CHAPTER- V

ANALYSIS OF LEGAL FRAME WORK FOR GRASS-ROOT DEMOCRACY
UNDER THE KARNATAKA PANCHAYAT RAJ ACT, 1993

5.1 INTRODUCTION.

The Karnataka Panchayat Raj Act, 1993 came into force from 10th May 1993 within a few days of the 73rd Constitutional Amendment Act, coming into effect. This Act has been enacted, as there was a constitutional obligation on the part of the States to enact an Act within one year from the date of 73rd Amendment Act came into force. It is to implement the constitutional provisions at the State level. Though there is an obligation on the State to follow up the principles under 73rd Amendment Act, 1992 some liberty has been conferred on the States to pass legislation, which is suitable to the State environment. The present KPR Act 1993 has been supplemented by various rules and notifications. In fact, these rules and notifications have been framed to get a clear-cut picture and the idea about the main Act. It is also to bridge the gap and plug the loopholes of the Act, ultimately making the Act with clarity and without any ambiguity. However, in spite of these efforts a person cannot be stopped to approach the Court for seeking the justice. This is because the judicial review has been considered as the basic structure of the Constitution. However, any ambiguity, uncertainty etc., of the Act can be resolved only by the Court by interpreting the various provisions of the Act. Is that the decisions of the Courts are helping to uphold the real spirit of the Act? Or will it be supplemental the Act by expanding the scope of the Act? Much depends on the judicial interpretations. In this chapter the KPR Act, 1993 has been discussed with the support of the case laws decided by the Courts step by step.

5.2 CONSTITUTION OF PANCHAYATS.

The election process for all the three tiers begins after the declaration of Panchayat areas by the Deputy Commissioner (DC). The DC may declare any village or group of villages having population not less than 5000 and not more than 7,000 to be a Panchayat area and also specifying its head quarters. In the District of Belgaum, Chikmagalur, Dakshina Kannada, Dharawar, Hassan, Kodagu, Shimoga, Udupi, Haveri and Uttara Kannada the DC may declare a Panchayat area with a population of less than 2,500. However this is subject to
general or special orders of the Government. The Government as a special case, irrespective of population may order that an area within a radius of 5 kilometers (diameter of ten kilometers) from the centre of a village may declare a Panchayat area in such areas of the districts mentioned above.

The DC may also declare a Panchayat area with a population of either less than 5,000 or more than 7,000 with the previous permission of the Government. The DC at the request of a Gram Panchayat concerned and by general or special orders of the Government may after the previous publication of the proposal by notification, -

1) Increase or diminish any Panchayat area
2) Alter the head quarters, name of Panchayat area and may also declare that any area shall cease to be a panchayat area.

The Commissioner by *Suo-moto* or on an application made with in 30 days from the date of notification, by any person aggrieved by such notification of DC may modify or revise the orders of DC. Such revised or modified order of the Commissioner shall be publish in the official gazette.

It can be inferred from the above sections empowering the DC to declare a village for the purpose the KPR Act, 1993, is not invalid on the ground of excessive delegation of legislative functions. The Karnataka High Court in *Janab A Rizwanulla shariff @ Gauver V. State of Karnataka and Others* held that the powers conferred on the DC regarding declaration of Panchayat area and establishment of Gram Panchayat under Section 4 of KPR ACT, 1993 is not excessive delegation and lack of any guidance. The Court further held that the Commissioner need not undergo the same procedure as prescribed in Section 4 (1) of the KPR Act, because there was already a proposal made by the DC and there after a notification issued by him after following the procedure prescribed under that provision and the Commissioner is sitting in revision thereto. In doing so, it cannot be said that he has only power to demolish the orders made by the DC and he cannot alter the same. If there is a sufficient material before him and for good reasons he may do so subject to the limitation of powers of revision such as not substituting his own opinion to that of DC which is equally
cogent or when the DC has reached such conclusion on the material on record, which is a plausible conclusion.

The Court further held that the powers of Commissioner are as wide as that of original authority. The question with reference to jurisdiction under Article 226 of Indian Constitution cannot be adjudicated by High Court unless the order is vitiated either by error of statutory law or Constitutional law.

The Court in K.G. Krishna Murthy V. State of Karnataka and Others held that during the temporary vacancy of the DC under Section 14 (2) of the Karnataka Land Revenue Act 1964, if the DC is unable to perform his duties, unless other provision has been made by the State, the person succeeding temporarily to his office shall be deemed to be the DC under the act, or until the DC assumes the charge of his duties, or till the State Government appoints a successor. And such successor takes the charge of his office can declare the panchayat area and establish a Panchayat under Section 4 (1) of the KPR Act 1993.

