 03.12.2007 (hereafter called, the 2007 Rules), cancelling the earlier notifications (whereby Dubbaka, Dharmajipet, Lachapet, Chervapur, Dumpalapally, Chellapur and Mallaipally villages were declared as Gram Panchayats) so as to declare these areas as a Nagar panchayat. G.O.Ms. No. 37 MA & UD (Elec. I) Dept dated 31.01.2013 was issued, in the exercise of the powers conferred by Section 2(42-a) of the A.P. Municipalities Act, 1965 (hereafter called, the 1965 Act) read with rule 2 of the 2013 Rules, specifying the areas, covered under the erstwhile Dubbaka, Dharmajipet, Lachapet, Chervapur, Dumpalapally, Chellapur and Mallaipally Grampanchayats of Medak District, as the Dubbaka transitional area (Nagar Panchayat) with immediate effect for the purposes of the said Act.

8. The 1st petitioner in W.P. No. 4205 of 2013 is the Ex-surpanch of Lachapet village and a resident thereof. He, and the other petitioners, claim to be residents of the villages which are now made part of Dubbaka Nagar Panchayat. Petitioners 3, 7, 9, 12, 15, 17 also claim to be the card holders of Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), and the beneficiaries thereof. Petitioners 4, 5, 8, 10, 13 and 14 claim to be Antyodaya ration card holders, poor agriculturists and weavers in distress. It is the petitioners'' case that the population of Dubbaka Gram panchayat is 11,368 as per the 2001 census; it does not even have a cinema hall; there is no industry thereat; most of its inhabitants are agricultural labourers and beedi workers; nearly 120 weavers committed suicide because of recession, and several others have become daily wage labourers; 3506 families are eking out their livelihood, under the MGNREGA, in Dubbaka alone i.e., more than 30% of the population; the local panchayat officer had called for a gram sabha in their areas in November, 2012; he had not followed the prescribed procedure while calling for the gram sabhas; neither was any agenda circulated nor were the villagers given due notice; the gram sabhas, convened in all the subject gram panchayats, were told that there was a proposal for creating a municipality with Dubbaka as the headquarter; 12 villages were proposed to be merged with Dubbaka to constitute a Municipality; and, as the elected body of the regular panchayat was not in existence, the gram sabha was conducted. The petitioners claim that all the gram sabhas had opposed the proposal; no gram sabha was even held for Dubbaka gram panchayat; the special officer and the panchayat secretary had alone proposed and passed the resolution; except for these two officers, there was no consultation with the villagers of Dubbaka gram panchayat; in the gram sabha convened in Lachapet gram panchayat, the petitioners had insisted on the authorities recording the resolution, in the minutes book, that they were opposing the merger of their village with the proposed municipality; the officers had, instead, sent a letter that the gram sabhas had accepted the proposal; similar resolutions were passed for villages, other than Latchapet also; it later came to light that the proceedings were manipulated, and the local M.L.A. was instrumental in floating this proposal; representations were

made, processions were taken out, and dharnas were held by the villagers; in view of the opposition to the formation of a Municipality, the officers appeared to have dropped the proposal; however, in the last week of January, 2013, authorities from the district headquarters were seen in the panchayat offices collecting information; on enquiry the 1st petitioner learnt that Dubbaka Nagar Panchayat was formed; not even a copy of the G.O. was sent to the Gram Panchayat; while the earlier proposal, placed before the Gram sabha, was for constitution of a Municipality, a Nagar Panchayat was, instead, declared; the proposal for constitution of a Nagar Panchayat was not even placed before the gram sabha; on an application made under the RTI Act, certain documents were furnished to them which revealed that the local M.L.A. had written letter dated 03.11.2012 seeking creation of Dubbaka Municipality; curiously the officers had conducted the gramsabhas a day earlier i.e., 02.11.2012 itself; the MPDO, acting at the behest of the M.L.A. had sent a letter to the District Collector; no prior notice was given or objections called for by placing the proposals in the notice board of the gram panchayat; while the respondents claimed that Dharmajipet is 3 kms from Dubbaka, and the other villages, in the proposed Nagar panchayat, were located 2 kms away, the distance is more than the prescribed maximum distance of 3 kms; the impugned GO is in violation of Article 243-Q of the Constitution of India; Dubbaka Mandal was declared as a drought prone area in the previous year; it has been suffering drought conditions for the past several decades; people belonging to the poorer sections in these villages depend on the MGNREGA scheme for their livelihood; they would all lose their sustenance if this area is declared an urban area; from out of the total population of 25661, in the proposed Nagar panchayat, there are around ten thousands MGNREGA wage workers i.e., nearly 40% of the population; others are agricultural labourers; the 40% criteria, in non-agricultural earnings, has also been violated; these issues raised in the gram sabhas were not even considered; no notice was given to the gram panchayat either for their de-notification or for constituting them as a Nagar panchayat; the resolutions of the gram sabhas, rejecting the proposal for forming the Municipality, were sent as if the gram sabhas had accepted the proposal for formation of Dubbaka Municipality; even though no gram sabha was held in Dubbaka gram panchayat, proceedings were issued by the Panchayat officer referring to an earlier resolution without any date; the income criteria, stipulated under the Rules, were not reflected correctly in the proposal; the distances were also wrongly mentioned; none of these gram panchayats have any urban characteristics; a majority of the poorer sections in these gram panchayats get their sustenance from the MGNREGA scheme, which would no longer be available once it is declared an urban area; nearly 90% of the population are white ration card holders; they would all be burdened with more taxes; other areas in Medak District, with greater population and with a higher income, have not been converted either into Municipalities or as Nagar Panchayats; the action of the respondents, in creating Dubbaka Nagar Panchayat, is arbitrary and in violation of Articles 14 and 21 of the Constitution of India; it is vitiated by non-application of mind; the impugned

order is a colourable exercise of power and is based on false and fudged figures; the proceedings were manipulated for extraneous reasons; and the order suffers from legal malafides.

9. In the counter-affidavit, filed on behalf of the 1st respondent, it is stated that, keeping in view rapid urbanization and transition of rural areas, the Government took a decision to consider the proposal for upgradation of areas, which acquired urban characteristics and were covered in gram panchayats, to that of Nagar panchayats/Municipalities for providing better civic amenities and to attend to urban needs; all the District Collectors in the State were requested to submit proposals in respect of areas which fulfilled the criteria for upgradation as Urban local bodies; the District Collectors had sent proposals to the Government for upgradation of certain gram panchayats as Nagar Panchayats/Municipalities, and for merger of surrounding areas into the existing Municipalities/Municipal corporations; the petitioners'' contention that the proposal for constitution of Nagar Panchayats were not placed before the gram sabha, and the gram sabhas were not consulted before orders were issued constituting the Dubbaka Nagar panchayat, is not tenable as the guidelines in G.O.Ms. No. 16 dated 16.01.2013 do not stipulate any such condition; the District Collector, Medak submitted a detailed proposal to the 3rd respondent, vide letter dated 21.01.2013, to consider creation of Dubbaka Nagar Panchayat/Municipality duly merging Dubbaka, Dharmajipet, Latchapet, Chervpur, Dumapalally, Chellapur and Malliahpur gram panchayats; after its detailed scrutiny, the proposal was sent to the 1st respondent, vide letter dated 25.01.2013, for constitution of Dubbaka Nagar panchayat; the 1st respondent had, thereafter, issued a notification in G.O.Ms. No. 37 dated 21.01.2013 declaring Dubbaka as a gram panchayat, after merging it with six other gram panchayats; and, in PIL Nos. 359, 360, 368 and 369 of 2013 dated 29.07.2013, a Division Bench of this Court held that a policy decision, taken in accordance with law, cannot be scrutinised by the Court; and the Dubbaka Nagar Panchayat was constituted in accordance with the guidelines issued by the Government in G.O.Ms. No. 16 dated 16.01.2013.

10. In the counter-affidavit filed by the 2nd respondent, the petitioners locus standi to question the impugned GOs is put in issue. It is stated therein that the impugned orders were passed considering the resolution of the respective gram panchayats; under Rule 10 of the 2007 Rules, it is for the concerned gram panchayat to file a revision before the Government; it is only after considering the viability of constitution of a Nagar panchayat, with reference to the existing norms, was the impugned G.O. issued by the Government; the population of the Dubbaka Nagar Panchayat is 25,669, and it qualifies to be a Nagar panchayat in terms of G.O.Ms. No. 16 dated 16.01.2013; the population criteria for, constitution of a Nagar Panchayat, as per the last census is 20,000 to 40,000; 10 rice mills are located in the vicinity of the Nagar Panchayat limits; most of them are mainly dependant on agriculture; these gram panchayats are situated near Siddipet Town, and the density of

population is increasing day by day; gram sabhas were conducted in the 11 to be merged gram panchayats, including Dubbaka; the members of these gram sabhas gave their consent for formation of a Nagar panchayat; by his proceedings dated 18.01.2013, the MPDO submitted proposals for upgradation of Dubbaka gram panchayat, with 11 surrounding gram panchayats, into a Nagar panchayat; the MPDO had stated that it was viable to form a Nagar panchayat with Dubbaka, and 11 other gram panchayats, as it satisfied the norms of population and revenue; public at large were seeking benefits of the Indiramma Bata programme which is available only to urban local bodies; the MPDO Dubbaka had also submitted resolutions of the Gram panchayats passed in the Gram sabhas, as well as in the gram panchayat meetings, resolving to merge the gram panchayats into Dubbaka, and to upgrade it into a Nagar panchayat; the proposals were submitted to the District Collector, Medak, vide proceedings dated 18.01.2013, recommending formation of the Dubbaka Nagar Panchayat, excluding five gram panchayats i.e., Ramakkapet, Habsipur, Cheekode, Kammarpally and Balwantpur as they were more than 3 kms away from the peripheral jurisdiction of Dubbaka gram panchayat; the District Collector, Medak had submitted his report on 21.01.2013 to the Government; the criteria, for constitution of a Nagar Panchayat, is fully satisfied such as market potential, income importance and scope for industrialisation; the distance from the outer periphery of these gram panchayats to Dubbaka gram panchayat is less than 3 kms; gram sabhas were conducted in all the 12 gram panchayats, sought to be merged with Dubbaka Gram Panchayat, to constitute a Nagar Panchayat; and all the members of the gram sabhas had given their consent, and had passed resolutions to form the Nagar panchayat merging their villages into Dubbaka Nagar Panchayat. Para 6 of the counter-affidavit contains a table wherein details are furnished regarding compliance of various parameters for constitution of a Nagar Panchayat. It is further stated that Dubbaka Nagar Panchayat satisfies all these requirements; it was only after detailed verification was G.O.Ms. No. 33 dated 31.01.2013 issued de-notifying seven gram panchayats of Dubbaka Mandal for the purpose of constituting it into the Dubbaka Nagar Panchayat; Dubbaka Nagar Panchayat is situated 25 kms from NH7 high way road, and 26 kms from Rajiv Rahadary, leading to the State capital; it has acquired urban characteristics; the distance between the six merged villages and Dubbaka is around 3 kms, and satisfies the criteria prescribed in G.O.Ms. No. 16 dated 16.01.2013; MGNREGA programme would be continued, and the petitioners apprehension of their sustenance being in danger is misplaced; the population of Dubbaka Nagar Panchayat is 25,914 as per the 2011 census, and satisfies the prescribed norms; gram sabhas were conducted and all the members of the gram panchayats, sought to be merged with Dubbaka Nagar Panchayat, had given their consent; they had overwhelmingly supported the resolutions to form the Nagar Panchayat, and to merge their villages in Dubbaka Nagar panchayat; this Court passed an interim order on 01.03.2013 recording that the State Government was committed, for the next one year, to continue the National Rural Employment Guarantee Scheme in the

six villages; the petitioner filed W.A. No. 432 of 2013 against the said interim order; and the Division bench had passed an interim order on 13.06.2013 staying elections to the Dubbaka Nagar Panchayat.

11. In the counter-affidavit, filed on behalf of the Dubbaka Nagar panchayat, it is stated that, while Dubbaka and Lachapet panchayats continued as notified gram panchayats since 1960, the other gram panchayats continued as non-notified panchayats till they were merged with the Dubbaka Nagar panchayat; both Dubbaka and Lachapet villages are reputed for their handlooms, power looms etc., for the past 50 years; beedi making small scale industries and rice mills etc., are located thereat; a large number of people earn their livelihood from sources other than agriculture; there are many central and state government offices located at Dubbaka which was, hitherto, the Taluq head quarters and, thereafter, the Mandal Head quarters; it also has a bus depot wherefrom buses ply to surrounding villages; in addition to its population of 25914, it also has a floating population of around 10,000; resolutions were passed by the Special Officers in consultation with the public; the petitioners were manipulating and fabricating truth to suit their convenience; proposals were submitted with the prior consent of all the panchayats and gram sabhas; there are no procedural lapses; the conditions, fixed for constitution of Nagar panchayats, have not been violated; the distance certificate, produced by the petitioners, were issued reckoning the distance from the mandal office to the merged gram panchayat, instead of the periphery of the outer habitation of the merged villages; the actual distance of the surrounding villages is well within 3 kms from the periphery of the main gram panchayat; declaration of these areas as drought prone areas does not preclude these gram panchayats from being constituted as a Nagar panchayat; a number of schemes are being implemented in urban local bodies to uplift the poor; resolutions were passed by the gram panchayats and the gram sabhas; the proposals were not rejected either by the gram panchayats or the gram sabhas; the income of the gram panchayats were correctly shown as per the records; the Nagar Panchayat is continuing till date; consequent on its formation, the requisite post constitution activities of Dubbaka Nagar Panchayat were completed and implemented; all the staff have exercised their option to continue to serve the Nagar Panchayat; they were all absorbed in the Municipal Administration Department, and were posted in other Municipalities after their in-terse-seniority was fixed; it is not possible to restore the action taken and implemented; division of the Nagar panchayat into 20 wards was approved in G.O.Ms. No. 277 dated 17.06.2013; a slum survey was conducted and completed, and 14 slums were identified in Dubbaka Nagar Panchayat; and proposals have been submitted for their notification as slums. The counter-affidavit details the development activities taken up by the Nagar Panchayat. It is further stated that petitioner Nos. 6 and 18 are not residents of any of the villages which were merged and formed as the Dubbaka Nagar Panchayat.

