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(BEFORE K.G. BALAKRISHNAN, C.J. AND P. SATHASIVAM
AND J.M. PANCHAL, JJ.)

UNION OF INDIA AND OTHERS

.. Appellants;

Versus

RAKESH KUMAR AND OTHERS

.. Respondents.

Civil Appeals Nos. 484-91 of 2006[†] with Nos. 209 of 2010[‡],
210-11 of 2010^{††}, 212 of 2010^{‡‡}, 213 of 2010^{‡‡}, 214 of 2010^{‡‡},
215 of 2010^{†††}, 216 of 2010^{†††} and 217 of 2010^{†††},
decided on January 12, 2010

A. Constitution of India — Pt. IX, Arts. 243-M(4)(b), 243-D, 15(4), 16(4) and Sch. V — Extension of provisions of Pt. IX (Panchayati Raj System) to Scheduled Areas — Broad policy of law — Effect on privileges enjoyed by STs in Scheduled Areas — Chairperson of Panchayat in Scheduled Areas, if can exclusively be from STs only i.e. 100% reservation — Held, object and policy is to preserve protection already granted to Scheduled Areas under Sch. V and simultaneously to extend Panchayati Raj System under Pt. IX to those areas — While extending Panchayati Raj System, STs cannot be put to a disadvantaged position, compared to protection already afforded to them under Sch. V — Exceptional treatment has been given to STs in Scheduled Areas in view of peculiar conditions of those areas — Such exceptional treatment cannot be compared with reservation policy under Arts. 15(4) and 16(4) — It is permissible that Chairperson of Panchayat in Scheduled Areas should exclusively be from STs only — Panchayats (Extension to the Scheduled Areas) Act, 1996 — S. 4(g) second proviso — Jharkhand Panchayat Raj Act, 2001 (6 of 2001) — Ss. 21(B), 40(B), 51(B) and 55(B) — Bhuria Committee Report

The first and second provisos to Section 4(g) of the Panchayats (Extension to the Scheduled Areas) Act, 1996 and Sections 17(B)(2), 21(B), 36(B), 40(B) and 51(B) and 55(B) of the Jharkhand Panchayat Raj Act, 2001, were challenged on the ground that reservation of seats provided in these sections was excessive and therefore violative of the Constitution. The High Court struck down the second proviso to Section 4(g) of the PESA Act and Sections 21(B), 40(B) and 55(B) of JPRA. The Union of India filed an appeal against the judgment of the High Court.

[†] From the Judgment and Order dated 2-9-2005 of the High Court of Jharkhand in WPs (PIL) Nos. 2728, 3877 of 2002, 747 of 2001, 1585, 849 of 2002, CWJCs Nos. 3591 of 1997 (R), 2148 of 2001 and WP (C) No. 2097 of 2002

[‡] Arising out of SLP (C) No. 21123 of 2005

^{††} Arising out of SLPs (C) Nos. 21124-25 of 2005

^{‡‡} Arising out of SLP (C) No. 21129 of 2005

^{†††} Arising out of SLP (C) No. 21131 of 2005

^{‡‡‡} Arising out of SLP (C) No. 23887 of 2005

^{††††} Arising out of SLP (C) No. 2535 of 2006

^{†††††} Arising out of SLP (C) No. 3274 of 2006

^{††††††} Arising out of SLP (C) No. 6325 of 2008

Allowing the appeal, the Supreme Court

Held :

- a Principles of reservation which are applicable for public employment and for admission to educational institutions cannot be readily applied in respect of a reservation policy made by the legislature to protect the interests of Scheduled Tribes by assuring them of majority reservation as well as occupancy of Chairperson positions in Panchayats located in Scheduled Areas. The policy broadly corresponds with past practice wherein Scheduled Areas were administered as per the provisions of Schedule V to the Constitution, and the same was expected to adhere to the advice of Tribes Advisory Councils which were predominantly controlled by Scheduled Tribes. By extending the Panchayati Raj System to these areas, Scheduled Tribes should not be put in a relatively disadvantaged position. In Panchayati Raj System contemplated by Part IX, Scheduled Tribes should have an effective say in the administration. That is why Bhuria Committee recommended that all Chairperson positions
- c should be reserved in favour of Scheduled Tribes. The impugned reservation policy is applicable only to Scheduled Areas which were hitherto covered by Schedule V. This pattern of reservation has been designed only for Scheduled Areas which merit such exceptional treatment. The Scheduled Areas under consideration are restricted only to certain districts in the State of Jharkhand. In some districts where STs are not predominantly in occupation, only certain blocks have been notified as Scheduled Areas by themselves. On account of
- d migration of non-tribals in some areas, there may be relatively lesser proportion of tribal population but historically these areas were occupied almost exclusively by tribal people. (Paras 24 to 26 and 36)
- e There is no reason to strike down Sections 21(B), 40(B) and 55(B) of the Jharkhand Panchayat Raj Act which give effect to the second proviso to Section 4(g) of the Panchayats (Extension to the Scheduled Areas) Act, 1996. In Panchayats located in Scheduled Areas, exclusive representation of Scheduled Tribes for positions of Chairpersons is constitutionally permissible. This is so because Article 243-M(4)(b) expressly empowers Parliament to provide for “exceptions and modifications” in the application of Part IX to Scheduled Areas. The provisos to Section 4(g) of the PESA Act contemplate certain exceptions to the norm of “proportionate representation” and the same exceptional treatment was incorporated in the impugned provisions of JPRA. (Para 31)
- f *Ashok Kumar Tripathi v. Union of India*, (2000) 2 MPHT 193, impliedly approved
- g B. Constitution of India — Arts. 243-D(1), (4) & (6), 243-M(4)(b); 14, 15(4), 16(4) and Sch. V — Reservation of seats for SCs and STs in Panchayats — Whether limit of 50% maximum reservation as prescribed in *Indra Sawhney case*, 1992 Supp (3) SCC 217, applies to reservations under Art. 243-D — 100% reservation of post of Chairperson of Panchayat in Scheduled Areas for STs and up to 80% reservation of Panchayat seats in Scheduled Areas at various levels for SCs, STs and OBCs — Validity — Held, Art. 243-D envisages proportionate representation and is distinct and an independent constitutional basis of reservation in Panchayati Raj institutions — Reservation under Art. 243-D cannot be compared with affirmative action measures under Arts. 15(4) and 16(4) where balance is to be maintained between affirmative action measures and merit — However, even if law laid down in *Indra Sawhney case* were to be applied, *Indra Sawhney case* does recognise exceptions where reservation
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can exceed 50% in certain circumstances — Reservations in Panchayats in Scheduled Areas is a fit case where exception should be applied, for the reason that there is compelling need in Scheduled Areas to safeguard interests of tribal communities by giving them effective voice in local self-government — Hence said reservations are valid (Ed.: See also Shortnotes A and M) — Panchayats (Extension to the Scheduled Areas) Act, 1996 — S. 4(g) provisos — Bhuria Committee Report — Local Self-Government — Reservation and Affirmative Action — Types and bases of reservation in the Constitution — Panchayats and Zila Parishads — Jharkhand Panchayat Raj Act, 2001 (6 of 2001) — Ss. 17(B)(2), 36(B)(2) and 51(B)(2)

Held :

Article 243-D is a distinct and independent constitutional basis of reservation in Panchayati Raj institutions. This reservation cannot be readily compared to affirmative action measures enabled by Articles 15(4) and 16(4) of the Constitution. The constitutional mandate is that Scheduled Castes should be given reservation at all the three tiers of Panchayats, with regard to the principle of proportionate representation. However, even if an analogy between Article 243-D and Article 16(4) was viable, a close reading of *Indra Sawhney case* reveals that though an upper limit of 50% was prescribed for reservations in public employment, the said decision did recognise need for exceptional treatment in some circumstances. The case of Panchayats in Scheduled Areas is a fit case that warrants exceptional treatment with regard to reservations. The rationale behind imposing an upper ceiling of 50% in reservations for higher education and public employment cannot be readily extended to the domain of political representation at Panchayat level in Scheduled Areas. With respect to education and employment, parity is maintained between total number of reserved and unreserved seats in order to maintain a pragmatic balance between affirmative action measures and considerations of merit. (Paras 41, 43 and 44)

Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385, *clarified, distinguished and relied on*

Vinayakrao Gangaramji Deshmukh v. P.C. Agrawal, AIR 1999 Bom 142, *approved*

M.R. Balaji v. State of Mysore, AIR 1963 SC 649, *distinguished*

Janardan Paswan v. State of Bihar, AIR 1988 Pat 75; *Krishna Kumar Mishra v. State of Bihar*, AIR 1996 Pat 112, *cited*

Under Articles 15(4) and 16(4), reservation of seats in favour of socially and educationally backward classes (SEBCs) is ordinarily done on the basis of proportionate representation and an upper ceiling of 50% allows for considerable flexibility in distributing benefits of higher education and public employment among a wide range of intended beneficiaries such as SCs, STs, women and OBCs. However, the same approach of providing proportionate representation is likely to be less effective in the context of reservations for Panchayats in Scheduled Areas. One reason for this is the inherent difference between nature of benefits that accrue from access to education and employment on the one hand and political participation on the other hand. While access to higher education and public employment increases likelihood of gradual socio-economic empowerment of individual beneficiaries, involvement in local self-government is intended as a more immediate measure of protection for individual as well as the community that he/she belongs to. Especially in the context of Scheduled Areas, there is compelling need to safeguard interests of tribal communities with

- a immediate effect by giving them an effective voice in local self-government. The Bhuria Committee Report has outlined problems faced by Scheduled Tribes and urged importance of democratic decentralisation which would empower them to protect their own interests. (Para 45)