The DC under Section 4 of the KPR Act 1993 can increase or diminish or alter etc., Panchayat area. There is no contradiction between the Karnataka Land Revenue Act, 1964 and the KPR Act, 1993 regarding the declaration of Panchayat area. Both the Acts are supplemental to each other. However during the temporary vacancy of any officer the Government can make alternative arrangement so as to continue with the functions under the act, and not to hamper the usual works.

Under Section 119 of the KPR Act, 1993 for each Taluk there shall be a Taluk Panchayat having jurisdiction over the entire taluk, and under Section 158 of the KPR Act, 1993 for each district there shall be a Zilla Panchayat having jurisdiction over the entire district excluding the such portion of taluk and district as the case may be included in a smaller urban area or area under the authority of a Municipal Corporation, a Town Panchayat or Industrial Township constituted under law for the time being in force. The Taluk Panchayat and Zilla Panchayat may have its office in any area comprised within the excluded
portion of the taluk and district and in such area may exercise their powers and functions over schools and other institution under its control or management.

5.3 FREE AND FAIR ELECTION.

There was no uniform approach as far as the elections to the PRIs in all the States and Union Territories of our country. However the 73rd Amendment Act, 1992 has made the elections to these Panchayats mandatory. The Karnataka Panchayat Raj Act, 1993, effectuates the 73rd Amendment Act, in order to ensure the free and fair elections in the State by adopting various provisions in the act, Free and fair elections are necessary for fruitful and effective functions of democracy that may be achieved at the grass root levels only by fulfilling the aspirations of the Constitution. That can be achieved only by empowering the SC and ST, Women and people belong to the backward classes.

Article 324 of the Indian Constitution deals with the superintendence, direction and control of the preparation of the electoral rolls for, and conduct of, all elections to the Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under the Constitution shall be vested in the Election Commission.

While framing the Constitution, the Committee on fundamental rights had recommended that the independence of election should be regarded as fundamental right of every citizen. The Constituent Assembly agreed with the views of the committee that the question of fair elections was a matter of great importance but it was not in favour of embodying a right to that effect in the chapter dealing with the fundamental rights. In pursuance of the decision of the Constituent Assembly, the Drafting Committee removed the matter from the category of fundamental right and put it in a separate part.

All the articles relating to elections have to be read in the light of the Constitutional scheme and the Representation of the People Acts of 1950 and 1951. The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats which is vested in a State Election Commission under Article 243K of the Indian Constitution is similar to the expression used in the Article 324(1) of the Constitution. The Court held that the words ‘superintendence etc., are the broadest terms, which would include the power to make all such provisions’.

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Article 243 O of the Constitution imposes bar to interference by courts in the electoral matters—i.e.,

a) The validity of the law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243 K shall not be called in question in any Court.

b) No election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

The very purpose of the statute relates to the elections under the various acts and the Panchayati Raj Acts are to ensure the free and fair elections. Apart from the various statutes, the judicial interpretations also help in giving the clear-cut picture about the election laws. It was rightly observed by the Supreme Court in *Indira Nehru Gandhi V. Raj Narain*¹⁰ that any amendment to the Constitution and other statutes, which affected the free and fair elections and judicial review, was unconstitutional, as these being parts of the basic structure of the Constitution. In *Surendra Babu V. State of Karnataka and Others*¹¹ the main contention of the petitioner was Article 243ZG (this Article is similar to the Article 243O of 73rd Amendment Act, 1992) of the Indian Constitution barring the jurisdiction of the Courts to examine the validity of any law relating to delimitation of constituencies as unconstitutional on the ground that the provisions of the Constitution introduced by amendment must be in conformity with the basic features of the Constitution and judicial review is basic features in the Constitution with the consequence that the provision barring such judicial review is invalid.

The Court held that barring the jurisdiction of the Court in matters of delimitation of constituencies or allotment of seats thereto by Article 243-ZG does not affect the basic features of the Constitution... when the entire concept of local authority being made a constitutional entity; election thereto; reservations and also making provisions for delimitations of constituencies, prohibiting interference by Courts etc., is one package. If under one package the entire setup is introduced in the Constitution, then it cannot be said that such a provision would offend the basic features of the Constitution. The Court further
held that there are several provisions of the Constitution wherein the interference of the Courts is not permitted or specifically barred. In this case the basic features of the Constitution are not affected by Article 243-ZG, which bars interference of Courts in electoral matters, and the said provisions are not therefore ultra virus the Constitution.