12. The Ex-Sarpanches of some of these Gram Panchayats impleaded themselves as respondents to this Writ Petition. In their counter-affidavit, it is stated that the 2007 Rules prescribes a notice to be given to the Panchayat, and not to individual villagers; no gram panchayat is before this Court complaining of violation of Rule 12(2) of the 2007 Rules; the gram panchayats had passed resolutions, through Gram sabhas, to constitute the Dubbaka Nagar panchayat after merger of the respective villages; the Writ Petition as filed is not maintainable either in law or on facts; on examining the request made by the villagers, and on being satisfied that the Dubbaka Nagar Panchayat has attained urban characteristics, the 1st respondent declared it as a Nagar Panchayat as the conditions stipulated in G.O.Ms. No. 16 dated 16.01.2013 were satisfied; consequently G.O.Ms. No. 37 dated 13.01.2013 was issued constituting the Dubbaka Nagar Panchayat; the petitioners, being individuals, are not entitled to question the action of the Government; it is only the Gram Panchayats which are entitled to question the same; Dubbaka was a panchayat samithi even in the late 1960s; Dubbaka town was declared as the Taluq Headquarters and after formation of Mandals, as the Mandal Head quarters; and its strategic location, and availability of suitable land in plenty in and around, has resulted in Dubbaka rapidly acquiring urban characteristics. The counter-affidavit details various facilities available in these areas which, according to them, satisfy the conditions stipulated in G.O.Ms. No. 16 dated 16.01.2013, in constituting these gram panchayats as a Nagar Panchayat. It is further stated that they had submitted a representation to the M.L.A. for merger of the neighbouring villages for the purpose of formation of a Nagar panchayat; they had also submitted a representation to the Chief Minister during the Indiramma Bata programme on 29.10.2012; acting on their representation, the MPDO had submitted proposals for upgradation of Dubbaka Gram Panchayat, with 11 surrounding gram panchayats, as the Dubbaka Nagar Panchayat; respondents 1 to 6 had examined the proposals and the resolutions passed by the respective gram panchayats; they were satisfied that Dubbaka Nagar panchayat had fulfilled the criteria laid down in G.O.Ms. No. 16 dated 16.01.2013; while the initial proposal was to form Dubbaka Municipality, after merging 11 villages which fell within a distance of 5 kms, the Government, after taking into consideration the conditions laid down in G.O.Ms. No. 16 dated 16.01.2013, on being satisfied that six villages were located within the periphery of 3 kms from Dubbaka gram panchayat, and their revenues were more than 40 lakhs, had issued G.O.Ms. No. 37 dated 31.01.2013 constituting Dubbaka Gram panchayat as a Nagar Panchayat; the 3rd respondent issued proceedings dated 05.02.2013 appointing a Special Officer to discharge functions under the 1965 Act; the Special Officer has assumed charge on 06.02.2013; thereafter, a regular Commissioner was appointed; for the past more than a year, permissions have been granted by the Nagar panchayat for construction of residential houses; betterment charges, collected in this regard, have been deposited in the Treasury; the respondents have substantially complied with all procedural aspects stipulated for formation of Dubbaka Nagar panchayat; there was no necessity, therefore, for the Government

to issue a notice to the gram panchayat under Rule 12(2) of the Rules notified in G.O.Ms. No. 542 dated 03.12.2007; and the petitioners lack the locus standi to challenge the impugned notifications issued in larger public interest.

13. Elaborate submissions, both oral and written, were made by Sri K.S. Murthy, Learned Counsel for the petitioners, and Sri B. Mahendar Reddy, Learned Counsel for respondents 8 to 11. The Learned Government Pleaders for Panchayat Raj and Municipal Administration put forth their submissions and produced the records. Sri D. Bhaskar Reddy, Learned Standing Counsel appearing for respondent No. 12, put forth his contentions on the need to permit Dubbaka Nagar Panchayat to function. It is convenient to examine the rival submissions, made by Counsel on either side, under different heads.

I. ARE THE A.P. GRAM PANCHAYAT (DECLARATION OF VILLAGES) RULES, 2007 DIRECTORY OR MANDATORY?

14. Sri K.S. Murthy, Learned Counsel for the petitioner, submits that the 2007 Rules are mandatory; even otherwise there is no substantial compliance of the said Rules; no resolution has been passed by any of the Gram Panchayats, except by the Special Officer of Dubbaka gram panchayat, expressing their consent to the constitution of a Municipality; all Officers, from the Mandal level upto the Principal Secretary, have made false statements before this Court that the Gram Panchayats had passed resolutions agreeing to merge their gram panchayat for constitution of a Nagar Panchayat; even if Gram Sabhas were conducted as per rules, they are of no consequence as it is the Gram Panchayats which have to resolve/respond, and not the Grama Sabha; no notice was issued by the government to the subject gram panchayats; resolutions were passed by the Special Officers of the Gram Panchayats; the whole process is vitiated by fraud; constitution of Dubbaka Nagar Panchayat is a sham; and the respondents have reduced the entire process, of de-notifying the Gram panchayats, to a mockery. Learned Counsel would rely on Yerusu Appalakonda v. The Govt. of A.P. Panchayat Raj, Hyderabad judgment in WP 23942 of 2013 dated 24.09.2013; and Vemuri Venkata Swamy v. Spl. Secretary, Transport Dept. Hyderabad judgment in WP 258 of 2012 dated 3-1-2014).

15. On the other hand Sri B. Mahender Reddy, learned counsel for respondents 8 to 11, would submit that, under Sec. 3(2)(f) of the 1994 Act for cancellation of the earlier notification constituting a village, it is mandatory for a notification to be issued; in the present case, in terms of the mandatory provision, a notification has been issued; the 2007 Rules prescribes the procedure for de-notification of villages, and for a notice to be issued to the Gram Panchayat calling for their objections, if any; the 2007 Rules are procedural in nature; procedural laws are, ordinarily, directory, and not mandatory; no negative words are used in the 2007 Rules, and no consequences are provided for its violation; the 2007 Rules are, hence, directory; the 2007 Rules do not provide for notice to individual villagers, but only to the Gram Panchayat; the consent of the Gram Sabha is also not required; in the absence of an

elected body to the village, the Special Officer, appointed to the Gram Panchayat, represents the Gram Panchayat u/s. 143(4); the gram panchayats have not raised any dispute regarding violation of Rule 12(2) i.e., non issuance of a notice to the Gram Panchayats; they have also not raised any objection for its de-notification; on the contrary, the Gram Panchayats have consented to the constitution of a Nagar Panchayat; the 2007 Rules have been substantially complied with; if the Rules are directory, its violation does not result in invalidation of the action already taken; and substantial compliance of the directory rule is sufficient. Learned counsel would rely on Mahadev Govind Gharge and Others Vs. The Special Land Acquisition Officer, Upper Krishna Project, Jamkhandi, Karnataka, ; May George Vs. Special Tahsildar and Others, ; Balwant Singh and Others Vs. Anand Kumar Sharma and Others, ; Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, ; Lachmi Narain and Others Vs. Union of India (UOI) and Others, ; Yeni Reddy Raghava Reddy Vs. Government of A.P., Secretary, Panchayat Raj Department Secretariat, Hyderabad and others, ; and Sambari Prabhakar v. The Government of A.P. (2005) (1) APLJ 321.

16. In Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, the Supreme Court held that, while considering the consequence of noncompliance of a procedural requirement, it must be kept in view that such a requirement is designed to facilitate justice and further its ends; and, therefore, if the consequence of non-compliance is not provided, the requirement may be held to be directory. In Mahadev Govind Gharge and Others Vs. The Special Land Acquisition Officer, Upper Krishna Project, Jamkhandi, Karnataka, , the Supreme Court held that procedural laws, like the Code, are intended to control and regulate the procedure of judicial proceedings to achieve the objects of justice and expeditious disposal of cases; procedural laws, which do not provide for penal consequences in default of their compliance, should normally be construed as directory, and should receive a liberal construction; and the Court should always keep in mind the object of the statute, and adopt an interpretation which would further such cause in the light of attendant circumstances. In Yeni Reddy Raghava Reddy Vs. Government of A.P., Secretary, Panchayat Raj Department Secretariat, Hyderabad and others, this Court held that, jurisprudentially, it is well established that, in an election, the right of the elected person is neither a fundamental right nor an equitable right; it is a statutory right and can be exercised or taken away strictly in terms of the statute; nothing had been pointed out whereby, by the Legislature, it has been provided that non-compliance of processual or procedural provisions of service of notice or the form of notice would render the vote of no-confidence invalid; the object of procedural law is to serve the person or apprise the person that a vote of no-confidence would be held on a particular date and at a particular time for consideration of the motion of no-confidence; it is only the intention of the proposer which has to be intimated to the members; and the notice being only directory, the mere use of the word "shall" would not make it mandatory especially when no consequence for non-compliance of the requirements of the notice in Form-V has

been provided by legislation.

17. The difference between a mandatory and a directory rule is that the former requires strict observance while, in the case of latter, substantial compliance with the rule may suffice. Where the statute provides that failure to observe a particular rule would lead to a specific consequence, the provision has to be construed as mandatory. Sharif-ud-din Vs. Abdul Gani Lone, ; Balwant Singh and Others Vs. Anand Kumar Sharma and Others, ; Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, Chandrika Prasad Yadav Vs. State of Bihar and Others, ; May George Vs. Special Tahsildar and Others, . If a rule is mandatory, it must be strictly construed and followed, and an act done in breach thereof will be invalid. But if it is directory, the act will be valid although its non-compliance may give rise to some other penalty, if any, provided by the Statute. A mandatory enactment must be obeyed or fulfilled exactly, but non-compliance of a directory provision would not affect the validity of the act done in breach thereof. Dr. Ram Deen Maurya Vs. State of U.P. and Others, . Often the question whether a mandatory or directory construction should be given to a statutory provision may be determined by an expression in the statute itself of the result that shall follow non-compliance with the provision. As a corollary to this rule, the fact that no consequences of non-compliance are stated in the statute, has been considered as a factor tending towards a directory construction. But this is only an element to be considered, and is by no means conclusive. Balwant Singh and Others Vs. Anand Kumar Sharma and Others, ; Sutherland''s Statutory Construction, 3rd Edn., Vol. 3).

18. The primary key to the problem, whether a statutory provision is mandatory or directory, is the intention of the lawmaker as expressed in the law itself. The reason behind the provision may be a further aid to the ascertainment of that intention. If the provision is couched in prohibitive or negative language, it can rarely be directory, the use of peremptory language in a negative form is per se indicative of the intent that the provision is to be mandatory (Crawford, the Construction of Statutes; Lachmi Narain and Others Vs. Union of India (UOI) and Others, . It is impossible to lay down any general rule for determining whether a provision is imperative or directory. [Maxwell on the Interpretation of Statutes 12th Ed. p. 314; Karnal Leather Karamchari Sanghatan (Regd.) Vs. Liberty Footwear Company (Redg.) and others, . It is the duty of the Court to try to get at the real intention of the Legislature carefully attending to the whole scope of the statute to be construed, Seth Bikhraj Jaipuria Vs. Union of India (UOI), ; Liverpool Borough Bank v. Turner (1861) 30 LJ Ch 379), and analysing the scope of the statute or the Section or the phrase under consideration. Sarla Goel and Others Vs. Kishan Chand, ; Mohan Singh and Others Vs. International Airport Authority of India and Others, . The question as to whether a statute is mandatory or directory depends on the intention of the legislature, and not upon the language in which the intent is clothed. (Crawford on Statutory Construction -- Article 261 at p. 516; State of U.P. Vs. Manbodhan Lal Srivastava, ; State of M.P. and Another Vs. Pradeep Kumar and Another, ; Govindlal

Chhaganlal Patel Vs. The Agricultural Produce Market Committee, Godhra and Others, . One must look into the subject-matter and consider the importance of the provision disregarded, and the relation of that provision to the general object intended to be secured. The determination of the question whether a provision is mandatory or directory would, in the ultimate analysis, depend upon the intent of the law-maker. State of Mysore and Others Vs. V.K. Kangan and Others, . In ascertaining the real intention of the Legislature, the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the noncompliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom and, above all, whether the object of the legislation will be defeated or furthered. The State of Uttar Pradesh and Others Vs. Babu Ram Upadhya, ; May George Vs. Special Tahsildar and Others, ; Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others, ; Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur AIR 1965 SC 895; and State of Mysore and Others Vs. V.K. Kangan and Others, .

19. When a statute is passed for the purpose of enabling something to be done, and prescribes the formalities which are to attend its performance, those prescribed formalities which are essential to the validity of the thing when done are called imperative or absolute; but those which are not essential, and may be disregarded without invalidating the thing to be done, are called directory. (Craeis on Statute Law 5th Ed. p. 63; and Karnal Leather Karamchari Sanghatan (Regd.) Vs. Liberty Footwear Company (Redg.) and others, . Where a statute requires that a thing shall be done in the prescribed manner or form but does not set out the consequences of non-compliance, the question whether the provision is mandatory or directory has to be adjudged in the light of the intention of the legislature as disclosed by the object, purpose and scope of the statute. Seth Bikhraj Jaipuria Vs. Union of India (UOI), . The wording of a provision is not determinative as to whether it is absolute or directory. Even the absence of a penal provision for non-compliance does not lead to an inference that it is only directory. The Court must, therefore, ascertain the purpose to be achieved notwithstanding the text of the provision. Karnal Leather Karamchari Sanghatan (Regd.) Vs. Liberty Footwear Company (Redg.) and others, .

20. In order to determine whether Rule 12(2) of the 2007 Rules is mandatory or directory, the legislative intent in conferring constitutional status on Gram Panchayats by the 73rd Constitutional amendment under Part IX of the Constitution of India, and in treating them as body corporates, and distinct legal entities under the provisions of the A.P. Panchayat Raj Act, 1994, must be ascertained. Questions depending on "the intention of the legislature" cannot be answered without an examination of the provisions and purposes of the Act/Rules. In considering the true meaning of words or expressions used by the legislature, the Court must have

regard to the aim, object and scope of the statute/statutory rule as read in its entirety. The Court must ascertain the intention of the legislature/rule making authority by directing its attention not merely to the clauses to be construed but to the entire Statute/statutory rule. It must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs. State of West Bengal Vs. Union of India, ; AIR 1947 34 (Privy Council); State of Punjab Vs. Okara Grain Buyers Syndicate Ltd. and Others, . The Court must compare the clause to be construed with the other parts of the law and the setting in which the clause to be interpreted occurs. Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur, ; R.S. Raghunath Vs. State of Karnataka and another, ; and Manik Lal Majumdar and Others Vs. Gouranga Chandra Dey and Others, . The Court should examine every word of a statute/statutory Rule in its context. Interpretation must depend on the text and the context. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then Section by Section, Clause by Clause, phrase by phrase and word by word. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. R.S. Raghunath Vs. State of Karnataka and another, ; Reserve Bank of India and others Vs. Peerless General Finance and Investment Company Ltd. and another, . The distinction between the purpose or object of an enactment, and the legislative intention governing it, is that the former relates to the mischief to which the enactment is directed and its remedy, while the latter relates to the legal meaning of the enactment. There is a clear distinction between the two. While the purpose or object of the legislation is to provide a remedy for the malady, the legislative intention relates to the meaning or exposition of the remedy as enacted. Shashikant Laxman Kale and Another Vs. Union of India (UOI) and Another, ; Francis Bennion''s Statutory Interpretation, (1984 edn.).

(a). ORGANISING PANCHAYATS AS UNITS OF SELF-GOVERNMENT UNDER ARTICLE 40 OF THE DIRECTIVE PRINCIPLES OF THE CONSTITUTION OF INDIA: ITS BACKGROUND:

21. Article 40, one of the directive principles of the Constitution of India, reads as under:

"40. Organisation of Village Panchayats.--The State shall take steps to organise Village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government."

The Constitution''s quest for an inclusive governance, voiced in the Preamble, was found not to be consistent with the panchayats being treated merely as units of self-government and only as a part of the directive principles. From the Constituent Assembly Debates, one finds that even that constitutional provision about panchayat was inducted after strenuous efforts by some of the members. There was a substantial difference of opinion between one set of members who wanted to

finalise the Constitution solely on the parliamentary model totally ignoring the importance of panchayat principles, and another group of members who wanted to mould the Constitution on Gandhian principles of Village Panchayats. The word "panchayat" did not even once appear in the Draft Constitution. The Drafting Committee did not even discuss, in its meetings, the alternative principles of the Gandhian view of the panchayats. The Draft Constitution was published on 26-2-1948.