- b **C. Constitution of India — Arts. 14, 15(4), 16(4), 243-D, 243-M(4)(b) and Pt. IX — Types of affirmative action measures — “Proportionate representation”, “adequate representation” and “compensatory discrimination” — Difference explained — Held, reservation of seats under Arts. 15(4) and 16(4) for socially and educationally backward classes (SEBCs) is an example of “proportionate representation” — Principle of “adequate representation” is adopted when it is found that a particular community is under-represented and measures are taken to achieve desired level of representation — Reservation of one-third seats for women in Panchayats in Pt. IX, is an embodiment of “adequate representation” — Reservation of 50% seats for STs in Panchayats in Scheduled Areas is an example of “compensatory discrimination”**

- c *Held :*

- d By reserving at least half of the seats in Panchayats located in Scheduled Areas in favour of STs, the legislature has adopted a standard of compensatory discrimination which goes beyond the ordinary standards of “adequate representation” and “proportionate representation”. The standard of “adequate representation” comes into play when it is found that a particular community is under-represented in a certain domain and a specific threshold is provided in order to ensure that beneficiary group comes to be adequately represented with the passage of time. In Part IX of the Constitution, reservation in favour of women which amounts to one-third of all the seats in Panchayats is an embodiment of “adequate representation” standard. However, in instances where the Constitution does not specify quantum of reservations, the idea of
- e “proportionate representation” is the rule of thumb. (Paras 40 and 46)

- f Proportionate representation has been the controlling idea behind reservations in the context of education and public employment which have a basis in Articles 15(4) and 16(4) respectively. Even in the context of Panchayati Raj institutions, Articles 243-D(1), (4) & (6) explicitly refer to “proportionate representation” as the controlling idea behind reservations in favour of SCs, STs and Backward Classes respectively. With respect to Panchayats located in Scheduled Areas, flexibility provided by Article 243-N(4)(b) has led to enactment of the PESA Act which specifies “proportional representation” as the norm for reservations in favour of intended beneficiaries but makes a departure from this standard in order to protect interests of Scheduled Tribes in particular. (Para 47)

- g **D. Panchayats and Zila Parishads — Panchayats (Extension to the Scheduled Areas) Act, 1996 — S. 4(g) provisos — 50% reservation for STs in Panchayats and 100% reservation for STs on seats of Chairpersons — Rationale behind adopting such “compensatory measure” in preference to “adequate representation” or “proportionate representation” — Held, STs even if in relative majority were under-represented in governmental machinery and therefore vulnerable to exploitation — Hence need for**
- h **compensatory discrimination**

Held :

There is a rational basis for departing from norms of “adequate representation” as well as “proportionate representation” in the present case. This was necessary because it was found that even in areas where Scheduled Tribes are in a relative majority, they are under-represented in governmental machinery and hence vulnerable to exploitation. Even if areas where persons belonging to Scheduled Tribes held public positions, it is a distinct possibility that non-tribal population will come to dominate the affairs. Relatively weaker position of Scheduled Tribes is also manifested through problems such as land grabbing by non-tribals, displacement on account of private as well as governmental development activities and destruction of environmental resources. In order to tackle such social realities, legislature thought it fit to depart from the norm of “proportional representation”. It is not the job of the Court to second guess such policy choices. (Para 48)

Ashok Kumar Tripathi v. Union of India, (2000) 2 MPHT 193, *relied on*

E. Constitution of India — Sch. V — Purpose of — Held, is to provide for separate administrative scheme for Scheduled Areas in order to address special needs of tribal communities (Para 5)

F. Panchayats and Zila Parishads — Jharkhand Panchayat Raj Act, 2001 (6 of 2001) — Ss. 36(B) and 51(B) — Reservation of seats in Panchayat Samitis and Zila Parishads — Districts where only some blocks have been notified as Scheduled Areas — Held, in such cases, reservation is to be applied at Panchayat Samiti level only but not at Zila Parishad level (Para 29)

G. Constitution of India — Arts. 14, 39(b), 39(c), Preamble and Pt. IX — Equal protection of laws — Underlying considerations — Substantive equality and distributive justice — Held, are at the heart of Indian understanding of concept of equal protection — State can treat unequals differently for creating a level-playing field in social, economic and political spheres (Para 37)

H. Constitution of India — Arts. 14, 32 & 226 and Pt. IX — Affirmative action measures — Judicial review — Approach to be adopted by courts while examining such measures — Held, proportionality, rather than strict scrutiny is the guiding principle — Reservation of seats in Panchayats is one such affirmative action measure enabled by Pt. IX — Administrative Law — Proportionality (Para 37)

I. Constitution of India — Arts. 14, 15 and 16 — Affirmative action measures — Need for periodical review keeping in view changing social and economic conditions — Stressed (Para 37)

J. Constitution of India — Pt. IX (as ins. by 73rd Amendment) and Art. 14 — Underlying purpose of Pt. IX — Held, is to create democratic decentralisation for ensuring that traditionally marginalised groups should progressively gain foothold in local self-government — It is in this background that “reasonable classification” is to be viewed — Local Government — Local Self-Government (Para 39)

K. Constitution of India — Art. 243-M(4)(b) and Pt. V — Extension of Panchayati Raj System to Scheduled Areas — Reservations of seats for STs — Judicial interference if called for, in case reservation not targeted properly — Held, identification of Scheduled Areas is an executive function

- However, legitimacy of affirmative action is open to judicial review if measures are not targeted properly — Administrative Law — Judicial review — Scope of — Affirmative action measures — Panchayats and Zila Parishads — Panchayats (Extension to the Scheduled Areas) Act, 1996 — S. 4(g) provisos — Reservation of seats for STs in Scheduled Areas (Paras 50 and 51)**

- L. Panchayats and Zila Parishads — Panchayats (Extension to the Scheduled Areas) Act, 1996 — S. 4(g) provisos — Reservation of minimum 50% seats for STs in Scheduled Areas — Rationale of — Held, in most of Scheduled Areas, ST population is in majority but there are some other Areas where there is considerable influx of non-tribal population — In such Areas, interests of tribals have been protected by fixing minimum 50% reservation for STs (Para 52)**

- M. Panchayats and Zila Parishads — Jharkhand Panchayat Raj Act, 2001 (6 of 2001) — Ss. 17(B)(2), 36(B)(2) and 51(B)(2) — Ceiling of 80% reservation — Held, would be attracted only in those Scheduled Areas where population of SCs and Backward Classes exceeds 30%**

Held :

- In addition to 50% reservation in favour of Scheduled Tribes, the State of Jharkhand is also under an obligation to account for the interests of SCs and OBCs. The same has been contemplated in Section 17(B)(2), 36(b)(2) and 51(B)(2) of JPRA which incorporate the standard of “proportionate representation” for SCs and Backward Classes in such a manner that total reservations do not exceed 80%. This does not mean that reservation will reach 80% ceiling in all Scheduled Areas. Since the allocation of seats in favour of SCs and Backward Classes has to follow the principle of proportionality, the extent of total reservations is likely to vary across different territorial constituencies identified for the purpose of elections to Panchayats. Depending upon the demographic profile of a particular constituency, it is possible that total reservations could fall short of 80% ceiling. However, in Scheduled Areas where extent of population belonging to SCs and Backward Classes exceeds 30% of total population, upper ceiling of 80% will become operative. (Para 57)**

- N. Panchayats and Zila Parishads — Panchayats (Extension to the Scheduled Areas) Act, 1996 — S. 4(g) provisos — Jharkhand Panchayat Raj Act, 2001 (6 of 2001) — Ss. 17(B)(2), 36(B)(2) and 51(B)(2) — Constitutional validity — Held, these provisions give effect to exceptional treatment mandated in Art. 243-M(4)(b) and are therefore valid — Constitution of India — Art. 243-M(4)(b)**

Held :

- Legislative intent behind impugned provisions of JPRA is primarily that of safeguarding interests of persons belonging to Scheduled Tribes category. Total reservations exceeding 50% of the seats in Panchayats located in Scheduled Areas are permissible on account of exceptional treatment mandated under Article 243-M(4)(b). Proviso to Section 4(g) of the PESA Act and Sections 21(B), 40(B) and 55(B) of the Jharkhand Panchayat Raj Act, 2001 are constitutionally valid. Sections 17(B)(2), 36(B)(2) and 51(B)(2) of the Jharkhand Panchayat Raj Act, 2001 are also constitutionally valid. (Paras 58 and 60)**

O. Election — Voting right — Electoral franchise — Exercise of — Held, though an essential component of liberal democracy yet is not a fundamental right — It is a right conferred and controlled by legislative measures (Para 54) a

N.P. Ponnuswami v. Returning Officer, AIR 1952 SC 64, *relied on*

P. Election — “One man, one vote” — Principle restated — However held, the principle cannot be enforced to an absolute standard, for the reason that territorial constituencies are of varying sizes — The principle cannot also be applied absolutely to Panchayat elections in Scheduled Areas — It is necessary to redraw territorial constituencies from time to time keeping in view demographic shifts in an area — Constitution of India — Art. 243-M(4)(b) and Pt. V — Panchayats and Zila Parishads — Election — Scheduled Areas b

Held :

While the principle of “one man, one vote” entails that there should be parity between weightage given to votes cast by individuals, the same cannot be enforced to an absolute standard. This is because territorial constituencies are of varying sizes with regard to number of voters residing in them. This means that there is bound to be some disparity in the weightage accorded to votes cast by individuals across different constituencies. This problem exists in all electoral formats where representatives are chosen from territorial constituencies. The principle of “one man, one vote” cannot be applied in an absolute sense in the context of Panchayat elections in Scheduled Areas. However, it is the responsibility of the executive to identify territorial constituencies which have a certain degree of parity in their population level. It is important to redraw these constituencies from time to time, in keeping with demographic shifts in the area concerned. (Para 28) c