It is submitted, the decision of the Court in the instant case need some reconsideration for reason that the seats reserved to SC and ST, BCs and women in Grama Panchayat, Taluk Panchayat and Zilla Panchayat shall be allotted by rotation to the constituencies having highest percentage of population belonging to above communities. While allotting the seats by considering the reservations there may arise some problems, wherein the people of minority and other weaker section of the society in some constituencies may be ignored continuously with or without the knowledge of authority. In such circumstances, the equality rights to contest in the election will be denied to the people of those sections. Since, right to equality is also a basic structure of Constitution, there should be a provision to question the validity of the allotment of constituencies and delimitation of constituencies in the Court of law.

Article 243 E of the Constitution of India says the duration of the Panchayat is five years. It cannot be extended and elections should be held to constitute Panchayat and should be completed before the expiry of the five years from the date appointed for first meeting of Panchayat. The core question is that, whether the State Government can ignore the constitutional mandates by delaying the Panchayat elections under the guise of some reasons that the overall functions of Gram Panchayats in the State are not satisfactory, and it wanted to re-introduce the Mandal Panchayat system in the State. The delay of ruling party was sensed and challenged through Public Interest Litigation. The High Court held that to give effect to the mandate of the Constitution under Article 243-E, its intent and content, the elections to constitute Panchayat which is a continuation process has to be held before the expiry of the term of the outgoing Panchayat. The Court further held that the Panchayats are constitutional institutions, not the creatures of State Legislatures. It directed the State Election Commission to hold the election within six weeks from the date of order.13
It is the duty of the State to conduct the elections to PRIs as it is constitutional obligations under the Constitution. The post-poning of elections to PRIs under the guise of some amendments to it has no place in the Constitution. If such an attempt is to be made the President has to give assent for any changes in the PRIs and also it would consume lot of time to effectuate any amendments. Consequently, the whole set up of PRIs would be affected. Hence, the amendment of the KPR Act could have been done well in advance to avoid the postponement of the elections. Any move to ignore the constitutional mandates is a bad precedent.

In the next process, for the constitution of Village Panchayat, Taluk Panchayat and Zilla Panchayat, the DC will issue a notification of election. The elections to the PRIs are most important, as it is a constitutional obligation under 73rd Amendment Act. In public law, the selection by popular vote of a legislative representative, an executive officer or a judge, is called election 14, the word ‘election’ has both a wider and narrower meaning depending upon the scheme of the act. In the narrower sense, the word ‘election’ means the final selection of the candidate by taking poll when polling is necessary and without taking poll when the candidate is returned unopposed. In the wider sense this word connotes the entire process culminating in a candidate being declared elected. When one talks of elections in a democratic country, the word ‘election’ bears this wide meaning15.

The election processes to all the three tiers have been regulated in the K.P.R (conduct of election) Rules, 199316. The election to the Zilla Panchayats, Taluk Panchayats and Gram Panchayats shall be conducted under the superintendence, direction and control of State Election Commission 17, rules 7 to 11 of the above rules deals with the duties of various officers of State Election Commission. After preparation of electoral roll and list of voters under rule 4 and 5 the DC shall with the approval of the State Election Commission fix the date of such election. By notification he may also fix the last date for making nomination, scrutiny, withdrawal of candidature etc., 18. Any person may be nominated as a candidate to fill a seat in any constituencies of Zilla, Taluk or Gram Panchayats if he is qualified to be chosen to fill that seat under the provisions of the act19. The nomination papers may be filed before the date appointed between the hours of eleven O’clock in the forenoon and three O’clock in the afternoon by delivering to the Returning Officer at the specified place20.
The acceptance of nomination paper by the Returning Officer is a decisive factor for a candidate in contesting the election. The candidate is expected to submit all the relevant documents including the caste or class certificate to which he/she belongs, because in a constituency if any seat is reserved for the backward classes, the Sc or St, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying the particular class, caste or tribe of which he is a member and the said class, caste or tribe is a backward class, Sc and St: If the seat is reserved for women the nomination paper shall contain a declaration that the candidate is a woman.

In Khatib Irshad Ahmed V. The Returning Officer for election, the petitioner had submitted all the relevant documents. He had also produced the required caste or class certificate issued by the Tahsildar on the date fixed for scrutiny to which class he belongs, (may be after the appointed time viz., 3 P.M). There was no person who raised any objection in the matter at the appointed time. In this circumstances, the Court held that rejection of nomination paper was clearly improper and inviolation of relevant rules when there was no objection from any one.