22. One of the strongest critics of the Draft Constitution was Dr. Rajendra Prasad and he opined that "the village has been and will ever continue to be our unit in this country". Subsequently, other members like Sri M.A. Ayangar and Sri N.G. Ranga also suggested some amendments to the Draft Constitution and both harped on the introduction of the Panchayat Raj principles. Their arguments were on the following lines "The State shall establish self-governing panchayats for every village or a group of villages with adequate powers and funds to give training to rural people in democracy and to pave the way for effective decentralisation of political and economic power." Mr. Ayangar expressed his views very strongly saying "democracy is not worth anything, if once in a blue moon individuals are brought together for one common purpose, merely electing X, Y and Z to the Assembly and then disperse". A somewhat similar opinion was expressed by Sri S.C. Mazumdar that the main sources of India''s strength lay in ''revitalised'' villages but he accepted that a strong unifying central authority was a necessity. The opinion expressed by Sri S.C. Mazumdar struck a balance between Gandhian principles and the parliamentary model of the Constitution. Under strong criticism from various members, the Constituent Assembly grudgingly accepted that an Article concerning the panchayat should be included in the directive principles. On 22-11-1948, Sri K. Santhanam moved the official amendment and that is how Article 40, in its present form, came into existence. The amendment was accepted by Dr. Ambedkar. Bhanumati Vs. State of Uttar Pradesh through its Principal Secretary and Others, ; Granville Austin - "Indian Constitution: Cornerstone of a Nation").

23. The incorporation of Article 40 in the Constitution has proved to have been less a gesture to romantic sentiment than a bow to realistic insight. And the aim of the article has long been generally accepted: if India is to progress, it must do so through reawakened village life. (Granville Austin - Bhanumati Vs. State of Uttar Pradesh through its Principal Secretary and Others, . From the very start the idea of organising the government, on the basis of the village panchayat as a unit, was not entertained, a strong central government having been generally accepted as inevitable. The inclusion of Article 40 appears to have been a sop for those who held that a democratic Indian Constitution should be founded on the village as a unit of Government. (Constitution of India - H.M. Seervai - Silver Jubilee Edition; "The Indian Constitution - Cornerstone of a Nation - Granville Austian").

24. In other representative democracies of the World, committed to a written Constitution and the rule of law, the principles of self-government are also part of the constitutional doctrine. It has been accepted in the American Constitution that the right to local self-government is treated as inherent in cities and towns. Such rights cannot be taken away even by the legislature. Bhanumati Vs. State of Uttar Pradesh through its Principal Secretary and Others, ; Vol. 56, American Jurisprudence, Article 125). Local Self-Government, realistically speaking, is a simulacrum of Article 40 and democratically speaking a half-hearted euphemism for, in substance, these elected species were talking phantoms with a hierarchy of state officials hobbling their locomotion. Their exercises were strictly overseen by the State Government, their resources were precariously dependent on the grace of the latter, and their functions were fulfilled through a Chief Executive appointed by the State Government. Floor-level democracy in India is a devalued rupee, Article 40 and the evocative opening words of the Constitution notwithstanding. Grassroots never sprout until decentralization becomes a fighting creed, not a pious chant. Ranga Reddy District Sarpanches'' Association and Others Vs. Government of A.P. and Others, .

(b). STATEMENT OF OBJECTS AND REASONS AND THE PARLIAMENTARY DEBATES PRECEDING THE CONSTITUTION OF GRAM PANCHAYATS AS "INSTITUTIONS OF SELF-GOVERNMENT" UNDER PART-DC OF THE CONSTITUTION:

25. The 73rd and 74th Constitutional amendments were introduced in Parliament in September, 1991 in the form of two separate bills i.e., the 72nd Amendment Bill for Panchayats and the 73rd Amendment Bill for Municipalities. They were referred to a joint select Committee of Parliament and were, ultimately, passed as the 73rd and 74th Amendment in December, 1992. After the bills were ratified by the State assemblies of more than half the States, the President gave his assent on April 20th 1993. The Statement of Objects and Reasons of a Constitutional Amendment Bill or an Act can be referred to for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same, and the extent and urgency of the evil which he sought to remedy. The State of West Bengal Vs. Subodh Gopal Bose and Others, ; M.K. Ranganathan and Another Vs. Government of Madras and Others, ; Chern Taong Shang and Others Vs. Commander S.D. Baijal and Others, . For determining the purpose or object of the legislation, it is permissible to look into the circumstances which prevailed at the time when the law was passed and which necessitated the passing of that law. For the limited purpose of appreciating the background and the antecedent factual matrix leading to the legislation, it is permissible to look into the Statement of Objects and Reasons of the Bill which actuated the step to provide a remedy for the then existing malady. A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another, ; State of West Bengal Vs. Union of India, ; Pannalal Binjraj Vs. Union of india (UOI), ; and Shashikant Laxman Kale and Another Vs. Union of India (UOI) and Another, .

26. In order to understand the purport of the Seventy-third Constitutional Amendment in Part IX of the Constitution, it is useful to refer to the Statements of Objects and Reasons for the amendment. Excerpts thereof are set out:

"THE CONSTITUTION (SEVENTY-THIRD AMENDMENT) ACT, 1992 Statement of Objects and Reasons appended to the Constitution (Seventy-second Amendment) Bill, 1991 which was enacted as the Constitution (Seventy-third Amendment) Act, 1992

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

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

27. Likewise the speech made by the mover of the Bill, explaining the reason for its introduction, can be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation, and the object and purpose for which the legislation was enacted. Doypack Systems Pvt. Ltd. Vs. Union of India (UOI) and Ors, ; and K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, . Reference can usefully be made, in this context, to the Lok Sabha debate, dated 1st December 1992, wherein it was stated:

".....At a broad level, we are seeking to provide a Constitutional guarantee to certain basic and essential features including regular elections to Panchayat Raj Institutions, representations in these bodies for Scheduled Castes, Scheduled Tribes and Women and devolution of financial and administrative powers with the co-operation of the States. I would now like to dwell briefly on some of the basic features of the Constitution Amendment Bill as reported by the Joint Committee and the rationale behind them.

The Gram Sabha, which is the foundation of our Panchayati Raj System, has been envisaged to discharge wider duties. It shall perform such functions and exercise such powers as may be entrusted to it by the State Legislatures. There should be participatory decision making and the structure at the village level should be the image of participatory democracy. It is in this light that we have given a central

place to the Gram Sabha. It has been our endeavour that uniformity and rigidity is not imposed on the States. Therefore, whereas the Bill envisages a three tier system of Panchayat Raj at the village, intermediate and district level, small States having a population not exceeding twenty lakhs have been given the option not to constitute the Panchayat at the intermediate level While we have agreed with the three tier structure recommended by the Joint Committee, we have provided an option for smaller States, on the same lines as in the very first Constitution Amendment Bill of 1989 on this subject. I hope the House will agree with our views....."

".....Keeping the spirit of this amendment and retaining the core items contained in it, the State Governments are at liberty to enact their own laws to provide for a strong Panchayat Raj set up within their States. We will also evolve suitable guidelines in this regard to assist the State Governments in undertaking comprehensive legislation in this regard, if they so desire. We reiterate our commitment to genuine democratic decentralization. We reaffirm our commitment to the emergency of democratic bodies at the grass-root level elected on the basis of equality and justice, truly representative of people and genuinely concerned with their development.

Before concluding, I wish to emphasise that this Constitution Amendment Bill is only the beginning and represents our earnestness in this endeavour. Gandhiji had said:

"Independence must begin at the bottom. Thus every village will be a Republic or Panchayat having full powers."

This must be our goal and I seek the cooperation of all sections of the House in achieving it....."

28. Later in the Rajya Sabha, on 23rd December 1992, it was stated:

".....Sir, as we know, the idea of the Bills is that there should be participation of people at the grass-root level in the development and in the administrative processes of the country.....

.....Even during the British period we had the system throughout the country. The Panchayats, the Municipalities and the Zilla Parishads were the primary centers of administrative system in our country. The Constitution of India in the Directive Principles of State Policy has referred to organizations of Village Panchayats under Article 40 and has stipulated that the Panchayats'' self-Government should be strong in this country. Yet in free India, the Panchayats and the Municipalities gradually have become weaker and weaker. "Panchas" means the collective wisdom of common men for the good of all. Gandhiji, the Father of the Nation, used to talk about Gram Swaraj as the composite, self-sufficient and self-reliant village. He said; "My idea of Village Swaraj is that it is a complete republic, independent of its neighbours. Every village will grow its crop and cotton for its clothes. It shall have a reserve of its cattle, a recreation place and a play-ground. The village will maintain a

village theatre, a school, a public hall. It will have its own water supply. This can be done through control over wells and tanks. As far as possible, every activity will be conducted in a co-operative basis. There will be no caste system." This was his dream of the Gram Swaraj. Had we followed it today India would have seen a different composite culture, emanating from the grass-root level....."

Ranga Reddy District Sarpanches'' Association and Others Vs. Government of A.P. and Others, .

29. The Constitution (Seventy-third) Amendment Act, 1992 was enacted with a view to provide for democracy at the grass-root level. Lalit Mohan Pandey Vs. Pooran Singh and Others, . What was in a nebulous state, as one of the directive principles under Article 40, has, through the Seventy-third Constitutional Amendment, metamorphosed into a distinct part of the Constitutional dispensation with detailed provision for functioning of panchayats. The main purpose behind this Amendment is to ensure democratic decentralisation on the Gandhian principle of participatory democracy so that the panchayat may become viable and responsive people''s bodies as an institution of governance. It may thus acquire the necessary status, and function with dignity, inspiring respect of the common man. The Seventy-third Amendment of the Constitution was introduced to strengthen the Preambular vision of democratic republicanism which is inherent in the Constitutional framework. Bhanumati Vs. State of Uttar Pradesh through its Principal Secretary and Others, .

30. The Panchayat, which was previously a mere unit of self-government under Article 40, became an "institution of self-governance" under the Seventy-third Amendment of the Constitution. It took four decades for the Parliament to pass this epoch-making Seventy-third Constitution Amendment--a turning point in the history of local self-governance with sweeping consequences in view of decentralisation, grass-root democracy, people''s participation, gender equality and social justice. Decentralisation is perceived as a precondition for preservation of the basic values of a free society. The Seventy-third Amendment is a "powerful tool of social engineering", and has the potential for social transformation. While this amendment may not see a quantum jump, it will certainly pioneer a major change, albeit in a painfully slow process. Bhanumati Vs. State of Uttar Pradesh through its Principal Secretary and Others, .

31. Part IX of the Constitution of India relates to "Panchayats". Article 243(d) defines ''panchayat'' to mean an institution (by whatever name called) of self-government constituted under Article 243-B for the rural areas. Article 243(e) defines ''panchayat area'' to mean the territorial area of a Panchayat. Article 243-B stipulates that there shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of Part IX. Article 243C(1) provides that, subject to the provisions of Part IX, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats. While Article 40 envisaged village panchayats as "units of self Government", Article 243(d) elevated them to the

status of "institutions of self-government". "Self-government is the process by which a group exercises rule over themselves, without being controlled by outside forces. "Self-government" is a government of a group that is guided by its own members. Article 3 of the European Charter of Local Self-Government-Strasbourg 15 defines "Local-Self Government" to denote the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population. Ranga Reddy District Sarpanches'' Association and Others Vs. Government of A.P. and Others, .

32. Section 2(17), of the Andhra Pradesh Panchayat Raj Act, 1994, (hereinafter called the "1994 Act") defines ''Gram Panchayat'' to mean the body constituted for the local administration of a village under the Act. Section 4 relates to the constitution of Gram Panchayats for villages, and their incorporation. Under subsection (1) thereof, a Gram Panchayat shall be deemed to have been constituted for a village on the date of publication of the notification under Section 3 in respect of that village, and the Special Officer, appointed under Section 143(1), is required to make arrangements for the election of the members and of the Sarpanch of the Gram Panchayat as provided in that Section. Section 4(2) stipulates that, subject to the provisions of the Act, the administration of the village shall vest in the Gram Panchayat, but the Gram Panchayat shall not be entitled to exercise functions expressly assigned by or under the Act or any other law on its Sarpanch or executive authority or on any other local authority or other authority. Under Section 4(3), every Gram Panchayat shall be a body corporate by the name of the village specified in the notification issued under Section 3; it shall have perpetual succession and a common seal and, subject to any restriction or qualification imposed by or under the Act or any other law, shall be vested with the capacity of suing or being sued in its corporate name, of acquiring, holding and transferring property, of entering into contracts, and of doing all things necessary, proper or expedient for the purposes for which it is constituted. Panchayats which were, hitherto, constituted merely as administrative units, are now "body corporates" with perpetual succession and a common seal, with the capacity of suing or being sued in its corporate name. They are also vested with the capacity of acquiring, holding and transferring property. Having gone to such great lengths to protect and safeguard panchayats, constituted as "Institutions of self-government" and as "body corporates", can the State Legislature be said to have conferred power on the Executive to bring the existence of gram panchayats to an end without rhyme or reason merely by way of a notification, and without even putting the concerned gram panchayats on notice and giving them an opportunity of submitting their objections to the proposal in this regard? The answer can only be in the negative.

(c). THE TWIN LIMITATIONS, ON THE EXERCISE OF POWER UNDER SECTION 3(2) OF THE 1994 ACT, ARE CUMULATIVE AND NOT ALTERNATIVE:

33. Section 3 of the 1994 Act relates to declaration of a village for the purposes of the Act and, under sub-section (1) thereof, the Government may, by notification and in accordance with the rules made in this behalf, declare any revenue village or hamlet thereof or any part of a Mandal to be a village for the purposes of the Act and specify the name of the village. Section 3(2) enables the Government, by notification and in accordance with such rules as may be prescribed in this behalf, to (a) form a new village by separation of a local area from any village or by uniting two or more villages or parts of villages or by uniting any local area to a part of any village; (b) increase the local area of any village; (c) diminish the local area of any village; (d) alter the boundaries of any village; (e) alter the name of any village; and (f) cancel a notification issued under sub-section (1). While a village constituted under Section 3(1) of the Act would remain in existence, albeit in a different form, even after the Government exercises its powers under clauses (a) to (e) of Section 3(2), the village would cease to exist on the Government exercising its powers, under Section 3(2)(f) of the Act, to cancel the notification, issued earlier under Section 3(1), constituting the village as a gram panchayat for the purposes of the Act.

34. Exercise of power by the government under Section 3(2)(f) of the Act, to cancel the notification issued earlier under Section 3(1) of the Act, is subject to twin limitations. The cancellation is to be made by way of (1) a notification; and (2) in accordance with such rules as may be prescribed in this behalf. Section 2(25) of the 1994 Act defines ''Notification'' to mean a notification published in the Andhra Pradesh Gazette and requires the word "notified" to be construed accordingly. Section 2(30) defines "prescribed" to mean prescribed by the Government by rules made under the Act. As is evident from the use of the word "and" in Section 3(2), the twin limitations stipulated therein are not in the alternative. The clear intention of the Legislature, as expressed in the impugned Act read as a whole, must be given effect to in reading the word "and" as conjunctive or disjunctive. The State of Bombay Vs. R.M.D. Chamarbaugwala, . Ordinarily, provisions separated by the use of the conjunction ''and'' must be read conjointly. M/s. Hyderabad Asbestos Cement Products and Another Vs. Union of India and Others, . Words in a statute should be read conjuctively if it subserves the object of the Act. Paras Ram Vs. State of Haryana, . It would, therefore, not suffice merely to issue a "notification" cancelling the earlier notification issued under Section 3(1) of the Act. The cancellation is also to be made in accordance with the Rules prescribed in this behalf i.e., the 2007 Rules. Compliance with the procedure prescribed in the 2007 Rules is, therefore, mandatory and not directory. Accepting the contention that it is merely directory would mean that the very existence of an "institution of self-government" under Article 243(d) of Part IX of the Constitution, and a body corporate under Section 4(3) of the 1994 Act, can be brought to an end by an executive fiat and on its mere whims and fancies.