R.C. Poudyal v. Union of India, 1994 Supp (1) SCC 324, *considered*

Q. Election — Right, if any, to contest elections — Held, there is no inherent right — There are explicit legislative controls over contesting of elections — 100% reservation of seats of Chairpersons for STs in Panchayats in Scheduled Areas thereby debarring non-STs from contesting elections for these seats — Held, is the outcome of 100% reservation conferred by PESA Act, 1996, S. 4(g) second proviso — No exceptions can be taken if non-STs are excluded from contesting elections for said post — Panchayats (Extension to the Scheduled Areas) Act, 1996 — S. 4(g) second proviso — Jharkhand Panchayat Raj Act, 2001 (6 of 2001) — Ss. 17(B)(1), 36(B)(1) and 51(B)(1) — Constitution of India, Art. 243-M(4)(B) (Paras 55 and 56) e

R. Constitutional Interpretation — External aids — Statement of Objects and Reasons — Taken into consideration to ascertain legislative intent behind 73rd Amendment of Constitution (Para 39) g

S. Constitutional Interpretation — External aids — Committee Reports — Relevance of — Bhuria Committee Report taken into consideration for interpreting Art. 243-M(4)(b) and legislations enacted pursuant thereto — Panchayats (Extension to the Scheduled Areas) Act, 1996 — S. 4(g) provisos — Jharkhand Panchayat Raj Act, 2001 (6 of 2001) — Ss. 17(B), 21(B), 36(B), 40(B) and 51(B) (Paras 8 to 11) h

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Advocates who appeared in this case :

- a* Gopal Subramaniam, Additional Solicitor General, Dr. Rajeev Dhavan (NP), P.S. Mishra (NP), S.B. Upadhyay (NP), M.N. Krishnamani (NP) and Nagendra Rai (NP), Senior Advocates [Tapeshe Kr. Singh, Balaji (for B. Krishna Prasad), Amlan Kr. Ghosh, Prashant Bhushan, Bhupender Yadav, Vikramjit Banerjee, R.C. Kohli, Saket Singh, Ms Niranjana Singh, Vikram, Braj Kishore Mishra, Ujjwal K. Jha, Arup Banerjee, Kshatrashal Raj, Braj K. Mishra, M/s T.T.K. Deepak and Co. (NP), Nikhil Nayyar, T.V.S. Raghavendra Sreyas, Sumeet Gagodra, Amboj Agrawal, Dr. M.P. Raju, Ms Mary Scaria, P. George Giri, Ms Y. Kalivi Zhimomi, Ashwani Bhardwaj, Santosh Mishra, Rajesh Ranjan Dubey, Dhruv Kr. Jha, Jayesh Gaurav, *b* Shiv Mangal Sharma, Upendra Mishra, Pawan Upadhyay, Ms Sharmila Upadhyaya, Chinmoy Khaladkar, Shailendra Narayan Singh, Ms Neelam Kalsi, Vimal Chandra S. Dave, Sanjay R. Hegde, Anil Kr. Mishra, A. Rohen Singh, Amit Kr. Chawla, Vikrant Yadav, R. Venkataraman, Manish Kr. Saran, Nirmal Kr. Ambastha, Delip Jerath, Ms Ruchira Gupta, Bhawesh Kumar (for Ashok Mathur), Ms Kumud Lata Das, D.N. Goburdhun (NP) and Ajit Kr. Sinha (NP), Advocates] for the appearing parties.

- c* **Chronological list of cases cited** **on page(s)**
1. (2000) 2 MPHT 193, *Ashok Kumar Tripathi v. Union of India* 69h, 77c
 2. AIR 1999 Bom 142, *Vinayakrao Gangaramji Deshmukh v. P.C. Agrawal* 75a
 3. AIR 1996 Pat 112, *Krishna Kumar Mishra v. State of Bihar* 71a-b
 4. 1994 Supp (1) SCC 324, *R.C. Poudyal v. Union of India* 69b-c, 69c-d
 - d* 5. 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385, *Indra Sawhney v. Union of India* 68c, 71a, 75c-d
 6. AIR 1988 Pat 75, *Janardan Paswan v. State of Bihar* 66e
 7. AIR 1963 SC 649, *M.R. Balaji v. State of Mysore* 68c, 71a
 8. AIR 1952 SC 64, *N.P. Ponnuswami v. Returning Officer* 79d-e

The Judgment of the Court was delivered by

- e* **K.G. BALAKRISHNAN, C.J.**— Leave granted. For a considerable period during the British Rule, special laws were made applicable to certain “backward areas” in India that were predominantly occupied by the tribal people. These backward regions covered an area of more than 1,20,000 square miles. However, the characteristics of these areas and their populations varied widely.

- f* **2.** By Act 14 of 1874, Santhal Parganas and Chutia Nagpur Division (now known as Chhota Nagpur Division) were created and in these “Scheduled Districts”, tribal communities were accorded a certain degree of autonomy to regulate their affairs on the basis of their own conventions and traditions. Many of these communities chose their leaders through an informal consensus among other customary methods of selection. When the Constitution was enacted, these areas were designated as “Scheduled Areas”. *g*

- 3.** Article 244 of the Constitution explicitly states that the provisions of the Fifth Schedule shall apply in respect of the administration and control of the Scheduled Areas in any State other than the States of Assam, Meghalaya, Tripura and Mizoram. The provisions of the Sixth Schedule guide the administration of tribal areas in those States. Para 4 of the Fifth Schedule states that there shall be in each State having a “Scheduled Areas”, a “Tribes Advisory Council” consisting of not more than twenty members of whom, as *h*

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nearly as may be, three-fourths shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State. It was the duty of the “Tribes Advisory Council” to advise on matters pertaining to the welfare and advancement of the Scheduled Tribes in the State. a

4. Para 5 of the Fifth Schedule states that the Governor of the State may by public notification direct that any particular Act of Parliament or the legislature of the State shall not apply to a Scheduled Areas or would apply subject to such exceptions and modifications as he may specify. The Governor of the State may also make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Areas. The Governor of the State has also been given the power to repeal or amend any existing Act of Parliament or of the legislature of the State which is for the time being applicable to the area in question. b

5. Hence, it is evident that the Framers’ intent behind including the Fifth Schedule was that of a separate administrative scheme for Scheduled Areas in order to address the special needs of tribal communities. During the debates on the floor of the Constituent Assembly, some members had criticised such differential treatment for Scheduled Tribes. In response to such criticisms, Shri K.M. Munshi had said that “Adivasis” or tribes were many in number belonging to different “ethnic, religious and social groups” and he explained the object of the Drafting Committee’s proposals in the following words: c

“We want that the Scheduled Tribes in the whole country should be protected from the destructive impact of races possessing a higher and more aggressive culture and should be encouraged to develop their own autonomous life; at the same time we want them to take a larger part in the life of the country adopted. They should not be isolated communities or little republics to be perpetuated forever ... object is to maintain them as little unconnected communities which might develop into different groups from the rest of the country ... and that these tribes should be absorbed in the national life of the country.” d

6. In exercise of the powers conferred by Para 6(1) of the Fifth Schedule to the Constitution of India, the President of India made an Order known as the Scheduled Areas (Part A States) Order, 1950. With respect to the then combined State of Bihar, this Order was applied to Ranchi District, Singhbhum District (excluding Dalbhum Sub-Division) and Santhal Pargana District. The following table shows the chronology of the governmental measures which have identified Scheduled Areas in the territories that lie in the present day State of Jharkhand: e

1874	The Scheduled Districts Act, 1874 (Act 14 of 1874) passed during the colonial period.	Declared the Santhal Parganas and the Chutia Nagpur Division (now known as “Chhota Nagpur Division”) as “Scheduled Districts” in the erstwhile province of Bengal. These areas now come within the territory of the State of Jharkhand. f
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a	1950	After Independence, the President of India had made an order known as the Scheduled Areas (Part A States) Order, 1950 in exercise of the powers conferred by Para 6(ii) of the Fifth Schedule to the Constitution of India.	In pursuance of this Order, Ranchi District, Singhbhum District (excluding Dalbhum Sub-Division), Santhal Pargana District (excluding Godda and Deoghar Sub-Divisions) and Latehar Sub-Division of Palamau District were declared to be Scheduled Areas.
	1977	The 1950 Order was rescinded and replaced by the Scheduled Areas (States of Bihar, Gujarat, Madhya Pradesh and Orissa) Order, 1977.	By the said Order, Ranchi District, Singhbhum District, Latehar Sub-Division and Bhandaria Block of Garhwa Sub-Division in Palamau District, Dumka; Pakur; Rajmahal and Jamatra Sub-Divisions and Sundarpahari and Boarijor Blocks of Godda Sub-Divisions in Santhal Pargana District were shown as Scheduled Areas of the then combined State of Bihar, all of which now fall within the territory of Jharkhand.
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c			
d	2003	Subsequent to the formation of the States of Jharkhand and Chhattisgarh, the Scheduled Areas (States of Chhattisgarh, Jharkhand and Madhya Pradesh) Order, 2003 was passed to replace the 1977 Order.	Under the 2003 Order, the following areas in the State of Jharkhand have been declared as Scheduled Areas:
e			1. Burhmu, Mandar, Chanho, Bero, Lapung, Namkom, Kanke, Ormanjhi, Angara, Silli, Sonahatu, Tamar, Bundu, Arki, Khunti, Murhu, Karra, Torpa and Raniya Blocks in Ranchi District.
			2. Kisko, Kuru, Lohardaga, Bhadra and Senha Blocks in Lohardaga District.
f			3. Bishanpur, Ghaghra, Chainpur, Dumri, Raidih, Gumla, Sisai, Kagdara, Basiya and Palkot Blocks in Gumla District.
			4. Simdega, Kolebira, Bano, Jaldega, Thethetangarh, Kurdeng and Bolba Blocks within Simdega District.
g			5. Barwadih, Manika, Balumath, Chandwa, Latehar, Garu and Mahuadaran Blocks within Latehar District.
			6. Bhandariya Block within Garhwa District.
h			7. Bandgaon, Chakradharpur, Sonuwa, Goyalkera, Mahoharpur, Noamundi, Jagannathpur, Manghgaon, Kumardungi,