On the presentation of a nomination paper, the Returning Officer shall satisfy himself whether the qualification to contest in the election have been fulfilled or not. This can be done on the date fixed for the scrutiny of nominations, which shall be the day immediately following the last date of making nominations or if that day is a public holiday the next succeeding day, which is not a public holiday. Qualifications literally mean limitation or condition to a particular post or position. The Constitution of India has fixed the eligibility to contest the election to every citizen in accordance with the various provisions unless he is disqualified on various grounds under the various provisions of the Peoples Representation Act, 1951.

The KPR Act, 1993 also prescribes the qualifications to contest for the elections of all the three tiers. A person shall not be qualified to be chosen to fill a seat in a Grama Panchayat, Taluk Panchayat and Zilla Panchayat unless his name is included in the
respective electoral roll or in the list of voters of Grama Panchayat, Taluk Panchayat and Zilla Panchayat as the case may be for the time being in force, and unless he is qualified under the act, or any other law. Further, a person shall not be qualified to be chosen from a territorial constituency to fill a seat in a Grama Panchayat, or Taluk Panchayat or Zilla Panchayat unless in the case of a seat reserved for Sc or St or Backward classes or Women, such person is a member of those castes or classes or is a women.

The eligibility criteria to contest any election in India can be seen in a very diversified manner since the Constitution has provided reservation of seats for Sc, St in the House of the People and in the Legislative Assemblies of the States. The similar provisions were also extended by 73rd Amendment Act, 1992 to all the three tiers of PRIs. By virtue of this amendment the reservation of seats was not only conferred to contest the elections to all the three tiers of PRIs but reservations were also extended for the office of Adhyaksha and Upadhyaksha of all these three tiers. One of the distinctive characteristics of 73rd Amendment Act, 1992, is extension of reservation facilities also to women for contesting the election and enjoying the posts of Adhyaksha and Upadhyaksha in order to empower them to take active participation in the Panchayat Raj administration. The amendment act, also gave permission to the Legislature of States from making any provision for reservation of seats in any Panchayat or offices of Adhyaksha and Upadhyaksha in the Panchayats at any level in favour of backward class of citizens. However the reservation of seats and special representation under clause (1) and (2) of Article 243 D and the reservation of offices of Adhyaksha and Upadhyaksha (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in Article 334 of Indian Constitution, unless it is amended for further period.

Similar provisions can be found in the KPR Act, 1993, by virtue of statement of objects and reasons, Sections 5(2)(3)(4)(5), 44 in respect of Gram Panchayat, Sections 123, 138 in respect of Taluk Panchayat and Sections 162 & 172 in respect of Zilla Panchayat. Various Karnataka Panchayat Raj Rules have supplemented the above provisions. The qualification to contest in the elections are necessary as the reservation under the KPR Act is a condition prescribed for membership to Gram, Taluk and Zilla Panchayats. For example in the case of seats reserved for the Sc or St or backward class and women, no person who is
not a member of any of the SC or ST or backward classes or is not a women as the case may be, shall be qualified to be elected to such seat. However, a citizen belongs to SC or ST or Backward class and a Woman has no restriction to contest from the general constituencies. Qualifications for members can be earned when a citizen is not attracted by any of the disqualifications provided under the Sections 12, 128 and 167 of the KPR Act, which deals with the disqualifications for members for all the three tiers on various grounds.

Usually the last day for withdrawal of candidature shall be the second day after the date for the scrutiny of nominations or if that day is a public holiday the next succeeding day, which is not a public holiday. The Returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may either on such objection or on his own motion, after such summary enquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds namely:

- Failure to comply with any provisions of the Act and Rules. Or
- That the signature of the candidate or the proposer on the nomination paper is not genuine etc.

The Returning officer shall endorse on such nomination paper his decision accepting or rejecting the same and if the nomination is rejected shall record in writing a brief statement of his reasons for such rejections. Then the valid nominations shall be affixed on the notice board. Any candidate may withdraw his candidature on the date fixed under Rule 12 before 3 O’clock by writing to Returning officer. Immediately after the expiry of the period within which candidature may be withdrawn under rule 18.