35. Part IX of the Constitution seeks to control executive interference and has entrusted the task of protecting the Gram Panchayats - "institutions of self-government" - on the State Legislature. Under Article 243G, subject to the provisions of the Constitution of India, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein with respect to (a) the preparation of plans for economic development and social justice; and (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule. The Eleventh Schedule, to the Constitution of India, lists 29 matters in respect of which the State Legislature may devolve powers and responsibilities on Panchayats for implementation of schemes for economic development and social justice. Out of 29 subjects in Schedule XI of the Constitution, orders have been issued in respect of 17 subjects, and monitoring and review functions in relation to these programmes have been devolved on Panchayat Raj Institutions. Ranga Reddy District Sarpanches'' Association and Others Vs. Government of A.P. and Others, .

36. The State Legislature has in turn, under Section 3(2) of the 1994 Act, prescribed two conditions for bringing the existence of a "gram panchayat" to an end. If the State Legislature intended to confer power on the Executive to do so merely by way of a "notification", it would neither have stipulated that they should act in accordance with the Rules nor would it have used the word "and" in Section 3(2). The legislative intent is clear. The 2007 Rules, including Rule 12(2) thereof, are mandatory in character and necessitate strict adherence, notwithstanding that no penal consequences are prescribed for its non-compliance. The government note file placed before this Court discloses that the Principal Secretary approved the proposal, for upgradation of the Dubbaka Gram Panchayat as a Nagar Panchayat duly merging the surrounding six gram panchayats, as all the gram panchayats had passed resolutions accepting the upgradation proposals, on 24.01.2013; the Minister for Panchayat Raj approved the proposal on 25.01.2013; the Minister for MA & UD approved it on 30.01.2013; the Chief Minister approved it on the same day; and after the draft G.Os. were approved by the Law department, the impugned notifications were issued. No effort was made at any stage to ascertain whether the requirements of the 2007 Rules was complied with, or to ensure its compliance.

(d). THE PROVISOS TO RULE 9 AND 12(2) OF THE 2007 RULES: THEIR SCOPE:

37. In the exercise of the powers conferred by Section 3(1)&(2) r/w. Section 268(1) of the 1994 Act, the Government of Andhra Pradesh made the "2007 Rules". Rule 2(iii) of the 2007 Rules defines ''local area'' to mean any area comprised within the jurisdiction of a Gram Panchayat, and to include any area not previously included in

any Gram Panchayat that may be declared to be or to form part of a Gram Panchayat. Rule 10 of the 2007 Rules provides that, where a notification for the declaration of a village has been issued by the Government, it shall be open to any affected Gram Panchayat to prefer a revision petition to the Government, through the Commissioner, within fifteen days from the date of publication of such notification and the Government may pass such orders thereon as they may deem fit. Rule 12(1)(i) enables the Government to cancel a notification, under Section 3(2)(f) of the Act, where it is proposed to constitute a "municipality" or a "notified area" under Section 389-A of the Andhra Pradesh Municipalities Act, 1965 or a Municipal Corporation for a village or for a group of villages or a part thereof declared as a village under Section 3(1) of the 1994 Act. Power is vested with the Government to relax the 2007 Rules.

38. It is convenient to read Rule 9 of the 2007 Rules in juxtaposition with Rule 12(2) thereof.

39. As in Rule 12(2), a similar opportunity to show cause against the proposal, made under clauses (a) to (e) of Section 3(2) of the 1994 Act, is provided for under Rule 9 of the 2007 Rules. While Rule 9 has two provisos, Rule 12(2) has only one. A proviso has several functions and, while interpreting a statutory provision, the court is required to carefully scrutinise and find out the real object of the proviso appended to that provision. A provision and the proviso thereto must be construed as a whole. A proviso is normally used to remove special cases from the general enactment and provide for them specially. A proviso qualifies the generality of the main enactment by providing an exception and taking out from the main provision a portion which, but for the proviso, would be a part of the main provision. A proviso must, therefore, be considered in relation to the principal matter to which it stands as a proviso. A proviso cannot be torn apart from the main Section nor can it be used to nullify or set at naught the real object of the main Section. S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others, ; Craies: Statute Law 7th Edn.) A proviso must be construed harmoniously with the main enactment. Abdul Jabar Butt Vs. State of Jammu and Kashmir, ; The Commissioner of Income Tax, Mysore, Travancore-cochin and Coorg, Bangalore Vs. The Indo Mercantile Bank Limited, ; Ram Narain Sons Ltd. Vs. Asst. Commissioner of Sales Tax and Others, ; and State of Punjab Vs. Kailash Nath, .

40. The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment. AIR 1944 71 (Privy Council) : AIR 1944 71 (Privy Council); Holani Auto Links Pvt. Ltd. Vs. State of Madhya Pradesh, ; The Commissioner of Income Tax, Mysore, Travancore-cochin and Coorg, Bangalore Vs. The Indo Mercantile Bank Limited, ; A.N. Sehgal and others Vs. Raje Ram Sheoram and others, . A proviso is a qualification of the preceding provision, and is not to be interpreted as stating a general rule. Haryana State Cooperative Land Development Bank Ltd. Vs. Haryana State Cooperative Land Development

Banks Employees Union and Another, ; Shah Bhojraj Kuverji Oil Mills and Ginning Factory Vs. Subbash Chandra Yograj Sinha, ; The Calcutta Tramways Co. Ltd. Vs. The Corporation of Calcutta, ; A.N. Sehgal 1992 SUPPL. (2) SCC 651; Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal AIR 1991 SC 1538 and Kerala State Housing Board and Others Vs. Ramapriya Hotels (P) Ltd. and Others, . A proviso, to a particular provision of a statute, only embraces the field which is covered by the said provision. It carves out an exception to the provision to which it has been enacted as a proviso, and to no other. (Indo-Mercantile Bank Ltd., 48; A.N. Sehgal 1992 SUPPL. (2) SCC 651; Tribhovandas Haribhai Tamboli Vs. Gujarat Revenue Tribunal and others, ; Kerala State Housing Board and Others Vs. Ramapriya Hotels (P) Ltd. and Others, ; Binani Industries Ltd., Kerala Vs. Assistant Commissioner of Commercial Taxes, VI Circle, Bangalore and Others, ; AIR 1944 71 (Privy Council); Nagar Palika Nigam Vs. Krishi Upaj Mandi Samiti and Others, ; Ram Narain Sons Ltd. Vs. Asst. Commissioner of Sales Tax and Others, . The ordinary and proper function of a proviso, coming after a general enactment, is to limit that general enactment in certain instances. (Jennings v. Kelly 1940 AC 206 : (1939) 4 All ER 464 (HL); Binani Industries Ltd., Kerala Vs. Assistant Commissioner of Commercial Taxes, VI Circle, Bangalore and Others, . As a general rule, in construing an enactment containing a proviso, it is proper to construe the provisions together without making either of them redundant or otiose. J.K. Industries Ltd. and Others Vs. Chief Inspector of Factories and Boilers and Others, . It would not be a reasonable construction of any statute to say that a proviso, which in terms purports to create an exception, should be held to be otiose. Kaviraj Pandit Durga Dutt Sharma Vs. Navaratna Pharmaceutical Laboratories, . A sincere attempt should be made to reconcile the enacting clause and the proviso and to avoid repugnancy between the two. Tahsildar Singh and Another Vs. The State of Uttar Pradesh, .

41. Both Rules 9 and 12(2) of the 2007 Rules require the government, before issuing a notification under Section 3(2) of the 1994 Act, to give the gram panchayat, which will be effected by the issue of such notification, an opportunity of showing cause against the proposal, to indicate its decision within ten days from the date of receipt of the show cause notice, and consider the objections, if any, of such gram panchayat. The first proviso to Rule 9 carves out an exception to the main provision (Rule 9) and provides for a situation where there is no elected body of the Gram Panchayat in office, and a special officer has been appointed to exercise the powers and perform the functions of the Gram Panchayat and its sarpanch and Executive authority. Rule 12(2) does not contain any provision similar to the first proviso to Rule 9. The second proviso to Rule 9 is similar to the proviso to Rule 12(2), except that, while the latter only uses the words "gram panchayat, the former uses both the words "gram panchayat" and "Special Officer". This distinction is significant. While Rule 9 requires the government to give the affected "gram panchayat" an opportunity to show cause, the first proviso thereto requires the notice, to show cause against the proposal, to be given to the Special Officer where a Special Officer

has been appointed to exercise the powers and perform the functions of the gram panchayat and its Sarpanch and Executive Authority. A special officer is appointed under Section 143 only in the absence of an elected body of the Gram Panchayat. Section 143(1) stipulates that, notwithstanding anything in the Act, when a local area is notified as a village under Section 3, for the first time, the commissioner shall appoint a special officer to exercise the powers and perform the functions of the gram panchayat, and its sarpanch and executive authority, until the members and sarpanch thereof, who are duly elected, assume office. Section 143(2) requires the special officer to cause arrangements for the election of the member of the gram panchayat, to be made before such date as may be fixed by the Commissioner in this behalf. Under the proviso thereto the Commissioner may, from time to time, postpone the date so fixed if, for any reason, the elections cannot be completed before such date. Under Section 143(3) the Government, or as the case may be an officer authorised by the Government, shall appoint a special officer or a person-in-charge or a committee of persons-in-charge to a gram panchayat if, for any reason, the process of election to such gram panchayat is not completed. Under Section 143(4) the special officer or person-in-charge or the Committee of persons-in-charge, appointed under sub-section (3), shall exercise the powers and perform the functions of the Gram Panchayat and its Sarpanch and executive authority until the members and Sarpanch elected thereof assume office. Section 2(12) of the 1994 Act defines ''executive authority'' to mean the Panchayat Secretary appointed to each Gram Panchayat. Section 2(37) defines ''sarpanch'' to mean the Sarpanch of a Gram Panchayat elected under Section 14. Under Section 14(1), there shall be a Sarpanch, for every gram panchayat, who shall be elected in the prescribed manner by the persons, whose names appear in the electoral roll for the gram panchayat, from among themselves. Section 7 relates to the total strength of a Gram Panchayat. Under Section 7(1) a Gram Panchayat shall consist of such number of elected members, inclusive of its Sarpanch, as may be notified, from time to time, by the Commissioner in accordance with the table referred to therein. Under Section 7(2), an M.P.T.C. Member is a permanent invitee to the meetings of Gram Panchayats, but would not be entitled to vote at any such meeting. Under Section 7(3) one representative from each category of Self Help Groups/Functional Groups, to be elected in a meeting of the Self Help Group/Functional Group which shall be presided over by the Sarpanch, shall be co-opted in the manner prescribed, and shall have the right to speak or otherwise to take part in proceedings of any meeting but they shall not be entitled to vote at any such meeting. The power which the special officers are empowered, under Section 143(3), to discharge are only till the members of the gram panchayat, and the sarpanch elected thereof, assume office.

42. The District Collector, Medak, in the exercise of the powers delegated to him by the Government under G.O.Ms. No. 269 PR & RD (Election & Rules) Department dated 22.08.2011, issued proceedings No. 2142/2011/Al-Pts., dated 22.08.2011 appointing Special Officers to the Gram Panchayats in Medak district as shown in

the annexure appended to the said proceedings. With respect to these 7 villages, the officers appointed were in the cadre of: 1) Dubbaka - M.P.D.O.; 2) Dharmajipet - M.P.D.O.; 3) Latchapet - E.O. (PR & RD); 4) Chervapur - M.P.D.O; 5) Dampalapalli - M.A.O.; 6) Chellapur - E.O. (PR & RD); and 7) Mallaipalli - M.P.D.O. The duties which these Special Officers were empowered to perform, under Section 143(4) of the Act, were the functions of the gram panchayat and its sarpanch and executive authority. Where an elected gram panchayat is not in office, the representation which the Special Officer is empowered to make against the proposal, under the first proviso to Rule 9, is only after taking into consideration the views expressed by the members of the gram sabha at a special meeting convened for the purpose. While Rules 9 and 12(2) empower the Gram panchayat to indicate its "decision" and submit its "objections" to the Government, the first proviso to Rule 9 enables the Special Officer to submit his "representation". This power conferred on the Special Officer to submit a representation is also fettered by the requirement of taking into consideration the views expressed by the members of the Gram sabha. The Rule making authority was conscious of the possibility of Special Officers, who are government servants, readily accepting the proposal of the Government to denotify gram panchayat and terminate its very existence. Bearing in mind that "gram panchayats" are "institutions of self-government", the Rule making authority has cast an obligation on the Special Officer, who holds office only in the absence of the elected body of the gram panchayat, to ascertain and take into consideration the views of the gram sabha.

(e). TWO DIFFERENT WORDS, USED IN STATUTORY RULES, MUST BE CONSTRUED AS CARRYING DIFFERENT MEANINGS:

43. The absence of a proviso, similar to the first proviso to Rule 9, in Rule 12(2) of the Rules is also significant. When two different words are used by the same statute, one has to construe these different words as carrying different meanings. Kailash Nath Agarwal and Others Vs. Pradeshiya Industrial and Investment Corporation of U.P. Ltd. and Another, . Different use of words in two provisions of a statute, or two different Articles in the Constitution, is for a purpose. If the field of the two provisions/Articles were to be the same, the same words would have been used. B.R. Enterprises Vs. State of U.P. and Others, . When two words of different import are used in a statute in two consecutive provisions, it would be difficult to maintain that they are used in the same sense, and the conclusion must follow that the two expressions have different connotations. The Member, Board of Revenue Vs. Arthur Paul Benthall, . When the legislature has taken care of using different phrases in different sections, normally different meaning is required to be assigned to the language used by the legislature. If, in relation to the same subject-matter, different words of different import are used in the same statute, there is a presumption that they are not used in the same sense. The Member, Board of Revenue Vs. Arthur Paul Benthall, ; The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc., If the legislative intention was not to distinguish, and while stating "Special

Officer" it was intended to convey the idea of a "gram panchayat", there would have been no necessity of expressing the position differently. When the situation has been differently expressed the legislature must be taken to have intended to express a different intention. Commissioner of Income Tax, New Delhi (Now Rajasthan) Vs. East West Import and Export (P) Ltd., (Now Known as Asian Distributors Ltd.), Jaipur, . Use of both the words "gram panchayat" and "Special Officer", in both the provisos to Rule 9, show that the words "Special Officer" was understood as distinct from, and not to mean, the "gram panchayat".

(f). NOSCITUR A SOCIIS:

44. Rule 9 is applicable only where a local area is excluded from one village and included in another; or where two or more villages or parts of villages are united; or where the boundaries of any village are altered; or the name of any village is altered in accordance with Section 3(2)(a) to (e) of the 1994 Act. The said Rule has no application where the very existence of the gram panchayat is sought to be brought to an end by the Government in the exercise of its powers under Section 3(2)(f) of the 1994 Act. The Special Officer is permitted, under the first proviso to Rule 9 of the 2007 Rules, to submit a representation against the proposal made by the government under clauses (a) to (e) of Section 3(2), only after taking into consideration the views of the gram sabha. Unlike the first proviso to Rule 9, Rule 12(2) does not provide for a representation to be made by a Special Officer. It is a legitimate rule of construction to construe words, in a statutory enactment or Rules, with reference to words found in immediate connection with them M.K. Ranganathan and Another Vs. Government of Madras and Others, ; Angus Robertson v. George Day (1879) 5 A.C. 63 (PC)). In construing the words "Gram Panchayat" and "Special Officer", which are used in association with each other in Rule 9 and its two provisos, the rule of construction noscitur a sociis may be applied. The meaning of each of these words is to be understood by the company it keeps. These words, read in juxtaposition, indicate that the meaning of one takes colour from the other. The Rule is explained differently: "that meaning of doubtful words may be ascertained by reference to the meaning of words associated with it". Ahmedabad Pvt. Primary Teachers'' Association Vs. Administrative Officer and Others, . The setting and context in which both the words "Special Officer" and "gram panchayat" are used in the two provisos to Rule 9 of the 2007 Rules, would require the word "Special Officer" not to be understood dissociated from the word "Gram Panchayat", and the word "Special Officer" not be read and construed to mean a "Gram Panchayat". Ahmedabad Pvt. Primary Teachers'' Association Vs. Administrative Officer and Others, for, if both these words were to mean the same, it would have sufficed only to provide for one of these words and not both. It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the Statute. Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another, .