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		Manjhari, Tatanagar, Jhinkpani, Tonto, Khutpani and Chaibasa Blocks within the West Singhbhum District.	a
		8. Govindpur (Rajnagar), Adityapur (Ghamariya), Seraikela, Kharsaan, Kuchai, Chandil, Ichagarh and Nimdih Blocks within Seraikela Kharsawan District.	
		9. Golmuri-Jugslia, Patmada, Potka, Dumariya, Musabani, Ghatsila, Dhalbhumgarh, Chakuliya and Bahragera Blocks within East Singhbhum District.	b
		10. Sariyhat, Jarmundi, Jama, Ramagarh, Gopikandar, Kathikund, Dumka, Sikripara, Raneshwar and Masaliya Blocks within Dumka District.	c
		11. Kundhit, Nala, Jamtara and Narayanpur Blocks within Jamtara District.	
		12. Sahebganj, Boriyo, Taljhari, Rajmahal, Barharwa, Pathna and Barhet Blocks within Sahebganj District.	d
		13. Littipara, Amrapara, Hiranpur, Pakur, Maheshpur and Pakuriya Blocks within Pakur District.	
		14. Borijore and Sundarpahari Blocks within Godda District.	e
2007	Subsequent to the impugned judgment of the Jharkhand High Court, the Government of Jharkhand passed the Scheduled Areas (State of Jharkhand) Order, 2007 and the same is presently in force.		f

Hence, Tribes Advisory Councils had been constituted for these Scheduled Areas since the Panchayati Raj System had not been extended to them.

7. By way of the Constitution (Seventy-Third Amendment) Act, 1992, Part IX was inserted in the Constitution of India. Article 243-B of Part IX of the Constitution mandated that there shall be panchayats at the village, intermediate and district levels in accordance with the provisions of this Part. Article 243-C provides that the legislature of a State may, by law, make provisions with respect to the composition of panchayats. Detailed provisions were made under Article 243-D enabling the reservation of seats for

Scheduled Castes, Scheduled Tribes, women and Other Backward Classes. Article 243-M stated that:

- a* “243-M. *Part not to apply in certain areas.*—(1) Nothing in this Part shall apply to the Scheduled Areas referred to in clause (1), and the tribal areas referred to in clause (2), of Article 244.”

8. Two years after the Seventy-Third Amendment Act, the Union Government had appointed a Committee of Members of Parliament (MPs) and experts under the Chairmanship of Shri Dilip Singh Bhuria to undertake a detailed study and make recommendations about whether the Panchayati Raj System should be extended to the Schedules Areas, as contemplated by Article 243-M(4)(b) of the Constitution. The Committee submitted its report on 17-1-1995 and favoured democratic decentralisation in Scheduled Areas. It will be instructive to refer to the following observations in the Bhuria Committee Report (at Para 10):

- c* “Tribal life and economy, in the not too distant past, bore a harmonious relationship with nature and its endowment. It was an example of sustainable development. But with the influx of outside population, it suffered grievous blows. The colonial system was established on the basis of expropriation of the natural and economic resources of tribal and other areas in the country. Although, theoretically,
- d* there has been difference in the approach after the departure of the colonial masters from tribal areas, in practice, the principles enunciated in Article 39 and other directive principles of State policy have to be followed more rigorously. On account of their simplicity and ignorance, over the decades the tribals have been dispossessed of their natural and economic resources like land, forest, water, air, etc. The dispossession
- e* has not been confined to that through private parties. For the purpose of promotion of general economic development projects, the State also has been depriving them of the basic means of livelihood. These processes have been operative since a long time causing human misery and socio-economic damage. No reliable picture is yet available, for instance, we are not seized on the total quantum of land alienated from the tribals both
- f* on private and State account nor the number of families, clans or tribes involved. This has compelled some to perceive development as an agent of destruction. But since planned development has been an article of faith with us, it has to be ensured that implementation of the policies and programmes drawn up in tribal interest are implemented in tribal interest. Since, by and large, the politico-bureaucratic apparatus has failed in its
- g* endeavour, powers should be developed on the people so that they can formulate programmes which suit them and implement them for their own benefits.”

9. It was further observed, at Para 30:

- h* “The group was further of the view that notwithstanding the fact that the areas under consideration i.e. Scheduled Areas are expected to have a majority of tribal population, *it is necessary to stipulate that the panchayats therein will have a majority of Scheduled Tribe members. The*

reason is that the Scheduled Areas were notified as such on account of majority of Scheduled Tribe population, contiguity, etc. In course of time, on account of influx of non-ST population, in a few Scheduled Areas, the status of the ST population might have been reduced to a minority. That should not be regarded as having altered the overall character of the Scheduled Areas. The Chairmen and Vice-Chairmen should belong to the Scheduled Tribes. One-third of the seats should be reserved for women.”

(emphasis supplied)

10. Evidently, the Committee made three specific recommendations, namely, (a) panchayats in Scheduled Areas must have a majority of Scheduled Tribe members, (b) Chairmen and Vice-Chairmen should belong to Scheduled Tribes, and (c) one-third of the seats should be reserved for women. The Committee felt that certain provisions in Part IX which pertained to Panchayati Raj Institutions (PRIs) were wholesome and should be incorporated in the law to be passed by Parliament under Article 243-M(4)(b) with due regard for the unique characteristics of tribal societies residing in the Scheduled Areas. It was considered especially important to protect the interests of many tribal societies which have their own customary laws, traditional practices and community ethos.

11. The Committee was also of the view that since the Scheduled Areas and Tribal Areas are expected to have a majority of tribal population, the panchayats at different tiers should have a majority of members who belong to the Scheduled Tribes (hereinafter “STs”). Furthermore, it was suggested that both the Chairman and Vice-Chairman should belong to this category as well. The Committee also made recommendations in respect of the various functions to be discharged by the Gram Sabhas in tribal areas. They pertained to safeguards for the rights of the tribal communities in matters relating to land, water, forest and minor forest produce; enforcement of customary rights such as grazing, fuel, fodder, minor forest produce, building materials; mobilisation for community welfare programmes and organising voluntary labour for community works; promotion of solidarity and harmony among all sections of people; consideration of the report on the audit of accounts of the Gram Panchayat; women and child development; identification of the beneficiaries for poverty alleviation and other programmes and a host of other welfare measures such as drinking water supply, sanitation, conservancy and drainage; public health measures; village roads and streets; small tanks; maintenance of public properties and community assets. The Committee gave detailed suggestions with regard to the powers, functions and procedures of the Panchayati Raj Institutions.

12. Based on these recommendations, the Panchayats (Extension to the Scheduled Areas) Act, 1996 (hereinafter “the PESA Act”) was passed by Parliament in 1996. The Statement of Objects and Reasons of the PESA Act reads as follows:

“There have been persistent demands from prominent leaders of the Scheduled Areas for extending the provisions of Part IX of the Constitution to these Areas so that Panchayati Raj Institutions may be established there. Accordingly, it is proposed to introduce a Bill to

a provide for the extension of the provisions of Part IX of the Constitution to the Scheduled Areas with certain modifications providing that, among other things, the State legislations that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources;.... The offices of the Chairpersons in the panchayats at all levels shall be reserved for the Scheduled Tribes; the reservations of seats at every panchayat for the Scheduled Tribes shall not be less than one-third of the total number of seats.”

b 13. The provision of the PESA Act which merits consideration in the present case is Section 4 which reads as follows:

c “4. *Exceptions and modifications to Part IX of the Constitution.*— Notwithstanding anything contained under Part IX of the Constitution, the legislature of a State shall not make any law under that Part which is inconsistent with any of the following features, namely:

(a) a State legislation on the panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources;

(b) a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs;

d (c) every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the panchayat at the village level;

(d) every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution;

e (e) every Gram Sabha shall—

(i) approve the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the panchayat at the village level;

f (ii) be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes;

(f) every panchayat at the village level shall be required to obtain from the Gram Sabha a certification of utilisation of funds by that panchayat for the plans, programmes and projects referred to in clause (e);

g (g) *the reservation of seats in the Scheduled Areas at every panchayat shall be in proportion to the population of the communities in that panchayat for whom reservation is sought to be given under Part IX of the Constitution:*

Provided that the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats:

h *Provided further that all seats of Chairpersons of panchayats at all levels shall be reserved for the Scheduled Tribes;*

(h) the State Government may nominate persons belonging to such Scheduled Tribes as have no representation in the panchayat at the intermediate level or the panchayat at the district level:

Provided that such nomination shall not exceed one-tenth of the total members to be elected in that Panchayat;

(i) the Gram Sabha or the panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level;

(j) planning and management of minor water bodies in the Scheduled Areas shall be entrusted to panchayats at the appropriate level;

(k) the recommendations of the Gram Sabha or the panchayats at the appropriate level shall be made mandatory prior to grant of prospecting licence or mining lease for minor minerals in the Scheduled Areas;

(l) the prior recommendation of the Gram Sabha or the panchayats at the appropriate level shall be made mandatory for grant of concession for the exploitation of minor minerals by auction;

(m) while endowing panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the panchayats at the appropriate level and the Gram Sabha are endowed specifically with—

(i) the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant;

(ii) the ownership of minor forest produce;

(iii) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe;

(iv) the power to manage village markets by whatever name called;

(v) the power to exercise control over money lending to the Scheduled Tribes;

(vi) the power to exercise control over institutions and functionaries in all social sectors;

(vii) the power to control over local plans and resources for such plans including tribal sub-plans;

(n) the State legislations that may endow panchayats with powers and authority as may be necessary to enable them to function as institutions or self-government shall contain safeguards to ensure that panchayats at the higher level do not assume the powers and authority of any panchayat at the lower level or of the Gram Sabha;

(o) the State Legislature shall endeavour to follow the pattern of the Sixth Schedule to the Constitution while designing the administrative arrangements in the panchayats at district levels in the Scheduled Areas.”