Then the Returning officer shall prepare and publish in Kannada language, a list of contesting candidates, that is to say, candidates who are included in the list of validly nominated candidates, and who have not withdrawn their candidature with in the said period. Where a poll becomes necessary the Returning officer shall consider the choice of symbols expressed by the contesting candidates in their nomination papers and, shall allot the symbols in accordance with the Election Symbols (Reservation and Allotment) Order 1968 for the purpose of election to Taluk Panchayat and Zilla Panchayat. The K.P.R Act, 1993, does not provide any provision to contest the election to Gram Panchayat on the party basis. For election to Taluk and Zilla Panchayat a candidate set up by a recognized political party in
the election shall choose, and shall be allotted, symbol reserved for that party and no other symbol. Any candidate other than candidate set up by recognized political party in the election shall choose and shall be allotted in accordance with the rules provided, one of the symbols specified as free symbols. Where any free symbol other than one chosen by a candidate set up by unrecognized political party has been chosen by only one candidate at the election, the Returning officer shall allot that symbol to that candidate and to no one else. When more than one candidate chooses a free symbol then Returning officer shall decide by lot.

If the number of contesting candidates is more than the number of seats to be filled, a poll shall be taken. If the number of such candidates is equal to the number of seats to be filled, the Returning officer shall forthwith declare all such candidates to be duly elected to fill those seats. If the number of such candidates is less than the number of seats to be filled in that constituency the Returning officer shall forthwith declare all such candidates to be duly elected as may be appropriate and the DC shall with the approval of the State Election Commission, by notification call upon the constituency to elect a person or persons to fill the remaining seat or seats.

In the case of election to a Gram Panchayat constituency where seats are reserved for SC, ST, BCs or women, as the case may be:

a. If the number of contesting candidates for the reserved seat or seats is equal to or less than the number of reserved seats to be filled, Returning officer shall declare all such candidates to be duly elected as may be appropriate and where the number of the contesting candidates for the non-reserved seats is more than the number of seats to be filled, a poll shall be taken for election to fill only such non-reserved seats in such constituency;

b. If the number of contesting candidates for the reserved seat or seats is more than the number of seats to be filled, but the total number of candidates contesting for the election in the constituency is equal to or less than the number of seats to be filled, the Returning officer shall first select, by lot to be drawn in such manner as he may determine the candidates to be declared elected to the reserved seats out of the candidates qualified to be chosen to fill those seats and then declare the
candidates so elected to be duly elected to fill the reserved seats and there after declare the remaining candidates to be duly elected to fill the non-reserved seats.

c. If the number of contesting candidates qualified to be chosen to fill the reserved seats exceeds the number of such seats and the total number of contesting candidates also exceeds the total number of seats to be filled a poll shall be taken and after the poll has been taken the Returning officer shall first declare those who are qualified to be chosen to fill the reserved seats by securing the largest number of votes to be duly elected to fill the reserved seats and then declare such of the remaining candidates as have secured the largest number of votes to be duly elected to fill the remaining unreserved seats.

The Presiding officer of a polling station or the Returning officer may adjourn the poll in emergency when it is not possible to take the poll at any polling station on account of any natural calamity or for any other sufficient cause. Adjournment of poll may be ordered and the fresh poll may be notified at any polling station if at any election, booth capturing has taken place at a polling station or at a place fixed for the poll. Fresh poll shall also be ordered in case of destruction, etc., of ballot boxes at any polling station. The Presiding officer shall make separate batch facilities for women electors. He shall be responsible for sealing of ballot box after poll, account of ballot paper and spoilt and returned ballot paper.

The Returning officer shall before he commences the counting, shall maintain the secrecy of voting. He shall first deal with the postal ballot paper as provided, and start counting of votes as per the Rule 69 of KPR (Conduct of Election) Rules, 1993. The counting of votes to be continuous. Facilities may also be provided for recounting of votes. If after the counting of the votes is completed an equality of votes is found to exist between any candidates and the addition of one vote will entitle any of those candidates to be declared elected, the Returning officer shall forth with decide between these candidates by lot and proceed as if the candidate on whom the lot falls had received an additional vote, then, the Returning officer shall declare the result of election, and grant of certificate of election to returned candidates in prescribed form and obtain from the candidate an
acknowledgement of its receipt duly signed by him and immediately sent the acknowledgement by registered post to DC\textsuperscript{52}.

The Supreme Court in Sri Murali Vengath V. Returning Officer and others\textsuperscript{53}, held that the decision by drawing lot in the event of securing equal number of votes is an age old practice and well accepted procedure in democracy and the same cannot in any way be held to be unfair or unreasonable or infringing the constitutional rights nor it is violative of Citizenship Act.