45. Both Rules 9 and 12(2) of the 2007 Rules stipulate that only the Gram Panchayat is entitled to indicate its decision and submit its objections to the proposal of the Government under Section 3(2) of the 1994 Act. The power conferred on the Special Officer, under the first proviso to Rule 9, is confined only to make a representation, and not to indicate his decision or to put forth his objections. As it is only the gram panchayat which is given the opportunity to show cause against the proposal, to indicate its decision and submit its objections, and not the Special Officer, it is evident that the proposal to cancel the notification can be made, and the power under Section 3(2)(f) of the 1994 Act exercised, by the Government only where an elected gram panchayat holds office, and not when a Special Officer is appointed to discharge the functions of the gram panchayat, its sarpanch and executive authority, in the absence of the elected body of the gram panchayat.

46. It is no doubt true that the Government discharges administrative functions in making the proposal to cancel a notification issued under sub-section (1) of Section 3 of the 1994 Act, and in cancelling such notification after considering the objections raised by the concerned gram Panchayats to the said proposal. K. Nagabhushanam and Others Vs. Collector, Krishna Distirct and Others, . It is also true that the explanation submitted by the Grampanchayat need not be considered extensively, for the reason that the functions discharged by the Government, with regard to conversion of Grampanchayat into the Municipality, are administrative and are not quasi judicial; and, therefore, authorities are not expected to give detailed reasons. (Puttur Gram Panchayat, Puttur v. Government of A.P. 2005 (6) ALD 813). That does not, however, mean that the Government can avoid complying with the mandatory requirements of Rule 12(2) of the 2007 Rules, and cancel the earlier notification, whereby the gram panchayats were constituted, without putting the gram panchayats on notice of such proposal, and without giving them an opportunity to show cause against the proposal by indicating their decision and submitting their objections thereto.

47. On the question whether or not the impugned notification was issued in conformity with the procedure prescribed under Rule 12 of the A.P. Gram Panchayat (Declaration of Villages) Rules, 1994 this Court, in Sambari Prabhakar (2005) (1) APLJ 321, held that, in the case on hand, the Gram Panchayat had itself passed a unanimous resolution for upgrading the said Gram Panchayat into a Municipality; on the basis of the said resolution, the District Collector had requested the Government to take necessary action to upgrade the Gram Panchayat into a Municipality; the impugned notifications were accordingly issued; Rule 12, of the Rules made under G.O.Ms. No. 515, dated 17-09-1994 in the exercise of the powers conferred by sub-Sections (1) & (2) of Section 3 read with Section 268 of the Act, required that, before issuing a notification under clause (f) of Sub-Section (2) of Section 3 of the Act, the Gram Panchayat, which will be affected by issue of such a notification, shall be given an opportunity of showing cause against the proposal to indicate its decision; however, in the light of the unanimous resolution passed by

the Gram Panchayat for upgradation of the Gram Panchayat into a Municipality much prior to the impugned notifications, issuance of a notice under Rule 12 could not be held to be mandatory; failure to issue such a notice did not vitiate the impugned action; under G.O.Ms. No. 515 dated 17-09-1994 the Government is also vested with the power to relax the rules contained in the said order; and the impugned notification cannot be held to be in violation of principles of natural justice or as contrary to Rule 12 of the Rules.

48. Unlike in Sambari Prabhakar (2005) (1) APLJ 321, where the gram panchayat had passed a unanimous resolution, in the case on hand no such resolution was passed as there was no elected body of the Gram Panchayats holding office. Except in the case of Dubbaka Gram Panchayats, none of the Special Officers of the other gram panchayats have even passed any resolution for denotification of the gram panchayat or for its constitution as a Nagar panchayat. Reliance placed, on Sambari Prabhakar (2005) (1) APLJ 321, by Sri B. Mahender Reddy, Learned Counsel for respondents 8 to 11, is therefore misplaced. It is wholly unnecessary for this Court to examine whether the Government can relax the Rules to such an extent as to avoid complying with the procedural requirement of Rule 12(2), as it is not even the case of the respondents that the Government had relaxed the rules in the case on hand.

(g). COMPLIANCE WITH THE REQUIREMENT OF RULE 12(2) OF THE 2007 RULES IS MANDATORY:

49. Rule 12 of the 2007 Rules is a regulatory provision and must be construed having regard to the purpose it seeks to achieve. D.L.F. Qutab Enclave Complex Educational Charitable Trust Vs. State of Haryana and Others, . In interpreting a statute the court has to ascertain the will and policy of the legislature as discernible from the object and scheme of the enactment and the language used therein. Chern Taong Shang and Others Vs. Commander S.D. Baijal and Others, . The fairest and most rational method to interpret the will of the legislator is by exploring his intention at the time when the law was made, by signs most natural and probable. And these signs are the words, the context, the subject matter, the effect and consequence, or the spirit and reason of the law. (Blackstone "Commentaries on the Laws of England" (Facsimile of 1st edn. 1765, University of Chicago Press 1979 Vol. 1 at 59; Doypack Systems (P) Ltd. 40). Rule 12(2) of the 2007 Rules uses the word "shall". The word "shall", in its ordinary significance, is obligatory or mandatory and the court shall, ordinarily, give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient consequence, or be at variance with the intent of the Legislature. Govindlal Chhaganlal Patel Vs. The Agricultural Produce Market Committee, Godhra and Others, ; Khub Chand and Others Vs. State of Rajasthan and Others, ; The State of Uttar Pradesh and Others Vs. Babu Ram Upadhya, . The requirement of giving the gram panchayats, which would be effected by the issue of the notification under Section 3(2)(f) of the Act, an opportunity of showing cause

against the proposal and to indicate their decision within a period of ten days, is therefore mandatory and failure to comply with this mandatory requirement would render the notification, issued under Section 3(2)(f) of the Act, illegal.

(h). A DECISION RENDERED PER INCURIAM IS NOT A BINDING PRECEDENT:

50. In Vaddepalli Narsimhulu v. The Government of A.P. judgment in W.P. No. 23023 of 2013 dated 02.06.2014, this Court held:

".....No statutory provision - plenary or subordinate - has been brought to the notice of this Court which requires the Government to issue a show-cause notice, under Rule 12(2) of the Rules, only to the elected body of a gram panchayat; and not to the Special Officers, appointed for such gram panchayats, in the place of the elected body. It is evident, therefore, that the requirement of Rule 12 of the 2007 Rules has not been violated by the respondents in issuing the impugned notification, under Section 3(2)(f) of the 1994 Act, to cancel the notifications issued earlier constituting them as gram Panchayats so that they can, thereafter, be constituted as a Municipality (Nagar panchayat)....."

(emphasis supplied)

51. In so holding, this Court failed to notice the distinction between the provisos to Rule 9 and Rule 12(2); unlike the first proviso to Rule 9 which provides for a situation where an elected body of the Gram Panchayat is not in office, Rule 12(2) does not; and, consequently, the requirement of giving an opportunity to show cause, indicate its decision regarding the proposal and submit their objections thereto, is only to the elected body of the gram panchayat and not its special officer.

52. A precedent ceases to be a binding precedent when it is rendered per incuriam. Commissioner of Income Tax Vs. B.R. Constructions, . The Latin expression per incuriam means through inadvertence. Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, . ''Incuria'' literally means ''carelessness''. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The ''quotable in law'' is avoided and ignored if it is rendered ''in ignoratium of a statute or other binding authority''. (Young v. Bristol Aeroplane Co. Ltd. (1944) KB 718). This principle has been accepted, approved and adopted by the Supreme Court while interpreting Article 141 of the Constitution of India which embodies the doctrine of precedents as a matter of law. State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, . A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. A judgment delivered without argument and without reference to the relevant statutory provisions is not binding. Municipal Corporation of Delhi Vs. Gurnam Kaur, . Where, by obvious inadvertence or oversight, a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, it may not have the

sway of a binding precedent. Mamleshwar Prasad and Another Vs. Kanhaiya Lal (Dead) through L. Rs., ; Morelle v. Wakeling (1955) 2 QB 379). The judgment of this Court, in Vaddepalli Narsimhlu judgment in W.P. No. 23023 of 2013 dated 02.06.2014, to the extent it held that no statutory provision-plenary or subordinate - had been brought to its notice which required the Government to issue the show-cause notice, under Rule 12(2) of the Rules, only to the elected body of the gram panchayats, and not the special officer appointed for such gram panchayats in the place of the elected body, is a decision rendered per incuriam.

53. Eminent Judges have shown the path making it easier for us to follow. In Distributors (Baroda) Pvt. Ltd. Vs. Union of India (UOI) and Others, P.N. Bhagawati J. held that his earlier decision, in Cloth Traders (P) Ltd. Vs. Additional Commissioner of Income Tax , Gujarat-I, , must be regarded as wrongly decided; and the view taken in that case in regard to the construction of Section 80-M must be held to be erroneous and it must be corrected. In Hotel Balaji and others, Vs. State of Andhra Pradesh and others, etc. etc., , S. Ranganathan, J. had no hesitation in accepting the point of view, presented before the Supreme Court which appealed to him as more realistic, appropriate and preferable, particularly when he saw that the view one way or the other would affect the validity of a large number of similar legislations all over India, merely because it may not be consistent with the view he took in Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another, , as consistency, for the mere sake of it, was no virtue. Similarly, in M. Gangareddy, rep. by his G.P.A., A. Srinivas Goud Vs. The State of A.P. and Others, , P. Venkatrami Reddy J, speaking for the Division Bench of this Court, held that the view expressed by him, speaking for the Division Bench in the two Division Bench decisions in Prasad and Co. Vs. The Superintending Engineer and Others, and State of Andhra Pradesh and Another Vs. P.L. Raju and Company, , must be taken to be decisions rendered per incuriam in so far as the arbitrator''s power to award interest was concerned.

54. To quote P.N. Bhagawati J., in Distributors (Baroda) Pvt. Ltd. Vs. Union of India (UOI) and Others, ,:-

"..... To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. In this, we derive comfort and strength from the wise and inspiring words of Justice Bronson in Pierce v. Delameter (AMY at page 18) ''a Judge ought to be wise enough to know that he is fallible and, therefore, ever ready to learn: great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead: and courageous enough to acknowledge his errors''....."

(emphasis supplied).

II GENUINENESS OF THE RESOLUTIONS, ALLEGEDLY PASSED BY THE GRAM SABHAS OF THE SUBJECT GRAM PANCHAYATS, ARE NOT FREE FROM DOUBT:

55. Sri K.S. Murthy, Learned Counsel for the petitioners, submits that proceedings, claiming to be a resolution of Latchapet Gram Sabha, were produced; the Gram Sabha of Lachapet had resolved to reject the proposal for creating a municipality; the resolution passed by them has been certified by the Bill Collector of the Gram Panchayat; a copy of the resolution now produced by the respondents is a resolution drafted by the Executive Officer after counter-affidavits were filed by the respondents, and when this Court had directed production of the records; the resolution now produced was allegedly passed by the Latchapet Gram Sabha for a second time on 02.11.2012; this resolution has been created only for the purposes of this Writ Petition; the rules notified in G.O.Ms. No. 162 has been violated; every meeting of the Gram Sabha must be held as per G.O.Ms. No. 162 dated 4-4-1997; a notice is required to be given prior to the meeting, by way of tomtom etc; even this was not followed; inspite of repeated representations, neither have the authorities furnished to the petitioners, nor have they placed before this Court, any proceedings to show that the Gram Sabhas were, in fact, convened and held as per rules; even otherwise, the Gram Sabha is only an advisory body; while these meetings may not count for the purposes of Rule 12(2), they exhibit how the Rule was violated; and no information has been furnished as to who called for the meeting?, What was the authority?, and What was the agenda?

56. Article 243(b) in Part-IX defines ''gram sabha'' to mean a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of a Panchayat at the village level. Article 243-A enables the Gram Sabha to exercise such powers and perform such functions at the village level as the Legislature of a State may, by law, provide. Section 2(18) of the 1994 Act defines ''Gram Sabha'' to mean the Gram Sabha which comes into existence under Section 6 of the Act. Section 6 relates to Gram Sabhas. Under sub-section (1) thereof, there shall come into existence a "gram sabha" for every village on the date of publication of the notification under Section 3. Under Section 6(2) a gram sabha shall consist of all persons whose names are included in the electoral roll for the Gram Panchayat referred to in Section 11, and such persons shall be deemed to be the members of the gram sabha. Section 6(3) requires the gram sabha to meet at least twice every year, on such date and at such place and time as may be prescribed, to consider the following matters which shall be placed before it by the Gram Panchayat: (i) annual statement of accounts and audit report; (ii) report on the administration of the preceding year; (iii) programme of works for the year or any new programme not covered by the budget or the annual programme; (iv) proposals for fresh taxation or for enhancement of existing taxes; (v) selection of schemes, beneficiaries and locations; and (vi) such other matters as may be prescribed. The Gram Panchayat is required, under Section 6(3), to give due consideration to the suggestions, if any, of the gram sabha. Section 6(4) requires the "gram sabha" to observe such rules of procedure at its meetings as may be prescribed. Section 6(5) requires every meeting of the gram sabha, within 10 days from the date prescribed under sub-section (3), to

be convened and presided by the Sarpanch or, in his absence, by the Upa-Sarpanch of the Gram Panchayat.