(emphasis supplied)

14. To give effect to the provisions of the PESA Act, the State Legislature of Jharkhand had passed the Jharkhand Panchayat Raj Act, 2001 (hereinafter

a “JPRA”) which included the following provisions:

“17. *Reservation of seats in Gram Panchayat.*— * * *

(B) For members of the Gram Panchayat (in Scheduled Areas)—

(1) In Scheduled Areas, in every Gram Panchayat, reservation of seats in favour of Scheduled Castes and Scheduled Tribes shall be made, proportionate to their respective population in that Gram Panchayat:

b Provided that the seats reserved for Scheduled Tribes shall not be less than half of the total number.

(2) In the Scheduled Areas, in Gram Panchayat, seats shall be reserved in such number in favour of persons of backward class, proportionate to their population, which, if combined with the seats reserved for Scheduled Castes and Scheduled Tribes, if any, shall not exceed more than eighty per cent of total seats of that Gram Panchayat.

c * * *

21. (B) *Reservation of posts of Mukhia and Up-Mukhia in Gram Panchayat (in Scheduled Areas).*—Post of Mukhia and Up-Mukhia of the Gram Panchayats in the Scheduled Areas shall be reserved for the Scheduled Tribes:

d Provided also that the Gram Panchayats, in the Scheduled Areas, wherein there is no population of Scheduled Tribes, shall be duly excluded from allotment of reserved posts of Mukhia and Up-Mukhia of Scheduled Tribes.

* * *

36. (B) *Reservation of seats of Panchayat Samiti (in Scheduled Areas).*—(1) In Scheduled Areas, in every Panchayat Samiti, reservation of seats in favour of Scheduled Castes and Scheduled Tribes shall be made, proportionate to their respective population in that Panchayat Samiti:

e Provided that the seats reserved for Scheduled Tribes shall not be less than half of the total number.

(2) In the Scheduled Areas, in Panchayat Samiti, seats shall be reserved in such number in favour of persons of backward class, proportionate to their population, which, if combined with the seats reserved for Scheduled Castes and Scheduled Tribes, if any, shall not exceed more than eighty per cent of total seats of that Panchayat Samiti.

f * * *

40. (B) *Reservation of posts of Pramukh and Up-Pramukh in Panchayat Samiti (in the Scheduled Areas).*—Posts of Pramukh and Up-Pramukh in Panchayat Samitis in the Scheduled Areas shall be reserved for the members belonging to the Scheduled Tribes.

g * * *

51. (B) *Reservation of seats in Zila Parishad (in Scheduled Areas).*—(1) In Scheduled Areas, in every Zila Parishad, reservation of seats in favour of Scheduled Castes and Scheduled Tribes shall be made, proportionate to their respective population in that Zila Parishad:

h Provided that the seats reserved for Scheduled Tribes shall not be less than half of the total number.

(2) In the Scheduled Areas, in Zila Parishad, seats shall be reserved in such number in favour of persons of backward class, proportionate to their population, which, if combined with the seats reserved for Scheduled Castes and Scheduled Tribes, if any, shall not exceed more than eighty per cent of total seats of that Zila Parishad.

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55. (B) *Reservation of posts of Adhyaksha and Upadhyaksha in Zila Parishad (in Scheduled Areas).*—The post of Adhyaksha of Zila Parishads in Scheduled Areas shall be reserved for the members of the Scheduled Tribes.”

15. In the High Court of Jharkhand, several writ petitions were filed to challenge the constitutional validity of the PESA Act, 1996 and certain other provisions of the Jharkhand Panchayat Raj Act, 2001. With regard to the PESA Act, the main challenge was directed against the second proviso to Section 4(g) whereby all the seats of Chairpersons of panchayats at all three tiers in Scheduled Areas are to be reserved in favour of Scheduled Tribes. The petitioners before the High Court had contended that since every eligible individual has a right to vote and the right to contest elections for the seats and Chairperson positions in panchayats, the cent per cent reservation of Chairperson positions in favour of STs would curtail the rights of candidates other than those belonging to the ST category.

16. It was also argued that the cent per cent reservation of Chairperson positions was excessive and hence violative of Article 14 of the Constitution. Some of the petitioners had urged that the office of a Chairperson should be treated as a solitary post and hence reservation of such office was not permissible. In support of this contention, they had relied on an earlier judgment of the Patna High Court in *Janardan Paswan v. State of Bihar*¹. This case was distinguished by the High Court keeping in mind that it was decided before the commencement of the Seventy-Third Amendment and that Article 243-D in Part IX of the Constitution had contemplated the said reservation policy. However, the High Court held that the second proviso to Section 4(g) of the PESA Act, 1996 reserving all the seats of Chairpersons of panchayats in favour of Scheduled Tribes was unconstitutional.

17. The relevant portion of the High Court judgment reads as follows:

“... So far as second proviso to clause (g) of Section 4 of the PESA Act, 1996 is concerned, by such provision the seats of Chairpersons of panchayats at all levels in the Scheduled Areas have been reserved for the Scheduled Tribes. In view of the aforesaid proviso to clause (g) of Section 4 of the PESA Act, 1996, the State Government while enacted the Jharkhand Panchayat Raj Act, 2001 in regard to the Scheduled Areas, all seats of Chairpersons of panchayats at all levels have been reserved for Scheduled Tribes vide Section 21(B), Section 40(B) and Section 55(B) of the Act, 2001. It has already been held that cent per cent reservation of the offices and seats of Chairpersons cannot be made, being excessive, unreasonable and against the principles of equality i.e.

¹ AIR 1988 Pat 75

a violative of Article 14 of the Constitution of India. By the aforesaid provisions cent per cent reservation of seats of Chairpersons of panchayats at all levels in Scheduled Areas having been made, they cannot be upheld, being unconstitutional. Accordingly, the second proviso to clause (g) of Section 4 of the PESA Act, 1996, Section 21(B), Section 40(B) and Section 55(B) of the Jharkhand Panchayat Raj Act, 2001 so far as cent per cent reservation of seats of Chairpersons of panchayats at all levels in favour of Scheduled Tribes is concerned, are hereby declared unconstitutional and ultra vires.”

b The abovementioned finding of the High Court has been challenged before this Court by the Union of India (the appellant).

c 18. In the course of the proceedings before this Court, we heard Mr Gopal Subramaniam, Additional Solicitor General (now Solicitor General of India) and Mr M.P. Raju, on behalf of the appellant. Mr P.S. Mishra, Mr M.N. Krishnamani, Senior Advocate, Mr R. Venkataraman, Mr Nagendra Rai and Mr Delip Jerath, learned counsel made oral submissions on behalf of the respondents.

d 19. It should be kept in mind that apart from relying on the earlier decision, the High Court did not state any specific reason for striking down the second proviso to Section 4(g) of the PESA Act, 1996 as well as Sections 21(B), 40(B) and 55(B) of JPRA, 2001 by holding these provisions to be unconstitutional. The only reason given by the High Court was that cent per cent reservation of the offices of Chairpersons is excessive, unreasonable and against the principles of equality.

e 20. It may also be noted that the Bhuria Committee Report had recommended that the Chairman and Vice-Chairman of panchayats should belong to Scheduled Tribes. This recommendation was accepted by the Union Government and the PESA Act, 1996 was enacted to give effect to the same. Parliament has conferred such special reservation on account of the pivotal role of the Chairperson in a panchayat. It must have been felt that if the Chairperson positions are occupied by non-tribal persons in Scheduled Areas, there is no guarantee that such persons will account for the special interests of the Scheduled Tribes.

f 21. While enacting the Fifth Schedule, the Constituent Assembly was of the view that the subjection to normal laws would have exposed the tribal communities to two dangers in particular. Both arose out of the fact that they were primitive people, simple, unsophisticated and frequently improvident. Firstly, there was a risk of their agricultural land being usurped by the more civilised section of the population. This would threaten their livelihood and sustenance since the occupation of the tribals was for the most part agricultural. Secondly, they were more likely to be victimised by the “wiles of the moneylender”. The primary aim of the government policy then was to protect the tribal communities from these two dangers and to preserve their customs. This objective was pursued by incorporating special provisions that were to be made applicable to these backward areas.