5.4 PROCEDURES IN ELECTION PETITION.

Regarding the procedures to file any petition relating Gram Panchayat election it should be presented as election petition on one or more grounds specified in Sections 19 (1) & 20 before the Civil Judge (Junior Division) by any candidate at such election or by any qualified voters at such election together with a deposit of rupees five hundred as security costs within 30 days from the declaration of election of returned candidate\textsuperscript{54}.

A petitioner apart from joining as respondents to his petition may claim that the election of returned candidate is void and he himself or any other candidate has been duly elected\textsuperscript{55}. The election petition shall be accompanied by, as many copies thereof as there are respondents and such copies shall be attested under his signature\textsuperscript{56}. The petition shall contain concise statement of material facts and it should also contain statement about corrupt practice with all the details and shall sign and verified in the manner laid down in the Civil Procedure Code 1908 (Central Act 5 of 1908) for the verifications of pleadings. The petition shall also be accompanied by an affidavit in the prescribed manner in support of alleged corrupt practice and he can claim that election of returned candidate is void and he himself or any other candidate has been duly elected\textsuperscript{57}.

5.4. A. Trial of Election Petition.

The Civil Judge (Junior Division) shall dismiss an election petition, which does not comply with the provisions of Section 15. Where more election petitions than one are presented to him in respect of the same election petition he may, try them separately or in one or more groups. Any candidate not already a respondent shall, upon application made by
him to the Civil Judge (Junior Division) within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made to the Civil Judge (Junior Division) be entitled to be joined as a respondent. The Civil Judge (Junior Division) may upon such terms as to costs and otherwise as he may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in his opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition, which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

The trial of an election petition shall be consistent and continuous until its conclusion and trial should be concluded within 6 months from the date on which the election petition is presented. The petition shall be tried as nearly as may be in accordance with the procedure applicable under Civil Procedure Code, 1908 (Central Act 5 of 1908), to the trial suits. He may also refuse to examine any witness or witnesses if such witness or witnesses evidence is not material for the decision of petition or that the party tendering such witness or witnesses is doing so on frivolous grounds. The trial of election petition is subject to the provision of Indian Evidence Act, 1872 and no document shall be inadmissible in evidence at the trial of the election petition on the ground that it is not duly stamped or registered.

The Civil Judge (Junior Division) at the conclusion of the trial shall make an order-

a) Dismissing the election petition; or

b) Declaring the election of all or any of the returned candidates to be void; or

c) Declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidates to have been duly elected.

He shall also make an order whether corrupt practice has been proved or not and name the person or persons guilty of any corrupt practice and fix the amount of costs to whom it is payable. The person who is not a party to the election petition shall not be named in the order that he is involving in corrupt practice unless he is given notice to appear before him and provide an opportunity of being heard as per the Act.
5.4. B. Grounds for Declaring Election to be Void.

The Civil Judge (Junior Division) shall declare the election of the returned candidate to be void, if he is of the opinion that the Returned candidate is attracted to any of the provisions of Section 19(1) and (2) of KPR Act, 1993, which refer to lack of qualifications, existence of disqualifications, corrupt practices and improperly filing of nominations etc.

If any person filed an election petition and claims that he or other candidate has been duly elected, then the Civil Judge (Junior Division) is of the opinion, that the petitioner or such other candidate received a majority of the valid votes or the petitioner or other candidate could not get the majority valid votes as the votes obtained by returned candidate by corrupt practices, then he may declare the election of returned candidate to be void and also declare the petitioner or such other candidate as the case may be, have been duly elected. The decision of the Civil Judge (Junior Division) shall be final. If during the trial of an election petition there appears equality of votes between any candidates then the Civil Judge (Junior Division) has to decide it by lot.

The following shall be deemed to be corrupt practices for the purposes of this act, they are: Bribery, Undue influence, appealing vote on caste, religion, race etc., publication of fact which is false, procuring of hiring vehicle for the free conveyance of voter, serving liquors, and any other practice which the Government may by rule specify to be corrupt practice.

The corrupt practices referred to above shall entail disqualification for membership of any local authority for a period of five years counting from the date on which the finding of the Civil Judge (Junior Division) as to such practices takes effect under this Act. The Civil Judge (Junior Division) shall after announcing the orders made under section 18 and 19 send a copy thereof to the DC.

The above provisions of Sections 15,16,17,18,19,20,21,22,23 and 24 of KPR Act, 1993 shall apply mutatis mutandis in respect of election to Taluk Panchayat, the application being to the Civil Judge (Senior Division) having jurisdiction and deposit as security for costs being one thousands rupees. Further the provisions of above sections are also
applicable *mutatis mutandis* in respect of election to Zilla Panchayat the application being to the Civil Judge (Senior Division) having jurisdiction and deposit as security for costs being two thousand rupees.