57. In the exercise of the powers conferred by Section 6(1), (3) and (4) of the 1994 Act r/w. Section 268(2) thereof, the Governor of Andhra Pradesh made the rules relating to the holding of meetings of the Gram Sabha. These Rules were notified in G.O.Ms. No. 162 Panchayat Raj and Rural Development (Pts. I) Department, dated 04.04.1997 (hereinafter called the "1997 Rules"). Rule 1 stipulates that the two common dates namely, the 14th April and 3rd October in a year shall be fixed for the conduct of Gram Sabha meetings; the Divisional Panchayat Officer shall prepare a common list of Officers, by consulting the Mandal Praja Parishad Development Officers and Mandal Revenue Officers in his jurisdiction, and allot such Officers, available in the Division, to attend the Gram Sabhas in all Gram Panchayats; and the action of the Divisional Panchayat Officer (allotment of officers) should be over by the 7th of April and 25th of September every year. Rule 2 stipulates that the gram sabha meeting shall be held at such place, within the limits of the Gram Panchayat, as considered convenient and sufficient to accommodate the members of the Gram Sabha; and meetings of the Gram Sabha may be held in rotation in each of the constituent villages of the Gram Panchayats. Rule 3 stipulates that the meeting may be held at any time during the day between sunrise and sunset. Under Rule 4(1) no meeting shall be held unless notice of the place where, and of the day and time when, the meeting is to be held and of the business to be transacted thereat, has been given at least two clear days before the day of the meeting. Rule 4(2) stipulates that the notice, referred to in sub-rule (1), shall be given (i) by beat of drum in the village; (ii) by affixing the notice at three conspicuous places in the village; and (iii) by affixing the notice on the notice board of the Gram Panchayat Office. Under Rule 6 all questions which may come up before such meeting shall be decided by ascertaining the consensus of opinion of the members of the Gram Sabha present at the meeting through the speeches delivered by them; at the end of meeting, the presiding member is required to read the proceedings of the Gram Sabha, and get the approval of the members; and the members are required to raise their hands in token of their approval. Rule 7 stipulates that the meeting of the Gram Sabha may be adjourned if the members present thereat agree to it. Rule 9 requires an attendance register to be maintained in which the presiding member shall obtain the signatures or thumb impressions, as the case may be, of all the members present at the meeting of the Gram Sabha. Rule 11 requires the minutes of the proceedings of every meeting to be drawn up and entered in a book to be kept for the purpose, and to be signed by the presiding member of the meeting; and the suggestions, if any, of the meeting are required to be reported by the presiding member to the Gram Panchayat at its next meeting for its due consideration. Rule 12 stipulates that, in addition to the matters listed under clauses (i) to (v) of Section 6(3) of the 1994 Act, the following matters shall also be placed before the Gram Sabha for its consideration, viz., i) the village agricultural production plans; ii) the

work of village volunteer force; iii) the work of Defence Labour Banks; iv) the utilisation of land funds; v) the work of Co-operatives; vi) the list of the location of the common lands in villages i.e., Porambokes vesting in Panchayats and other relevant particulars; vii) the list of transfer of ownership of houses and other immovable properties; viii) a copy of the approved budget estimates of the Gram Panchayat, and x) a list of defaulters, who are in arrears of payment of taxes and fees due to the Gram Panchayat. Rule 13(1) requires the executive authority to maintain two bound registers one for writing meeting notice-cum-agenda and minutes and another for Attendance of the members at meeting. Rule 13(ii) stipulates that, besides giving advance notice about the meeting and its agenda, the agenda copy shall also be distributed to all the members present in the meeting before the start of the meeting.

58. Registers of the seven Gram Panchayats, containing the gram sabha resolutions allegedly passed by each of these gram panchayats, have been placed before this Court. The Register containing the gram sabha resolutions of Lachapet Gram panchayat discloses that a gram sabha was convened on 02.11.2012 at 10.30 A.M. on the oral directions of the MPDO, Dubbaka; and the gram sabha of Lachapet Gram Panchayat resolved to reject the proposal, to merge Lachapet Gram panchayat with the Dubbaka Gram Panchayat for its constitution as a Municipality, as they would be denied the benefits of the National Rural Employment Guarantee Scheme, and as there would be an increase in water tax, house tax, prescribed fee for construction of new buildings etc. This gram sabha resolution was signed by 36 members and was attested by the Special Officer and Executive Officer of Lachapet gram panchayat.

59. The aforesaid Register contains a subsequent resolution allegedly passed by the gram sabha of Lachapet Gram panchayat in a meeting held, in the office of the Gram panchayat, in the afternoon of 02.11.2012. The minutes of the said meeting records that some members of the gram sabha had earlier resolved to reject the proposal to merge Lachapet gram panchayat with Dubbaka gram panchayat for being constituted as a Municipality; thereafter, in the after-noon of 02.11.2012, certain villagers of Lachapet gram panchayat had come to the office of the Mandal Praja Parishad; they had requested that the Lachapet Gram panchayat be merged with Dubbaka gram panchayat for being constituted as the Dubbaka Municipality; a gram sabha meeting was, therefore, convened on 02.11.2012 at the Lachapet Gram panchayat office under the supervision of the Special Officer; it was unanimously resolved by the gram sabha to merge Lachapet gram panchayat with Dubbaka gram panchayat for its constitution as a Municipality; and to request that the benefits of the National Rural Employment Guarantee scheme be continued. This resolution, which contains the signatures of 75 members, was also attested by the Special Officer and the Executive Officer of Lachapet Gram Panchayat. As noted hereinabove, Rule 7 enables a gram sabha meeting to be adjourned if the members present thereat agree to it. While the earlier meeting of the gram sabha, held at

10.30 AM on 02.11.2012, resolved to reject the proposal, there is no material on record to show that they had agreed to re-convene in the afternoon of the same day. No notices, as stipulated in Rules 4(1) & (2), for convening the meetings of the gram sabhas has been placed before this Court, much less details of the manner of its affixture. None of the attendance registers, of the meetings of the gram sabhas of any of the seven gram panchayats as required to be maintained under Rule 7, has been placed before this Court. While Registers containing the alleged minutes of the meetings of the seven gram sabhas have been produced, these Registers make no reference to any notice or agenda. These Registers do not satisfy the requirement of Rule 13(i) of the 1997 Rules. Agenda copies, required to be distributed to the members present at the gram sabhas in terms of Rule 13(ii), have also not been placed before this Court.

60. The gram sabha resolution register of Mallaipally gram panchayat contains only the resolution of the gram sabha dated 02.11.2012, the signatures of eight members of the gram sabha, and the left thumb impressions of five others. The said Register does not contain any other resolution either before 02.11.2012 or thereafter. Even worse are the Registers, containing the gram sabha resolutions, of Dumpalapally, Chellapur, Dharmajipet and Chervapur gram panchayats. Each of the registers, of these four gram panchayats, contain only the resolution of the gram sabha dated 02.11.2012. Except for this resolution, the Registers make no reference to any resolution of the gram sabha passed either prior thereto or thereafter. Even more disconcerting is that the gram sabha resolutions dated 02.11.2012, allegedly passed by the villagers of these four gram panchayats, bear only the signature of the Special Officers and the Panchayat Secretaries of these gram panchayats, and do not contain the signature of even one member of the respective gram sabhas.

61. The Dubbaka gram panchayat resolution dated 02.11.2012, for conversion of Dubbaka Gram Panchayat into a Municipality, is signed by the Special Officer and Panchayat Secretary of the said panchayat. While the gram sabha minutes book of Dubbaka gram panchayat contains certain resolutions of the gram sabhas prior to 02.11.2012 also, the resolution of the gram sabha dated 02.11.2012 merely bears the signatures of the Executive Officer and the Special Officer of Dubbaka Gram panchayat. None of the members of the gram sabha, of Dubbaka Gram Panchayat, have signed on the resolution allegedly passed by the gram sabha of Dubbaka Gram panchayat on 02.11.2012 for its merger with other gram panchayats, and for its constitution as a Municipality. I find considerable force in the submission of Sri K.S. Murthy, Learned Counsel for the petitioners, that these records have now been created only for the purpose of this Writ Petition, and to justify the illegal and arbitrary acts of the respondent in denotifying the seven gram panchayats in flagrant violation of the statutory rules.

62. Sri B. Mahendar Reddy, Learned Counsel for respondents 8 to 11, would submit that, as the Special Officers have attested the gram sabha resolutions, it is evident

that they were aware of the gram sabha resolutions; and, as they did not choose to submit their representation to the Government, it must be presumed that they had no objection to the denotification of the gram panchayats. This contention needs only to be noted to be rejected. While Rule 12(2) requires only the elected body of the gram panchayats to be informed of the proposal, to convey their decision and submit their objections, if any, and not for the consent of the Gram Sabha, reference is being made herein to some of the Gram Sabha Resolution Registers, which are, obviously, cooked up, only to highlight the desperate attempts of the respondents to cover up their illegal acts. The requirement of Rule 12(2) is to put the gram panchayats on notice of the proposals, asking them to show cause there-against. The gram panchayats are entitled to convey their decision, and submit their objections thereto. Silence of the Special Officers, or their failure to submit a representation, would not render the impugned G.Os. valid more so as Rule 12(2) neither provides for a representation to be submitted by the Special officer nor does it require the views of the gram sabhas to be ascertained.

III. FAILURE OF THE GOVERNMENT TO COMPLY WITH THE REQUIREMENT OF RULE 12(2) OF THE 2007 RULES - WOULD THIS COURT BE JUSTIFIED IN EXERCISING RESTRAINT ON APPLICATION OF THE TEST OF ABSENCE OF PREJUDICE?

63. Sri B. Mahender Reddy, Learned Counsel for respondents 8 to 11, would submit that mere violation of principles of natural justice is not sufficient to interfere with the action taken, unless the petitioners show prejudice having been caused to them as a result of the alleged violation. Learned counsel would rely on Aligarh Muslim University and Others Vs. Mansoor Ali Khan, ; Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., ; and Burdwan Central Cooperative Bank Ltd. and Another Vs. Asim Chatterjee and Others, in this regard.

64. Where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. Aligarh Muslim University and Others Vs. Mansoor Ali Khan, ; M.C. Mehta Vs. Union of India (UOI) and Others, . The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether, in fact, prejudice has been caused on account of the denial of reasonable opportunity has to be considered on the facts and circumstances of each case. Where, even after compliance with principles of natural justice, no different consequence would have followed, it would be a perversion of justice to set aside the order. It amounts to stretching the concept of justice to illogical and exasperating limits. It also amounts to an "unnatural expansion of natural justice" which, in itself, is antithetical to justice. Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., ; Burdwan Central Cooperative Bank Ltd. and Another Vs. Asim Chatterjee and Others, . It is not possible to lay down rigid rules as to when the principles of natural justice are to apply, nor as to their scope and extent. There

must also have been some real prejudice to the complainant. There is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth. Aligarh Muslim University and Others Vs. Mansoor Ali Khan, ; K.L. Tripathi Vs. State Bank of India and Others, ; Wade''s Administrative Law (5th Edn., pp. 472-75); State Bank of Patiala and others Vs. S.K. Sharma, ; and Rajendra Singh Vs. State of Madhya Pradesh and others, . If, upon admitted or indisputable facts, only one conclusion is possible then, in such a case, the principle, that breach of natural justice was in itself prejudice, would not apply. In other words if no other conclusion is possible on admitted or indisputable facts, it is not necessary to quash the order which is passed in violation of natural justice. This being an exception, great care must be taken in its application. Aligarh Muslim University and Others Vs. Mansoor Ali Khan, ; S.L. Kapoor Vs. Jagmohan and Others, .

65. As noted hereinabove, none of the subject Gram Panchayats have passed any resolutions giving their consent to their merger with, and for being constituted as a Nagar panchayat. Except for Dubbaka Gram panchayat, even the Special Officers of the other gram panchayats have not passed any resolution for their merger and constitution even as a Municipality. The record discloses that the alleged gram sabha resolutions of Dumpalapally, Chellapur, Dharmajipet and Chervapur gram panchayats were signed not by the members of the gram sabhas, but merely by the Special Officer and the panchayat secretary of these gram panchayats. Even in Lachapet gram panchayat, while the earlier gram sabha resolution was to reject the proposal for de-notification of the gram panchayat, and for its constitution as a Nagar panchayat, the resolution allegedly passed subsequent thereto is contrary to the statutory rules prescribed for convening and holding a gram sabha. Admittedly, the Government has neither issued any notice to the gram panchayats, indicating its proposal to denotify the subject gram panchayats for their being constituted as a Nagar panchayat, nor were the gram panchayats informed that they could submit their decision against, and their objections to, such a proposal. Failure to adhere to the statutory rules renders the very exercise of jurisdiction to de-notify these gram panchayats illegal, and contrary to law.

66. The object of ascertaining the views of the elected body of the gram panchayat, or the gram sabha where no elected body of the gram panchayat is in office, is not a mere ritual or an empty formality. The views expressed by the gram panchayats/gram sabhas, either for or against the proposal, must be given due consideration by the Government in taking a decision whether or not to de-notify the said Gram Panchayat under Section 3(2)(f) of the 1994 Act. An institution of self-government, a constitutional body under Part IX of the Constitution, is entitled to be heard, and its decision/objection considered, when its very existence is sought to be brought to an end. The requirement of a notice and an opportunity being afforded to the gram panchayats to show cause, indicate its decision and submit

their objection, or the gram sabhas to express their views to the Special Officer enabling him to submit a representation, is not a needless exercise. The Executive cannot presume that every gram panchayat would readily consent to their very existence being brought to an end, and for their being constituted as a Nagar panchayat, as is evident from the resolution of the Lachapet gram sabha conveying their view that the said proposal should be rejected. The plea of absence of prejudice is, therefore, misplaced.

67. The statutorily prescribed procedure, of putting the gram panchayats on notice and giving them an opportunity to submit their objections before their existence is brought to an end, must be adhered to. When a procedure has been laid down, the authority must act strictly in terms thereof. (Taylor v. Taylor (1875) Ch.D. 426). If a statute has conferred a power to do an act, and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any manner other than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted. State of Uttar Pradesh Vs. Singhara Singh and Others, ; Dhananjaya Reddy etc. Vs. State of Karnataka, ; Ramchandra Murarilal Bhattad and Others Vs. State of Maharashtra and Others, ; and State of Gujarat Vs. Shantilal Mangaldas and Others, . Failure to adhere to the statutorily prescribed procedure would necessitate the impugned GOs being set aside.

IV. THE REPOSITORY OF POWER MUST ACT INTRA-VIRES THE POWER GRANTED TO IT:

68. In Adepu Veeraswamy v. The Govt. of A.P. rep. by its Principal Secretary, Panchayat Raj & Rural Development Dept. Judgment in P.I.L. No. 359 of 2013 and batch dated 29.07.2013 a Division bench of this Court held that a decision taken in accordance with law cannot be scrutinized by the Court; it is the decision of the Government that some areas should be brought within the municipal area so as to bring them within urban life; and this policy decision, unless it is absolutely mala fide and with an oblique motive, cannot be examined by the Court.

69. Whether a gram panchayat should be denotified as such, and whether it should be constituted as a Nagar Panchayat, are matters in the executive realm. This Court would not take upon itself the task of examining the wisdom or otherwise of such executive decisions - save resultant constitutional and statutory-violations. While Part-IX and Part-IX-A of the Constitution of India place emphasis on establishing and promoting local bodies as self-sustainable institutions of self-government, they do not disable a gram panchayat from being constituted as a Nagar Panchayat provided the statutory provisions in this regard - both plenary and subordinate - are satisfied.

70. The power conferred on the Government, to cancel a notification in terms of Section 3(2)(f) of the 1994 Act, must be exercised strictly in accordance with the

procedure prescribed under Rule 12(2) of the 2007 Rules. The power delegated by a statute/statutory rule is limited by its terms, and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the power granted, and on relevant consideration of material facts. All his decisions must be "reasonably related to the purposes of the enabling legislation". If they are manifestly unjust or oppressive or outrageous or directed to an unauthorised end or do not tend in some degree to the accomplishment of the objects of the delegation, the Court might well say that they are unreasonable and ultra vires. M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, ; Leila Mourning v. Family Publications Service 411 US 356; and Kruse v. Johnson (1898) 2 QB 91.). The repository of power must act within the bounds of the power delegated, and should not abuse his power. He must act reasonably and in good faith. A repository of power acts ultra vires either when he acts in excess of his power in the narrow sense or when he abuses his power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness. M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, ; Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, ; Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation (1948) 1 KB 223; and Mayor & C. Westminster Corporation v. London and North Western Railway 1905 AC 426).

71. The exercise of administrative power will be set aside if there is manifest error in its exercise or if it is manifestly arbitrary. Similarly, if the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If the power is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated. M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, ; and General Electric Co. Vs. Renusagar Power Co., . As the 2007 Rules empower the Government to cancel the earlier notification, constituting a gram panchayat, only where an elected body of the Gram panchayat is in office, the impugned notifications, which were issued when all the subject gram panchayats were administered by the Special Officers in the absence of an elected body, are ultravires the powers conferred on the Government under Rule 12(2) of the 2007 Rules.