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22. The main contention made by the counsel for the respondents is that it is not justifiable to reserve all Chairperson positions in panchayats located in Scheduled Areas in favour of persons belonging to the ST category. At this juncture, we must clarify that Sections 21(B), 40(B) and 55(B) of JPRA have since been amended to confine reservation to the office of Mukhia (at Gram Panchayat level), Pramukh (at Panchayat Samiti level) and Adhyaksh (at Zila Parishad level). a

23. The counsel for the respondent had contended that the constitutional intention behind Article 243-D is not that of 100% reservation but only proportionate reservation and it speaks of rotation of the reserved seats. However, we must emphasise that Article 243-M(4)(b) permits “exceptions and modifications” in the application of Part IX to Scheduled Areas. The respondents have also argued that the maximum reservation which is legally permissible is only up to 50% and reliance was placed on the decisions of this Court in *Indra Sawhney v. Union of India*² and *M.R. Balaji v. State of Mysore*³. However, it should be kept in mind that both of these decisions were given in respect of reservation measures enabled by Article 16(4) of the Constitution. b
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24. At the outset, we are of the view that the principles of reservation which are applicable for public employment and for admission to educational institutions cannot be readily applied in respect of a reservation policy made by the legislature to protect the interests of the Scheduled Tribes by assuring them of majority reservation as well as the occupancy of Chairperson positions in panchayats located in Scheduled Areas. This policy broadly corresponds with the past practice wherein the Scheduled Areas were administered as per the provisions of the Fifth Schedule to the Constitution and the same was expected to adhere to the advice of the Tribes Advisory Councils, which were predominantly controlled by Scheduled Tribes. By extending the Panchayati Raj System to these areas, Scheduled Tribes should not be put in a relatively disadvantageous position. In the Panchayati Raj System contemplated by Part IX, the Scheduled Tribes should have an effective say in the administration. That is why the Bhuria Committee recommended that all Chairperson positions should be reserved in favour of the Scheduled Tribes. d
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25. The counsel for the respondents also contended that the exclusive reservation in favour of Scheduled Tribes unfairly limits the scope of political participation for others and since all the offices of Chairpersons are reserved, there is no scope for rotation of seats as contemplated by the third proviso to Article 243-D(4) of the Constitution. It was also pointed out that in some of the districts notified as Scheduled Areas, the Scheduled Tribes are not in a majority. First of all, it is to be remembered that the impugned reservation policy is applicable only to Scheduled Areas which were hitherto covered by the Fifth Schedule to the Constitution. We must make it abundantly clear that g

2 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385

3 AIR 1963 SC 649

this pattern of reservation has been designed only for Scheduled Areas which merit such exceptional treatment.

- a **26.** In the present case, it should be noted that the Scheduled Areas under consideration are restricted only to certain districts in the State of Jharkhand. In some districts where STs are not predominantly in occupation, only certain blocks have been notified as Scheduled Areas by themselves. On account of migration of non-tribal people in some areas, there may be a relatively lesser proportion of tribal population but historically these areas were occupied almost exclusively by tribal people.

- b **27.** In the course of the proceedings, our attention was also drawn to a Constitution Bench decision reported as *R.C. Poudyal v. Union of India*⁴, wherein the majority had upheld the reservation of some seats in favour of the Bhutia and Lepcha communities in the Sikkim Legislative Assembly. In that case the majority had held that even though legislative seats could not be ordinarily reserved on the basis of ethnic and religious identity, an exception could be made in this case on account of the particular historical factors that led to the integration of Sikkim with the Union of India.

- c **28.** The judgment in *R.C. Poudyal case*⁴ does not directly aid the case of either side in the present litigation. However, the opinions delivered in that case did touch on the importance of the “one man, one vote” principle that should be followed in liberal democracies. While this principle entails that there should be parity between the weightage given to the votes cast by individuals, the same cannot be enforced to an absolute standard. This is because territorial constituencies are of varying sizes with regard to the number of voters residing in them. This means that there is bound to be some disparity in the weightage accorded to the votes cast by individuals across different constituencies. This problem exists in all electoral formats where representatives are chosen from territorial constituencies. Needless to say the principle of “one man, one vote” cannot be applied in an absolute sense in the context of panchayat elections in Scheduled Areas. However, it is the responsibility of the executive to identify territorial constituencies which have a certain degree of parity in their population levels. It is of course important to redraw these constituencies from time to time, in keeping with the demographic shifts in the area concerned.

- d **29.** Concerns were also raised that in some instances the notified Scheduled Areas include certain blocks in particular districts but do not include the remaining blocks of the same districts. This is not a serious hurdle because it is quite clear that the exceptional treatment for Scheduled Tribes will be confined to the blocks that have been notified as Scheduled Areas. This means that in the districts where only some of the blocks have been notified as Scheduled Areas, the impugned provisions of JPRA will be applicable at the level of Panchayat Samitis within the notified area but not at the level of the Zila Parishad for the whole district.

- e **30.** A comparable reservation policy contained in the Madhya Pradesh Panchayati Raj Act was challenged in *Ashok Kumar Tripathi v. Union of*

⁴ 1994 Supp (1) SCC 324

*India*⁵ and the High Court upheld the provision. The High Court of Madhya Pradesh held that: (MPHT pp. 218-19)

“45. So far as the high percentage of reservation exceeding 50% for members and 100% reservation for Chairpersons in Scheduled Areas is concerned, it is supportable even on the touchstone of Article 14 of the Constitution. It is a protective discrimination permissible on a reasonable classification of different sections of the society into more oppressed backwards and the forwards. The peculiar situation of the inhabitants of the Scheduled Areas whose conditions have to be improved to educate them in the local Government, a step towards an effort to achieve their assimilation in the normal stream of democratic life at par with the advanced and the forward sections of the society justifies such classification. In the Scheduled Areas in reality if an aboriginal has to contest an election against a member of the forward section of the society, the contest would be totally unequal as of a weak and ignorant against wealthy and powerful. In a contest of this nature the weak and ignorant hardly can get a chance to become a member and in any case it would be impossible for him to reach to the helm of the institution as Chairperson. If he by chance becomes a Chairperson in the panchayat consisting of elected members from advanced sections of the society and the members are in majority, it would be well-nigh impossible for the Chairperson of the reserved category to effectively function and to save his elected status. The necessity, therefore, is that the Chairperson should be from the reserved category so that he is in a position to effectively function without inhibition and threat of no-confidence motion against him to remove him from his office.”

31. In the light of these observations, it is our considered opinion that the High Court of Jharkhand had erred in striking down Sections 21(B), 40(B) and 55(B) of the Jharkhand Panchayat Raj Act which give effect to the second proviso to Section 4(g) of the Panchayats (Extension to the Scheduled Areas) Act, 1996. We hold that in panchayats located in Scheduled Areas, the exclusive representation of Scheduled Tribes in the Chairperson positions of the same bodies is constitutionally permissible. This is so because Article 243-M(4)(b) expressly empowers Parliament to provide for “exceptions and modifications” in the application of Part IX to Scheduled Areas. The provisos to Section 4(g) of the PESA Act contemplate certain exceptions to the norm of “proportionate representation” and the same exceptional treatment was incorporated in the impugned provisions of JPRA.

32. The next point that arises for consideration is whether it is constitutionally permissible to provide reservations in favour of Scheduled Castes (SCs), Scheduled Tribes (STs) and Other Backward Classes (OBCs) that together amount to eighty per cent of the seats in the Panchayati Raj Institutions located in Scheduled Areas of the State of Jharkhand? The High Court had struck down Sections 17(B)(2), 36(B)(2) and 51(B)(2) of JPRA as unconstitutional by virtue of reasoning that reservations to the extent of 80% of the seats in panchayats were excessive, arbitrary and disproportionate,

thereby violating Article 14 of the Constitution. The counsel for the respondent had referred to the observations of this Court in *M.R. Balaji v. State of Mysore*³ and *Indra Sawhney v. Union of India*² which had prescribed an upper ceiling of 50% for reservation of posts in public employment. Reference was also made to a decision of the Patna High Court in *Krishna Kumar Mishra v. State of Bihar*⁶, wherein a similar view had been adopted.

- 33.** Sections 17(B)(1), 36(B)(1) and 51(B)(1) of JPRA are in conformity with the first proviso to Section 4(g) of the PESA Act as 50% of the seats in panchayats located in Scheduled Areas are reserved in favour of ST candidates. The High Court has not struck down these provisions. These provisions contemplate that in Gram Panchayats, Panchayat Samitis and Zila Parishads located in Scheduled Areas, the reservation of seats for the Scheduled Castes and Scheduled Tribes shall be made on the basis of the proportion of their respective population, provided that reservation for the Scheduled Tribes shall not be less than half of the total number of seats. In addition to this, Sections 17(B)(2), 36(B)(2) and 51(B)(2) of JPRA provide that in Gram Panchayats, Panchayat Samitis and Zila Parishads located in Scheduled Areas, seats are to be reserved in favour of persons belonging to backward classes in proportion to their population, so that the aggregate reservations shall not exceed 80% of the total number of seats available. By the impugned judgment, Sections 17(B)(2), 36(B)(2) and 51(B)(2) have been held to be unconstitutional mainly on the ground that they permit “excessive reservation” which violates Article 14 of the Constitution. This finding of the High Court has also been contested before us.

34. Before adverting to the contentions advanced by the appellants’ counsel, it is useful to refer to the pattern of reservations set out in Part IX of the Constitution. Article 243-D is reproduced below:

- “243-D. *Reservation of seats.*—(1) Seats shall be reserved for—
(a) the Scheduled Castes; and
(b) the Scheduled Tribes,

- in every panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that panchayat as the population of the Scheduled Castes in that panchayat area or of the Scheduled Tribes in that panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a panchayat.

- (2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

- (3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a panchayat.

³ AIR 1963 SC 649

² 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385

⁶ AIR 1996 Pat 112

(4) The offices of the Chairpersons in the panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may, by law, provide: a

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State: b

Provided further that not less than one-third of the total number of offices of Chairpersons in the panchayats at each level shall be reserved for women:

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different panchayats at each level.