The decisions of the Civil Judge (Junior Division) relating to Gram Panchayat election shall be final. Any person aggrieved by any decision or order of the Civil Judge (Senior Division) in respect of the elections to both Taluk and Zilla Panchayats may, within thirty days from the date of such decision or order, appeal to the District Judge and the decision of the District Judge on such appeal shall be final. The procedure under the various provisions of Civil Procedure Code, 1908, shall be strictly adhered to before filing the election petition. In *S.A. Aswathanarayana & Others v. The Returning Officer, Somanahalli; Grama Panchayat, Bangalore, Rural District & Others* the High Court, while dealing with the scope of interference in exercise of writ jurisdiction regarding the dispute of acceptance or rejection of nomination of candidates to Gram Panchayat election held that the aggrieved person can seek remedy only by way of election petition, under Section 15 of the KPR Act, 1993 and 243-O(b) of the Indian Constitution. Further, whether the election of a member of Zilla Panchayat can be set aside by the State Election Commission *Suo-moto* other than by an election petition. In *Guru Shantha Pattedar v. State of Karnataka and Others* the State Election Commission *Suo-moto* other than by an election petition disqualified the petitioner under Section 167 (1) (g) of KPR Act, to hold the office as an elected member of the Gulbarga Zilla Panchayat, on the ground that he was holding an office of profit.

The Court held that Article 243-O (b) of the Indian Constitution, which states no election to any Panchayat, shall be called in question except by an election petition. Section 171 of the KPR Act provides that Section 15,16,17,18,19,20, 21,22,23 and 24 shall apply *mutatis mutandis* in respect of election to Zilla Panchayat. Section 15 of the KPR Act, in particular provides that no election to fill a seat or seats to Gram Panchayat shall be called in question except by an election petition on one or more grounds specified in sub-section (1) of section 19 and 20. In these circumstances the impugned order is set aside.
The jurisdictions of the Court to decide an election petition and its procedures have been explained under the various sections of the KPR Act, 1993. The powers have been entrusted with the Court to try the election dispute and to ensure the placement of the right candidate at a proper place. However, some time the ambiguity may prevail in the concerned section itself. Then the court has to clear it when a petition filed before it. In H.V Venkatesh V. Election Officer, Tahsildar Mulbagal Taluk, Kolar District and Others. The High Court of Karnataka held that the expression, ‘District Court’ and ‘District Judge’ are interchangeable. The ‘Munsiff’ can be equated with ‘Munsiff Court’ to file an election petition.

The learned Munsiff being sub-ordinate to the High Court, & the decision of the learned Munsiff in the election petition is revisable by this Court under Section 115 of the Code of Civil procedure... The Court further held that Section 17 of the KPR Act, 1993, which deals with the trial of election petition, provides for dismissal of the petition for non-compliance with Section 15 of KPR Act, 1993.

Apart from the elected members for Constitution of a Taluk Panchayat it shall also consists of the following members. They are:

a) The members of the House of People and the State Legislative Assembly representing a part or whole of the Taluk, whose constituencies lie within the taluk;

b) The members of Council of States and the State Legislative Council who are registered as electors within the taluk; and

c) One-fifth of the Adhyaksha of the gram panchayats in the taluk by rotation for a period of one year as the Adhyaksha of the Taluk Panchayat may determine by lot:

Provided that a Adhyaksha who was a member under this clause for one term shall not be eligible to become a member for a second term during the remainder of his term of office as Adhyaksha.
The above three category members shall be entitled to take part in the proceedings of, and vote at, the meetings of Taluk Panchayat except at a special meeting convened for the purpose of election of Adhyaksha and Upadhyaksha.

For the constitution of a Zilla Panchayat besides elected members it shall consist of the following members: -

a) The members of the House of People and the members of the State Legislative Assembly representing a part or whole of the district whose constituencies lie within the district;

b) The members of the Council of State and the members of the State Legislative Council who are registered as electors within the district; and

c) The Adhyakshas of Taluk Panchayats in the district.

The above members shall be entitled to take part in the proceedings of, and vote at, the meetings of Zilla Panchayat except at a special meeting convened for the purpose of election of Adhyaksha and Upadhyaksha.

However, Sections 12, 128 and 167 of the KPR Act, 1993, provides for the disqualification for being chosen and for being member of Gram Panchayat, Taluk Panchayat and Zilla Panchayat respectively on various grounds such as holding an office of profit, double representative position, conviction for Criminal action etc.