V. ARE THE PARAMETERS STIPULATED IN THE 2013 RULES SATISFIED IN CONSTITUTING THE DUBBAKA NAGAR PANCHAYAT:

72. Sri K.S. Murthy, Learned Counsel for the petitioner, would submit that the distance issue has not been settled; the claim made by the petitioners in this regard has not been controverted; and, in Chirala Veera Raghava Reddy and Others Vs. Chief Secretary to Government of A.P. and Others, , this Court set aside the notification as the figures were incorrect, and there was a lacuna in the data relied upon by the officers.

73. On the other hand Sri B. Mahender Reddy, learned counsel for respondents 8 to 11, would submit that Dubbaka Nagar Panchayat fulfils all the requirements, of GOMs. No. 16 dated 16.01.2013, for constituting it as Nagar Panchayat, namely a) population of Dubbaka Nagar Panchayat is above 20,000; b) all the villages merged in the Dubbaka Nagar Panchayat are within 3 KM from the periphery of Dubbaka village; c) density of population of Dubbaka Nagar Panchayat is more than 400 per sq. k.m.; d) revenue of Dubbaka Nagar Panchayat is more than 40 Lakh; and e) more than 40% of the population is employed in the non-agricultural activity sector. Learned Counsel would submit that all the statutory requirements, for constitution of Dubbaka Nagar Panchayat, have been complied with; and Dubbaka has all the characteristics of an urban area, and has been constituted by a notification issued in terms of Section 2-A r/w. 2(42-a), of the A.P. Municipalities Act, 1965. He would rely on Puttur Gram Panchayat Vs. Government of A.P. and Others, .

74. Part IX-A of the Constitution of India relates to "Municipalities". Article 243P(d) defines "municipal area" to mean the territorial area of a Municipality as is notified by the Governor. Article 243P(e) defines "municipality" to mean an institution of self-government constituted under Article 243Q. Article 243P(f) defines "Panchayat" to mean a Panchayat constituted under Article 243B. Article 243Q(1)(a) stipulates that there shall be constituted in every State a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area. Article 243Q(2) stipulates that, in Article 243Q, ''a transitional area'', ''a smaller urban area'' or ''a larger urban area'' shall mean such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify, by public notification, for the purposes of Part IXA. Article 243Q makes a distinction between a Nagar Panchayat and a Municipality. While clause (a) of Article 243Q stipulates that a Nagar Panchayat shall be constituted for an area in transition from a rural area to an urban area, clause (b) stipulates that a Municipal Council (Municipality) shall be constituted for a smaller urban area. Article 243Q(2) confers power on the Governor to specify a "transitional area" and "smaller urban area" having regard to the factors specified therein.

75. Section 2(22) of the A.P. Municipalities Act, 1965 defines ''municipality'' to mean a municipality of such grade as may be declared by the Government, from time to time, by notification in the Andhra Pradesh Gazette on the basis of its income and such other criteria as may be prescribed. Section 2(22-a) defines ''Nagar Panchayat'' to mean a body deemed to have been constituted under Section 2-A for a transitional area specified by the Governor under clause (42-a). Section 2(42-a) defines a ''transitional area'' or ''a smaller urban area'' to mean such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other

factors as he may deem fit, specify by public notification for the purposes of this Act, subject to such rules as may be made in this behalf. Section 2-A relates to the constitution of Nagar Panchayats and, under sub-section (1) thereof, where an area is specified as a transitional area under clause (42-a) of Section 2, a Nagar Panchayat shall be deemed to have been constituted for such transitional area. Under Section 2-A(2), the provisions of the Act shall apply to a Nagar Panchayat deemed to have been constituted under Section 2-A as they apply to a Municipality, and to facilitate such application a Nagar Panchayat shall be deemed to be a Municipality. Section 3 relates to the constitution of Municipalities and, under sub-section (1) thereof, where a notification is issued specifying an area as a "smaller urban area" under clause (42-a) of Section 2, a Municipality shall be deemed to have been constituted for such area.

76. In the exercise of the powers conferred by Section 326 r/w. Section 2(42-a) of the A.P. Municipalities Act, 1965 the Governor of Andhra Pradesh made the 2013 Rules. Rule 2 prescribes the criteria for constitution of Nagar Panchayats and, thereunder, an area may be notified as a Transitional Area (Nagar Panchayat) under Section 2(42-a) of the Andhra Pradesh Municipalities Act, if the following criteria is satisfied:

77. Under the proviso thereto, whenever a main urbanised Gram Panchayat is proposed to be constituted as a Nagar Panchayat with the merger of other surrounding village(s) of Gram Panchayat(s), such village(s) shall fulfill the following:

The proposed village(s) going to be merged shall not be more than 3 Kms from the periphery of outer habitation of the main Gram Panchayat to the outer Periphery of the habitation of village(s).

78. Rule 3 stipulates the criteria for constitution of Municipalities and, thereunder, an area may be notified as a Smaller Urban Area (Municipality) under Section 2(42-a) of the Andhra Pradesh Municipalities Act, 1965, if the following criteria is satisfied:

79. In Chirala Veera Raghava Reddy (2009 (3) ALD 310, this Court held:

".....It hardly needs any mention that howsoever attractive the upgradation of a Gram Panchayat into a Nagar Panchayat or Municipality may be, it would have its own impact upon the lives of citizens in terms of tax regime, their freedom to undertake constructions etc. It is not without reason that the Legislature insisted that the PENA must be not less than 50% for a Gram Panchayat to be upgraded as Nagar Panchayat. Even if a particular Gram Panchayat is flourishing and large in size, it cannot be converted into a Nagar Panchayat, in case, the population is predominately dependant upon agriculture. The upgradation of a Gram Panchayat into a municipality would have its own adverse effect upon agriculture. So many restrictions come to be imposed and the culture brought about in the habitat would not only discourage but also, in a way, make it impossible for the agriculture to be carried on in the normal course. Therefore, the respondents ought to have been more careful and certain in ensuring the fulfillment of the parameters, before the

Gram Panchayat was upgraded into Nagar Panchayat. Since it has emerged that the facts and figures on an important aspect were totally at variance, the notifications cannot be sustained.

(emphasis supplied)

80. The parameters stipulated under the 2013 Rules for constitution of a Nagar Panchayat is different from those stipulated for constitution of a Municipality. While the earlier proposal of the M.L.A., and the resolution of the Dubbaka Gram Panchayat represented by a Special Officer, was for constitution of a Municipality, what was eventually constituted was a Nagar panchayat. The alleged resolution of the Dubbaka Gram Sabha was also to constitute a Municipality. Likewise the resolutions, allegedly passed by the gram sabhas of the other gram panchayats, were only for constitution of a Municipality and not a Nagar Panchayat. While this Court would not take upon itself the task of determining whether the parameters for the constitution of a Nagar panchayat are satisfied, or sit in appeal over the conclusion of officials that the prescribed conditions have been fulfilled, the fact remains that these parameters should have been made part of the proposal, and the gram panchayats asked to show cause thereagainst. This would have enabled the gram panchayats, while conveying their decisions and submitting their objections, to point out any discrepancies therein, and satisfy the Government that the parameters for constitution of a Nagar Panchayat/Municipality, as stipulated under the 2013 Rules, are not satisfied. I see no reason to examine the submission of Sri K.S. Murthy, that the parameters for constituting a Nagar panchayat is not satisfied, on merits as the impugned G.Os. are being set aside on other grounds mentioned hereinabove.

VI. DO THE PETITIONERS HAVE THE LOCUS STANDI TO MAINTAIN THIS WRIT PETITION?

81. Sri K.S. Murthy, Learned Counsel for the petitioner, submits that the 2007 Rules deal with de-notification of a Gram Panchayat; Rule 12(2) stipulates that the Government must give notice to the Gram Panchayat concerned for its consideration, and objections, if any; a gram panchayat is a body created by a statute, and a body corporate; it has a special status after the 73rd Constitution Amendment; every resident of the Gram Panchayat can agitate, if the very existence of the Gram Panchayat is sought to be snuffed out by unscrupulous officers fudging records, misrepresenting facts and violating the law at the behest of their political masters; poor MGNREGA workers, who eke out their livelihood under the MGNREGA Scheme, would be adversely affected on the gram panchayats being de-notified, and the de-notified villages constituted as a Nagar Panchayat; and, hence, the villagers of the affected villages have the locus standi to invoke the jurisdiction of this Court. Learned Counsel would rely on M.S. Jayaraj Vs. Commissioner of Excise, Kerala and Others, ; and Ghulam Qadir Vs. Special Tribunal and Others, .

82. On the other hand Sri B. Mahender Reddy, Learned Counsel for respondents 8 to 11, would submit that the petitioners have not pleaded violation of their personal or individual statutory or legal rights; they lack the locus standi to maintain this Writ Petition; Rule 12(2) of the 2007 Rules requires a notice to be issued to the Gram Panchayat, inviting objections to the proposed de-notification for the purpose of creating a transitional area; the said Rule does not require notice to be given to individual villagers, much less the petitioners herein; the petitioners are, hence, not persons aggrieved; a legal right is conferred only on the gram panchayats under the 2007 Rules, and not on the petitioners; a Gram Panchayat must be sued in its corporate name, and not in the name of individual villagers; as there is no elected body, the Special Officer appointed under Section 143(3) of the Act represents the Gram Panchayat; the Gram Panchayat has not filed any Writ Petition questioning de-notification of the villages; the petitioners have no accrued/vested right under the Mahatma Gandhi National Rural Employment Guarantee Act, 2005; and the said Act is applicable only as long as there exists a notified rural area, and not otherwise. Learned Counsel would rely on The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, ; D. Venkata Rushi Reddy v. Divisional Panchayat Officer 1996 (1) ALD 76; and Pabba Ramesh Vs. State of A.P., Panchayat Raj, Rural Development and Relief Departments and Others, .

83. In D. Venkata Rushi Reddy 1996 (1) ALD 76 the proceedings of the District Collector bifurcating the Venkatapuram Gram Panchayat, forming a separate panchayat for Dayyalakuntapalle village, and appointing an executive officer as the Special Officer of the newly constituted Dayyalakuntapalle gram panchayat, was under challenge before this Court. It is in this context that the Division bench of this Court held that in case a notification is issued either by the District Collector or by the Commissioner, who have the power to declare a particular area as a Gram Panchayat or to include in or exclude therefrom any village or a part thereof, the aggrieved person, if any, would only be the Gram-Panchayat; in case a Gram Panchayat is affected by any such declaration or notification, it can challenge the same by way of a revision to the Government through the Commissioner; the Rules are not permanent in nature, and are subject to relaxation by the Government, as and when the exigencies demand; any bifurcation, declaration, inclusion or deletion etc., can be made by the authorities concerned by way of appropriate orders; interference is justified only when such an order is either arbitrary or mala fide; and an individual cannot challenge such an order as he is not the aggrieved party.

84. In Pabba Ramesh Vs. State of A.P., Panchayat Raj, Rural Development and Relief Departments and Others, , the action of the respondents in seeking to hold elections to the subject gram panchayat, by including the voters of the village and the tribal tandas, was questioned before this Court by one of the villagers. It is in this context that a Division bench of this Court held:

".....From the above narration of facts, it is clear that there was no notification of the collector under Section 3(2) of the Act which alone could be questioned in revision under Rule 10 of the Rules. Rule 10 of the Rules reads as follows:

"Where a notification for the declaration of village has been issued by the Commissioner, it shall be open to any Gram Panchayat affected to prefer revision petition to the Government through the Commissioner within fifteen days from the date of publication of such notification and the Government, may pass such order thereon as they may deem fit".

From a perusal of the Rule extracted above, it is evident that (1) a revision lies against a notification making declaration of a village by the Commissioner, (2) the affected Gram Panchayat alone can prefer the revision; (3) that such a revision has to be filed through the Commissioner; and (4) a revision ought to be filed within 15 days from the date of publication of the Notification.

In so far as the requirements 1, 2 and 4 are concerned, in our view they are mandatory; without there being a notification duly declaring a village issued by the Commissioner, there would be no cause to approach the Government under Rule 10. It is equally clear that the Gram Panchayat alone would be the affected party and can file a revision. In our view, advisedly, the Rules keep an individual away from seeking remedy under Rule 10 as, in the matter of declaration of villages and elections of Gram Panchayat, the body affected would be Gram panchayat, but not any individual; and, if individual residents are given the right to approach the revisional authority, the whole process of election and the administration of villages would be brought to a grinding halt and would be adversely affected....."

(emphasis supplied)

85. Unlike in D. Venkata Rushi Reddy 1996 (1) ALD 76 which related to the bifurcation of an existing Gram panchayat and forming a separate panchayat for one of the constituent villages, and Pabba Ramesh Vs. State of A.P., Panchayat Raj, Rural Development and Relief Departments and Others, wherein the validity of the elections held to the subject gram panchayat after including voters of another village and the tribal tandas was in issue, in the present case the very existence of the subject gram panchayats was brought to an end by way of a notification issued under Section 3(2)(f) of the 1994 Act. Rule 10 of the 2007 Rules stipulates that, where a notification for declaration of a village has been issued by the Government, it shall be open to any Gram panchayat affected to prefer a revision to the Government through the Commissioner within fifteen days from the date of publication of such notification. The remedy of a revision to the Government, under Rule 10 of the 2007 Rules, which is conferred only on the Gram panchayat, is available only in cases where a notification, for the declaration of a village, has been issued by the Government. Such a notification is contemplated only in the circumstances mentioned in Rule 9 of the 2007 Rules. Unlike a notification for declaration of a

village under Rule 9, Rule 12 prescribes the procedure for issuance of a notification to cancel the earlier notification constituting a gram panchayat. Rule 10 has no application where the Government has taken action to de-notify an existing gram panchayat under Section 3(2)(f) of the 1994 Act read with Rule 12 of the 2007 Rules.

86. Accepting this contention of Sri B. Mahender Reddy, Learned Counsel for respondents 8 to 11, would have absurd consequences. On a notification being issued under Section 3(2)(f) of the 1994 Act, read with Rule 12 of the 2007 Rules, the subject gram panchayat ceases to exist. A non-existent gram panchayat cannot avail the remedy of a revision to the Government under Rule 10 of the Rules, as the remedy is available only to an existing gram panchayat. If no one else has the locus standi to question such a de-notification, it would result in the illegal and highhanded acts of the Executive, in de-notifying a gram panchayat, going unchallenged and unchecked. Such a convoluted construction placed on Rule 10 of the Rules necessitates rejection. Interpretation of statutory provisions should not be stretched to exasperating and illogical limits. As the remedy of a revision under Rule 10 is only in the circumstances mentioned in Rule 9, and not where Rule 12 of the Rules is attracted, reliance placed by Sri B. Mahender Reddy, on D. Venkata Rushi Reddy 1996 (1) ALD 76 and Pabba Ramesh Vs. State of A.P., Panchayat Raj, Rural Development and Relief Departments and Others, , is misplaced.

87. An application for a writ of mandamus can be made by a person aggrieved by an order, and not a total stranger. Dr. Duryodhan Sahu and Others Etc. Etc. Vs. Jitendra Kumar Mishra and Others Etc. Etc., . The meaning of the expression "person aggrieved" may vary according to the context of the statute, and the facts of the case. Normally a ''person aggrieved'' is a man who has suffered a legal grievance or against whom a decision has been pronounced which has wrongfully deprived him of something or he has been wrongfully refused something or his title to something has been wrongfully affected. Thammanna Vs. K. Veera Reddy and Others, ; Bar Council of Maharashtra Vs. M.V. Dabholkar and Others, ; and Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, . Existence of a legal right is the foundation of the exercise of jurisdiction under Article 226 of the Constitution of India. The legal right, that can be enforced under Article 226, must, ordinarily, be the right of the petitioner himself who complains of infraction of such a right and approaches the Court for relief. The right that can be enforced under Article 226 shall also, ordinarily, be the personal or individual right of the petitioner himself. The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, ; The State of Orissa Vs. Madan Gopal Rungta, ; Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, .