(5) The reservation of seats under clauses (1) and (2) and the reservation of office of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in Article 334. c

(6) Nothing in this Part shall prevent the legislature of a State from making any provision for reservation of seats in any panchayat or offices of Chairpersons in the panchayats at any level in favour of backward class of citizens.” d

35. It may be noted that under Article 243-D there is a clear mandate for the State Legislature to reserve seats for SCs and STs in every panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that panchayat as the population of the SCs or of the STs in that panchayat area bears to the total population of the area under consideration. Article 243-D(6) further states that nothing in this part shall prevent a State Legislature from making any provision for reservation of seats in any panchayat or offices of Chairpersons in the panchayats at any level in favour of backward class of citizens. e

36. There was no contention on behalf of the petitioners before the High Court that the members of backward classes were not entitled to get reservation in the Scheduled Areas. With respect to the Scheduled Castes, the State was bound to provide reservation to them even in the Scheduled Areas. As already noticed, under the PESA Act 50% of the seats in Gram Panchayats, Panchayat Samitis and Zila Parishads should be reserved in favour of the Scheduled Tribes and the ceiling is fixed to the extent that this reservation put together shall not exceed 80% of the total seats. The contention of the respondents is that this policy will lead to reverse discrimination against persons who are not eligible for such reservation benefits. It may be noticed that this reservation policy is exclusively applicable to Scheduled Areas which had hitherto been the subject of a separate administrative scheme under the Fifth Schedule of the Constitution. f
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37. It is a well-accepted premise in our legal system that ideas such as “substantive equality” and “distributive justice” are at the heart of our h

- understanding of the guarantee of “equal protection before the law”. The State can treat unequals differently with the objective of creating a level-
- a playing field in the social, economic and political spheres. The question is whether “reasonable classification” has been made on the basis of intelligible differentia and whether the same criteria bears a direct nexus with a legitimate governmental objective. When examining the validity of affirmative action measures, the enquiry should be governed by the standard of proportionality rather than the standard of “strict scrutiny”. Of course,
 - b these affirmative action measures should be periodically reviewed and various measures modified or adapted from time to time in keeping with the changing social and economic conditions. Reservation of seats in panchayats is one such affirmative action measure enabled by Part IX of the Constitution.

- c **38.** The 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 reads as follows:

- d “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.

- e (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.

- f (3) Accordingly, it is proposed to add a new Part relating to panchayats in the Constitution to provide for among other things, Gram Sabha in a village or group of villages; constitution of panchayats at village and other level or levels; direct elections to all seats in panchayats at the village and intermediate level, if any, and to the offices of Chairpersons of panchayats at such levels; reservations of seats for the
- g Scheduled Castes and Scheduled Tribes in proportion to their population for membership of panchayats and office of Chairpersons in panchayats at each level; reservation of not less than one-third of the seats for women; fixing tenure of 5 years for panchayats and holding elections within a period of 6 months in the event of supersession of any panchayat; disqualifications for membership of panchayats; devolution
- h by the State Legislature of powers and responsibilities upon the panchayats with respect to the preparation of plans for economic

developments and social justice and for the implementation of development schemes; sound finance of the panchayats by securing authorisation from State Legislature for grants-in-aid to the panchayats from the Consolidated Fund of the State, as also assignments to, or appropriation by, the panchayats of the revenues of designated taxes, duties, tolls and fees; setting up of a Finance Commission within one year of the proposed amendment and thereafter every 5 years to review the financial position of panchayats; auditing of accounts of the panchayats; powers of State Legislatures to make provisions with respect to elections to panchayats under the superintendence, direction and control of the Chief Electoral Officer of the State; application of the provisions of the said Part to Union Territories; excluding certain State and areas from the application of the provisions of the said Part; continuance of existing laws and panchayats until one year from the commencement of the proposed amendment and barring interference by courts in electoral matters relating to panchayats.

(4) The Bill seeks to achieve the aforesaid objectives.”

39. Article 243-D of the Constitution, as stated earlier, clearly identifies the intended beneficiaries in the form of persons belonging to the Scheduled Castes, Scheduled Tribes, women and Other Backward Class of citizens. While introducing the Seventy-Third Amendment Act, the Statement of Objects and Reasons clearly contemplated democratic decentralisation to pursue the legitimate governmental objective of ensuring that the traditionally marginalised groups should progressively gain a foothold in local self-government. It is in this background that “reasonable classification” is to be viewed.

40. 50% of reservation in favour of the STs in panchayats at all the three tiers is clearly an example of “compensatory discrimination” especially in view of the fact that the Scheduled Areas under consideration were completely under a separate administrative scheme as per the Fifth Schedule to the Constitution. In fact, 50% of reservation in favour of the Scheduled Tribes by itself was not challenged before the High Court. Therefore, the question that now remains is whether reservation should be made in favour of the Scheduled Castes and backward classes for the purpose of Scheduled Areas. The constitutional mandate is that the Scheduled Castes should be given reservation at all the three tiers of panchayats, with regard to the principle of proportionate representation.

41. The Division Bench of the High Court has relied on the precedents relating to Article 15(4) and Article 16(4) by drawing an analogy with the limits placed on reservations in higher education and public employment. We must emphasise that Article 243-D is a distinct and independent constitutional basis for reservation in Panchayati Raj Institutions. This reservation cannot be readily compared to the affirmative action measures enabled by Articles 15(4) and 16(4) of the Constitution.

42. Especially on the unviability of the analogy between Article 16(4) and Article 243-D, we are in agreement with a decision of the Bombay High

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Court, reported as *Vinayakrao Gangaramji Deshmukh v. P.C. Agrawal*⁷. That case involved a fact situation where the Chairperson position in a panchayat was reserved in favour of a Scheduled Caste woman. In the course of upholding this reservation, it was held: (AIR p. 143, para 4)

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“4. ... Now, after the seventy-third and seventy-fourth constitutional amendments, the constitution of local bodies has been granted a constitutional protection and Article 243-D mandates that a seat be reserved for the Scheduled Castes and Scheduled Tribes in every Panchayat and sub-article (4) of the said Article 243-D also directs that the offices of the Chairpersons in the panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may, by law, provide. Therefore, the reservation in the local bodies like the Village Panchayat is not governed by Article 16(4), which speaks about the reservation in the public employment, but a separate constitutional power directs the reservation in such local bodies.”

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43. For the sake of argument, even if an analogy between Article 243-D and Article 16(4) was viable, a close reading of *Indra Sawhney*² decision will reveal that even though an upper limit of 50% was prescribed for reservations in public employment, the said decision did recognise the need for exceptional treatment in some circumstances. This is evident from the following words (at paras 809-10): (SCC p. 735)

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“809. From the above discussion, the irresistible conclusion that follows is that the reservations contemplated in clause (4) of Article 16 should not exceed 50%.

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810. While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in far-flung and remote areas the population inhabiting those areas might, on account of their being out of the mainstream of national life and in view of conditions peculiar to and characteristic to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out.”

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44. We believe that the case of panchayats in Scheduled Areas is a fit case that warrants exceptional treatment with regard to reservations. The rationale behind imposing an upper ceiling of 50% in reservations for higher education and public employment cannot be readily extended to the domain of political representation at the panchayat level in Scheduled Areas. With respect to education and employment, parity is maintained between the total number of reserved and unreserved seats in order to maintain a pragmatic balance between the affirmative action measures and considerations of merit.

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⁷ AIR 1999 Bom 142

² *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385

45. Under Articles 15(4) and 16(4) the reservation of seats in favour of socially and educationally backward classes (SEBC) is ordinarily done on the basis of proportionate representation and an upper ceiling of 50% allows for considerable flexibility in distributing the benefits of higher education and public employment among a wide range of intended beneficiaries such as the Scheduled Castes (SCs), Scheduled Tribes (STs), women and Other Backward Classes (OBCs). However, the same approach of providing proportionate representation is likely to be less effective in the context of reservations for panchayats in Scheduled Areas. One reason for this is the inherent difference between the nature of benefits that accrue from access to education and employment on the one hand and political participation on the other hand. While access to higher education and public employment increases the likelihood of gradual socio-economic empowerment of the individual beneficiaries, involvement in local-self government is intended as a more immediate measure of protection for the individual as well as the community that he/she belongs to. Especially in the context of Scheduled Areas, there is a compelling need to safeguard the interests of tribal communities with immediate effect by giving them an effective voice in local self-government. The Bhuria Committee Report had clearly outlined the problems faced by Scheduled Tribes and urged the importance of democratic decentralisation which would empower them to protect their own interests.

46. By reserving at least half of the seats in panchayats located in Scheduled Areas in favour of STs, the legislature has adopted a standard of compensatory discrimination which goes beyond the ordinary standards of “adequate representation” and “proportionate representation”. The standard of “adequate representation” comes into play when it is found that a particular community is underrepresented in a certain domain and a specific threshold is provided in order to ensure that the beneficiary group comes to be adequately represented with the passage of time. For instance in Part IX of the Constitution, the reservation in favour of women which amounts to one-third of all the seats in panchayats is an embodiment of the “adequate representation” standard. However, in instances where the Constitution does not specify the quantum of reservations, the idea of “proportionate representation” is the rule of thumb.

47. As mentioned earlier, proportionate representation has been the controlling idea behind reservations in the context of education and employment which have a basis in Articles 15(4) and 16(4) respectively. Even in the context of Panchayati Raj Institutions, Article 243-M(1) [*sic* Article 243-D(1)] and Article 243-M(6) [*sic* Articles 243-D(4) and (6)] explicitly refer to “proportionate representation” as the controlling idea behind reservations in favour of SCs, STs and Backward Classes respectively. With respect to the panchayats located in Scheduled Areas, the flexibility provided by Article 243-M(4)(b) has led to the enactment of the PESA Act which specifies “proportional representation” as the norm for reservations in favour of the intended beneficiaries, but makes a departure from this standard in order to protect the interests of Scheduled Tribes in particular.

48. There is of course a rational basis for departing from the norms of “adequate representation” as well as “proportionate representation” in the present case. This was necessary because it was found that even in the areas where Scheduled Tribes are in a relative majority, they are under-represented in the governmental machinery and hence vulnerable to exploitation. Even in areas where persons belonging to Scheduled Tribes held public positions, it is a distinct possibility that the non-tribal population will come to dominate the affairs. The relatively weaker position of the Scheduled Tribes is also manifested through problems such as land grabbing by non-tribals, displacement on account of private as well as governmental developmental activities and the destruction of environmental resources. In order to tackle such social realities, the legislature thought it fit to depart from the norm of “proportional representation”. In this sense, it is not our job to second guess such policy choices.
49. A similar position was also adopted by the Madhya Pradesh High Court in *Ashok Kumar Tripathi v. Union of India*⁵, where Dharmadhikari, J. made the following observations (extracted from paras 36 and 37): (MPHT pp. 213-15)
- “36. ... To safeguard interests of Scheduled Tribes living in remote or hilly areas or forests with primitive culture of their own, the Constitution envisages formation of Scheduled Areas for them, and application of laws to them with ‘exceptions and modifications’, so that they are able to preserve their culture and occupation and are not exposed to exploitation by forward classes of urban population. The protective discrimination in favour of such deprived sections of the society can go to the extent of complete exclusion, if the circumstances so justify, of advanced classes in local self-governance of Scheduled Areas. The main object and purpose behind such reservations based on population, even in excess of 50% is with a view that the exclusive participation of deprived and oppressed sections of the society in local self-government bodies in their areas is ensured because in open competition with the advanced sections of the society they can never have any share to participate in self-governance. A close and careful examination of the provisions of the Central and State Act, in the light of constitutional provisions, shows that principle of proportionate representation based on the population of the reserved categories has been adhered to but only departure has been made from it in giving them larger share of self-governance by reserving seats for them as member and in the Scheduled Areas a monopoly of seats of Chairpersons has been created for them so that they conserve their culture and way of living. ... For taking a decision on the policy of reservation as to whether it is reasonable or unreasonable, the court has to examine the overall scheme of the Constitution as envisaged in Parts IX and IX-A and the corresponding Central and State legislation brought to implement it. The aim and object of the reservation policy contained in Parts IX and IX-A is that the backward and oppressed sections of the society have to be encouraged in the democratic process by giving them a

⁵ (2000) 2 MPHT 193

share of governance which hitherto was denied to them since the times of British India and after independence. The other object at the same time is to protect them from urban influences so that they may be able to conserve their culture and way of life and are not exposed to exploitation by the advanced or socially and economically powerful sections of the society.

37. At the Bar it was argued that such excess policy of reservation is bound to create a bad blood between the two classes and would be a serious deterrent to bring such oppressed classes into the mainstream of democratic life. There are arguments for and against this. In the matters of policy the best Judges are the legislators who are closer to the society and represent them. They have a study of the society and have advantage of reports based on sociological surveys made by experts. They better understand the needs of the society and the various sections forming it. It is not for this Court to enter into this forbidden arena and lay down a policy of reservation. The argument advanced on behalf of the petitioners only show that the attitude of the members of the advanced sections of the society towards castes and tribes continues to be more of competition than compassion. The reservation in various walks of life made in their favour for the last 50 years of Independence has not been successful in improving their socio-economic condition and have not made them effective participants in the democratic process. The necessity is still felt by the legislators in making special provisions for them in the Constitution and the laws to ensure their effective participation at least in the local self-government institutions as a first step to give them due share of governance in the Assemblies of the States and Parliament. The argument that the policy of reservation would segregate them rather than assimilate them with the common stream is one for the legislator to consider on the basis of existing social situation. In the matters of policy wisdom of legislature cannot be questioned or the policy laid down cannot be upset by the court which is ill-equipped to deal with the subject."

50. Even though there are cogent reasons for the exceptional treatment accorded to Scheduled Tribes, there are some other concerns that merit consideration. One such concern is with the very identification of Scheduled Areas in the first place. It is a common refrain that the efficacy as well as legitimacy of affirmative action measures can be questioned if they are not targeted properly.

51. In the present case, it was pointed out that the identification of Scheduled Areas is done on the basis of census data and the same is collected after intervals of 10 years. It was urged that the identification of Scheduled Areas may not be accurate if it was based on outdated data. Even though we were shown data describing the distribution of the population belonging to the Scheduled Tribes category in the various districts of Jharkhand (as per the 2001 census), it will suffice to say that the identification of Scheduled Areas is an executive function and we do not possess the expertise needed to scrutinise the empirical basis of the same.

52. The data submitted before us indicates that while the Scheduled Tribes are indeed in a majority in some Scheduled Areas, the same is not true for some other Scheduled Areas. This disparity is understandable keeping in mind that there has been a considerable influx of non-tribal population in some of the Scheduled Areas. In this regard, we must re-emphasise the Bhuria Committee's recommendation that persons belonging to the Scheduled Tribes should occupy at least half of the seats in panchayats located in Scheduled Areas, irrespective of whether the ST population was in a relative minority in the area concerned. This recommendation is in line with the larger objective of safeguarding the interests of Scheduled Tribes.

53. The other significant criticism of aggregate reservation amounting to 80% of the seats in panchayats located in Scheduled Areas is that it amounts to an unreasonable limitation on the rights of political participation of persons belonging to the general category. The rights of political participation broadly include the right of a citizen to vote for a candidate of his/her choice and right of citizens to contest elections for a public office.

54. In the present case, it was urged that reservations amounting to 80% of the seats in Scheduled Areas panchayats will have the effect of limiting the choices available to voters and effectively discourage persons belonging to the general category from contesting these elections. While the exercise of electoral franchise is an essential component of a liberal democracy, it is a well-settled principle in Indian law that such rights do not have the status of fundamental rights and are instead legal rights which are controlled through legislative means. (See *N.P. Ponnuswami case*⁸.)

55. For instance, the Constitution empowers the Election Commission of India to prepare electoral rolls for the purpose of identifying the eligible voters in elections for the Lok Sabha and the Vidhan Sabhas. Furthermore, the Representation of the People Act, 1951 gives effect to the constitutional guidance on the eligibility of persons to contest these elections. This includes grounds that render persons ineligible from contesting elections such as that of a person not being a citizen of India, a person being of unsound mind, insolvency and the holding of an "office of profit" under the executive among others. It will suffice to say that there is no inherent right to contest elections since there are explicit legislative controls over the same.

56. In the context of reservations in panchayats, it can be reasoned that the limitation placed on the choices available to voters is an incidental consequence of the reservation policy. In this case, the compelling State interest in safeguarding the interests of weaker sections by ensuring their representation in local self-government clearly outweighs the competing interest in not curtailing the choices available to voters. It must also be reiterated here that the 50% reservations in favour of STs as contemplated by the first proviso to Section 4(g) of the PESA Act were not struck down in the impugned judgment. Even though it was argued before this Court that this provision makes a departure from the norm of "proportionate representation" contemplated by Article 243-D(1), we have already explained how Article

⁸ *N.P. Ponnuswami v. Returning Officer*, AIR 1952 SC 64

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243-M(4)(b) permits “exceptions” and “modifications” in the application of Part IX to Scheduled Areas. Sections 17(B)(1), 36(B)(1) and 51(B)(1) of JPRA merely give effect to the exceptional treatment that is mandated by the PESA Act. a

57. However, in addition to the 50% reservations in favour of Scheduled Tribes, the State of Jharkhand is also under an obligation to account for the interests of Scheduled Castes and Other Backward Classes. The same has been contemplated in Sections 17(B)(2), 36(B)(2) and 51(B)(2) of JPRA which incorporate the standard of “proportionate representation” for Scheduled Castes and Backward Classes in such a manner that the total reservations do not exceed 80%. This does not mean that reservations will reach the 80% ceiling in all the Scheduled Areas. Since the allocation of seats in favour of Scheduled Castes and Backward Classes has to follow the principle of proportionality, the extent of total reservations is likely to vary across the different territorial constituencies identified for the purpose of elections to the panchayats. Depending on the demographic profile of a particular constituency, it is possible that the total reservations could well fall short of the 80% upper ceiling. However, in Scheduled Areas where the extent of the population belonging to the Scheduled Castes and Backward Classes exceeds 30% of the total population, the upper ceiling of 80% will become operative. b
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58. Irrespective of such permutations, the legislative intent behind the impugned provisions of JPRA is primarily that of safeguarding the interests of persons belonging to the Scheduled Tribes category. In the light of the preceding discussion, it is our considered view that total reservations exceeding 50% of the seats in panchayats located in Scheduled Areas are permissible on account of the exceptional treatment mandated under Article 243-M(4)(b). Therefore, we agree with the appellants and overturn the ruling of the High Court of Jharkhand on this limited point. d
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59. Dr. M.P. Raju, learned counsel appearing for one of the respondents, contended that the Jharkhand Panchayat Raj Act should not have been extended to the “Scheduled Areas” as the Scheduled Tribes were enjoying more powers under the Fifth Schedule to the Constitution. The learned counsel contended that if those provisions are held to be unconstitutional as held by the High Court, it would be better to revert to the system of Tribes Advisory Councils under the Fifth Schedule. We do not find much force in the contention and it is only to be rejected. f

60. In the result, the appeals filed by the Union of India are allowed and the proviso to Section 4(g) of the PESA Act and Sections 21(B), 40(B) and 55(B) of the Jharkhand Panchayat Raj Act, 2001 are held to be constitutionally valid. We also hold that Sections 17(B)(2), 36(B)(2) and 51(B)(2) of the Jharkhand Panchayat Raj Act, 2001 are constitutionally valid provisions. g

61. The other appeals are also disposed of accordingly and the State Election Commission of the State of Jharkhand is directed to conduct elections for the Panchayati Raj Institutions (PRIs) as early as possible. h