88. The term "locus standi" can be understood as a legal capacity to challenge an act, an order or a decision. (Andhra Pradesh Wine Dealers Association v. Deputy Director of Income Tax (Investigation) 2005 (4) Laws (APHC) 106). The traditional rule of locus standi is that judicial redress is available only to a person who has suffered

a legal injury by reason of a violation of his legal right or legally protected interest by the impugned action of the State or a public authority or any other person or who is likely to suffer a legal injury by reason of threatened violation of his legal right or legally protected interest by any such action. The basis of entitlement to judicial redress is a personal injury to the property, body, mind or reputation arising from violation, actual or threatened, of the legal right or legally protected interest of the person seeking such redress. This is a rule of ancient vintage, and arose during an era when private law dominated the legal scene and public law had not yet been born. S.P. Gupta Vs. President of India and Others, .

89. The traditional rule of standing, which confines access to the judicial process only to those to whom legal injury is caused or a legal wrong is done, has now been jettisoned by Courts and the narrow confines within which the rule of standing was imprisoned for long, as a result of the inheritance of the Anglo-Saxon system of jurisprudence, has been broken and a new dimension has been given to the doctrine of "locus stand". People''s Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, ; Andhra Pradesh Wine Dealers Association 2005 (4) Laws (APHC) 106). The orthodox rule of interpretation, regarding the locus standi of a person to reach the Court, has undergone a sea change with the development of Constitutional law in our Country. Constitutional Courts have, of late, been adopting a liberal approach in dealing with cases, or in dislodging the claim of a litigant, merely on hypertechnical grounds. If a person approaching the court can satisfy that the impugned action is likely to adversely affect his right which is shown to have source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his not having the locus standi. In other words, if the person is found to be not merely a stranger having no right whatsoever, he cannot be non-suited on the ground of his not having the locus standi. Ghulam Qadir Vs. Special Tribunal and Others, . The strict rule of locus standi applicable to private litigation has been relaxed, and a broad rule has been evolved which gives the right of locus standi to any member of the pubic acting bona fide and having sufficient interest in instituting an action for redressal of public wrong or public injury, but who is not a mere busy body or a meddlesome interloper. Janata Dal Vs. H.S. Chowdhary and Others, ; Andhra Pradesh Wine Dealers Association 1996 (1) ALD 76). A member of the public, having no personal gain or oblique motive, is empowered to approach the Court for enforcement of his Constitutional or Legal rights. (Sheela Barse v. Union of India (1988) 4 SCC 226; Andhra Pradesh Wine Dealers Association 2005 (4) Laws (APHC) 106).

90. In M.S. Jayaraj Vs. Commissioner of Excise, Kerala and Others, , the Supreme Court observed:

".....In this context we noticed that this Court has changed from the earlier strict interpretation regarding locus standi as adopted in The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others, and Jasbhai Motibhai

Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, and a much wider canvass has been adopted in later years regarding a person''s entitlement to move the High Court involving writ jurisdiction. A four Judge Bench in Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, pointed out three categories of persons vis-a-vis the locus standi: (1) a person aggrieved; (2) a stranger; (3) a busybody or a meddlesome interloper. Learned Judges in that decision pointed out that any one belonging to the third category is easily distinguishable and such person interferes in things which do not concern him as he masquerades to be a crusader of justice. The Judgment has cautioned that the High Court should do well to reject the petitions of such busybody at the threshold itself. Then their Lordships observed the following (para 37 of AIR):

"The distinction between the first and second categories of applicants, though real, is not always well demarcated. The first category has as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of ''persons aggrieved''. In the grey outer circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be persons aggrieved."

A recent decision delivered by a two Judge Bench of this Court (of which one of us is a party - Sethi, J.) in The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others, after making a survey of the later decisions held thus (para 17 of AIR, Cri LJ):

"In the context of public interest litigation, however, the Court in its various judgments has given the widest amplitude and meaning to the concept of locus standi. In People''s Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, it was laid down that public interest litigation could be initiated not only by filing formal petitions in the High Court but even by sending letters and telegrams so as to provide easy access to Court. On the right to approach the Court in the realm of public interest litigation. In Bangalore Medical Trust Vs. B.S. Muddappa and others, the Court held that the restricted meaning of aggrieved person and the narrow outlook of a specific injury has yielded in favour of a broad and wide construction in the wake of public interest litigation. The Court further observed that public spirited citizens having faith in the rule of law are rendering great social and legal service by espousing causes of public nature. They cannot be ignored or overlooked on a technical or conservative yardstick of the rule of locus standi of the absence of personal loss or injury. There has, thus, been a spectacular expansion of the concept of locus standi. The concept is much wider and it takes in its stride anyone who is not a mere busybody."

In the light of the expanded concept of the locus standi and also in view of the finding of the Division Bench of the High Court that the order of the Excise Commissioner was passed in violation of law, we do not wish to nip the motion out solely on the ground of locus standi. If the Excise Commissioner has no authority to permit a liquor shop owner to move out of the range (for which auction was held) and have his business in another range it would be improper to allow such an order to remain alive and operative on the sole ground that the person who filed the writ petition has strictly no locus standi. So we proceed to consider the contentions on merits....."

(emphasis supplied)

91. The statutory remedy of a revision cannot be equated with the constitutional remedy under Article 226 of the Constitution of India. The jurisdiction of this Court can be invoked by any person who has a modicum of a right, and is not a mere busy body or a meddlesome interloper. Petitioners 3, 7, 9, 12, 15 and 17 claim to be card-holders of the Mahatma Gandhi National Rural Employment Guarantee Scheme, and the beneficiaries thereof. Section 2(o) of the National Rural Employment Guarantee Act, 2005 (Act 42 of 2005) defines "rural area" to mean any area in a State except those areas covered by any urban local body or a Cantonment Board established or constituted under any law for the time being in force. Clause (p) of Section 2 defines "Scheme" to mean a Scheme notified by the State Government under Section 4(1). Section 3(1) of the Act stipulates that, save as otherwise provided, the State Government shall, in such rural area in the State as my be notified by the Central Government, provide to every household, whose adult members volunteer to do unskilled manual work, not less than one hundred days of such work in a financial year in accordance with the Scheme made under the Act. Under Section 3(2), every person who has done the work given to him under the Scheme shall be entitled to receive wages at the wage rate for each day of work. Section 4 provides for an employment guarantee scheme for the rural areas and, under sub-section (1) thereof, for the purposes of ''giving effect to the provisions of Section 3, every State Government shall, within one year from the commencement of the Act, by notification, make a scheme, for providing not less than one hundred days of guaranteed employment in a financial year to every household in the rural areas covered under the scheme and whose adult members, by application, volunteer to do unskilled manual work subject to the conditions laid down by or under the Act, and in the scheme.

92. Adult members, of households in rural areas, are alone entitled to the benefits of the Employment Guarantee Scheme, and not those living in urban areas. Some of the petitioners, who claim to be the card holders under the MGNREGA scheme, would be disentitled to the benefits of the Scheme on the Gram panchayats being de-notified, and the subject villages constituted as a Nagar panchayat (a local body created under Part IX-A of the Constitution of India and the provisions of the A.P.

Municipalities Act, 1965). This Court may not be understood to have opined that the Government is prohibited from constituting a Nagar panchayat, after merging two or more gram panchayats for the said purpose, merely because some of the villagers would, thereby, be denied the benefits of the MGRNEGA scheme. All that this Court has held is that persons, who would be deprived of the benefits of the National Rural Employment Guarantee Scheme consequent upon de-notification of the Gram Panchayat and its constitution as a Nagar panchayat, have the locus standi to invoke the jurisdiction of this Court, under Article 226 of the Constitution of India, to question the validity of such de-notification and the consequent constitution of a transitional area (Nagar panchayat), as such persons would have sufficient interest in instituting an action for redressal of a public wrong and they cannot be said to be mere busy bodies or meddlesome interlopers. In view of the expanded rule of standing in M.S. Jayaraj Vs. Commissioner of Excise, Kerala and Others, , I see no reason to non-suit the petitioners on the specious plea that they lack the locus standi to file this writ petition.

VII. OTHER CONTENTIONS:

(a). SHOULD HEARING OF THE WRIT PETITION BE DEFERRED TILL THE WRIT APPEAL, FILED AGAINST DENIAL OF THE INTERIM ORDER IN THE W.P., IS FINALLY DISPOSED OF?

93. Sri B. Mahender Reddy, learned counsel for respondents 8 to 11, would submit that this Writ Petition has been filed questioning the de-notification of the village, (cancellation of the earlier notification constituting the village), under Section 3(2)(f) of the 1994 Act, vide GOMs. No. 33 dated 31.01.2013; the petitioners sought interim suspension of GOMs. No. 33 dated 31.01.2013, and the consequential GOMs. No. 37 dated 31.01.2013 constituting a transitional area; a learned single judge of this Court refused to grant an interim order in WPMP No. 5250/2013, dt. 13.3.2013; the petitioners filed W.A. No. 432 of 2013 questioning refusal of the interim order; W.A. No. 432 of 2013 was admitted and, by order in W.A.M.P. No. 1066/2013 dated 13.09.2013, the Division Bench directed that elections to the Dubbaka Nagar Panchayat not be conducted; as the Writ Appeal is still pending before the Division Bench, the Writ Petition cannot be heard till the Writ Appeal is finally disposed of; otherwise, the possibility of conflicting judgments being passed, one by the single judge, and another by the Division Bench, cannot be ruled out; propriety and judicial discipline requires the Writ Petition to be disposed of only after disposal of Writ Appeal arising from the said Writ Petition; and the petitioners cannot enjoy an interim order in the Writ Appeal and, simultaneously, seek disposal of the Writ Petition during the pendency of the Writ Appeal.

94. This Court, in its order dated 01.03.2013, recorded the assurance of the Government Pleader that, for the next one year, the State Government had committed itself to continue the National Rural Employment Guarantee Scheme in the six villages which were earlier notified as Gram Panchayats; and they would not

be disbanded for at least one year so that the apprehension of a large chunk of people, losing their right to guaranteed minimum number of days of work, would not continue and they would earn their living honourably. Notice before admission, returnable in ten days, was ordered and the Registry was directed to list the matter after ten days in the Motion List. Aggrieved thereby the petitioner preferred W.A. No. 432 of 2012 and the Division Bench of this Court, in its order dated 13.06.2013, observed that the contention of the Learned Counsel for the appellant that, as per Rule 12(2) of the A.P. Gram Panchayat (Declaration of Villages) Rules, 2007, the Government has not issued any notice to the Gram Panchayats was not disputed by the Learned Government Pleader for Panchayat Raj. After taking note of the submission, made on behalf of respondents 8 to 11, that the gram sabhas had themselves passed resolutions requesting merger with the Nagar panchayat, the Division Bench directed that the elections, which were going to be conducted for Dubbaka Nagar Panchayat, be stayed until further orders.

95. W.A. No. 432 of 2012 is said to be still pending before the Division Bench. The order passed by this Court in W.P. No. 4205 of 2013 dated 01.03.2013, recording the submission of the Learned Government Pleader for Panchayat Raj, is an interlocutory order. The Writ Appeal preferred thereagainst is limited to an examination of the validity or otherwise of the said interlocutory order, and for grant of the interim order sought for by the petitioners. The aforementioned order of the Division Bench is, therefore, also an interlocutory order. Interlocutory orders are made in aid of final orders, and not vice versa. No interlocutory order will survive after the original proceeding comes to an end. Shipping Corporation of India Ltd. Vs. Machado Brothers and Others, ; Mrs. Kavita Trehan and another Vs. Balsara Hygience Products Ltd., ; and Pitta Naveen Kumar and Others Vs. Raja Narasaiah Zangiti and Others, . When a party obtains an interim order, and the final proceedings come to an end, the interim order also, automatically, comes to an end. V. Ramakrishna Vs. Smt. N. Sarojini and others, .

96. Neither has any statutory provision, nor any binding precedent, been shown to this Court which would require it to refrain from hearing a Writ Petition finally, merely because the Writ Appeal preferred against the interlocutory order passed earlier in the very same Writ Petition, or for grant of the interim order sought for in the Writ Petition, is pending adjudication before the Division Bench. On the Writ Petition being finally heard and decided, the interlocutory order passed earlier would not survive and the Writ Appeal preferred thereagainst, or for grant of an interim order as sought for in the Writ Petition, would be rendered infructuous thereby. As the Writ Petition is finally disposed of, the possibility of conflicting judgments being passed by the single judge and the Division Bench would not arise. All that is required is for any of the parties to bring the fact of disposal of the main Writ Petition to the notice of the Division bench and request it to dismiss the Writ Appeal as infructuous. Mere pendency of W.A. No. 432 of 2012 would not bar this Court from hearing and adjudicating the main Writ Petition. This contention of Sri B.

Mahender Reddy necessitates rejection.

(b). SUBSEQUENT DEVELOPMENTS, AFTER CONSTITUTION OF DUBBAKA NAGAR PANCHAYAT, ARE OF NO CONSEQUENCE IN EXAMINING WHETHER OR NOT THE IMPUGNED G.Os., WHEREBY THEY WERE SO CONSTITUTED, ACCORD WITH LAW.

97. Both Sri B. Mahendar Reddy, Learned Standing Counsel for respondents 8 to 11, and Sri D. Bhaskar Reddy, Learned Standing Counsel for respondent No. 12, would submit that, subsequent to the constitution of Dubbaka Nagar Panchayat, a Municipal Commissioner was appointed, and is working for the last more than one year; the government has already released several crores of rupees as funds to the Dubbaka Nagar Panchayat for its development under Municipal Funds; and, in view of the above, the present Writ Petition should be dismissed with exemplary costs.

98. It is not even the case of the respondents that the Writ Petition is hit by delay and laches. W.P. No. 4205 of 2013 was filed on 11.02.2013 less than a fortnight after the impugned G.Os. were issued. As the Writ Petition was pending adjudication, on the file of this Court, for more than a year, the petitioners cannot be denied relief taking subsequent events into consideration, more so as the impugned G.Os. were issued in flagrant violation of the statutory rules, and the very existence of the gram panchayats were brought an end at the mere whims and fancies of the government. Larger public interest would require this Court''s intervention to ensure observance of the rule of law by the executive while denotifying gram panchayats - which are institutions of self-government under Part IX of the Constitution.

VIII. CONCLUSION:

99. Viewed from any angle, the impugned G.Os. (G.O.Ms. No. 33 PR & RD dated 31.01.2013 and G.O.Ms. No. 37 MA & UD (Elec. I) Dept dated 31.01.2013) must be, and are accordingly, set aside. As a result the subject Gram Panchayats, which were denotified by G.O.Ms. No. 33 dated 31.01.2013, shall stand revived. It is made clear that this order shall not preclude the State Government, if it so chooses, from taking action afresh, for constitution of a Nagar Panchayat, strictly in accordance with law. As the subject Gram Panchayats now stand revived, and the Dubbaka Nagar Panchayat ceases to remain in existence, the question of conducting elections to the Dubbaka Nagar Panchayat would not arise. With regards conduct of elections to the posts of M.P.T.C. in Dubbaka Mandal and other offices, I have no reason to doubt that the State Election Commission will take necessary action in accordance with law.

100. Both the Writ Petitions are, accordingly, disposed of. However, in the circumstances, without costs. The miscellaneous petitions, pending if any, shall also stand disposed of.