A person who is working as junior clerk in a private mill which later became the subsidiary unit of National Textile Corporation with the persons service conditions were continued to be governed by the rules of private textile mill is elected to Zilla Panchayat, whether he holds the office of profit which is subject to disqualification under Section 167 (1) (g) of the Act.

In Guru Shantha Pattedar V. State of Karnataka The Court held that, at the relevant time the petitioner was working as a junior clerk in a private textile mill. The mill is a separate legal entity and cannot be considered as an authority under the Control of Central Government. The petitioner was only holding a non-executive post... In this case, the
petitioner who is a junior clerk in the private mill is not under the control of National Textile Corporation. (A Government Undertaking Corporation).

The service conditions of the petitioner are also not governed by the corporation. The petitioner is only holding a post of junior clerk and did not hold any office as such. The KPR Act makes a reference to a person holding office of profit under any authority subject to the control of Central Government. The position, which the petitioner is holding is neither, an office of profit nor it is under the control of Central Government.

In the instant case, the service conditions of the petitioner are not governed under the National Textile Corporation. Further the mill is also not under the control of Central Government or State Government. In such circumstances, it does not attract Section 167 (1) (g) of KPR Act, 1993. Hence the decision of the Court, that the petitioner is not holding the office of profit is correct.

When a Gram Panchayat member getting elected as member of Taluk Panchayat is required to resign his seat in gram panchayat with in 15 days from the date of notification of names of members under Section 133 of KPR Act. Can the DC declare his seat in Taluk Panchayat as vacant if elected member fails to give up his membership of Gram Panchayat within the said period? In B. Venkateshallu V. Deputy Commissioner, Bellary and Others. The Court held that the words “at the expiration of a period of 15 days from the date of notification of the names of members under Section 133 apply where the person who is chosen as a member of the Taluk Panchayat is already a member of any of the Houses or other local authorities specified in the sub-section (2) of Section 128. On the other hand, the words “Within 15 days from the date of commencement of the term of office” apply to any other specified offices to which a person who is already a member of the Taluk Panchayat is elected or chosen. If such person did not resign from his seat in the Gram Panchayat within 15 days and resigned only after expiry of 15 days from the date of notification of names of Taluk panchayat under Section 133, the seat held by such person in the Taluk Panchayat having thus became vacant on the expiry of 15 days. Under Section 128 (2) of the Act, the D.C is bound to take action under Section 129 (2) in regard to the person who fails to give notice within 15 days.
Section 128 (2) of KPR Act, 1993, imposes the obligation on the part of a person who has been elected to Taluk Panchayat being a member of Gram Panchayat. There is no prohibition in the Act and wherein a Gram Panchayat member could also contest to Taluk Panchayat or other bodies. However, the KPR Act, 1993 prohibits the simultaneous membership in two bodies, i.e., in two tiers. In the instant case once the Gram Panchayat member is elected to Taluk Panchayat then within 15 days of notification of his name, such member shall resign to Gram Panchayat membership. Otherwise his membership to Taluk Panchayat would automatically be held as vacant. Hence, the duty is on such member to act within 15 days and convey his option to the DC.

In the next process, the elected members of Gram, Taluk and Zilla Panchayats shall within one month from the date of publication of names of members, after every general election or on reconstitution or establishment under this act or immediately before the expiry of term of office of Adhyaksha and Upadhyaksha chose two members from amongst them to be respectively Adhyaksha and Upadhyaksha thereof and so often as there is a casual vacancy in the office of Adhyaksha and Upadhyaksha, they shall chose another member amongst them to be Adhyaksha or Upadhyaksha as the case may be. However, the posts shall be reserved in accordance with the various provisions of act and rules, in all the three tiers. The reservation of posts of Adhyaksha and Upadhyaksha in all the three tiers of PRIs in favour of SC, STs and Women are constitutional obligations. However, the reservation in favour of backward class citizens has been left to the discretion of legislature of a State.

The reservation in the PRIs in favour of SC, ST and Women is necessary because the injustices caused to them since the time immemorial are still practised in our society. It may be the practise of untouchability or gender discrimination etc., which are still persisting in our society. Extending reservation to SC, STs and women in the governance of PRIs have been recommended by the various committees constituted both at the Centre and State level. But the constitutional status and obligation was achieved only through the 73rd Amendment Act, 1993. In fact, this promotes the objectives of social justice enshrined in the preamble of Indian Constitution.
It is obvious that the reservation of seats as specified in Article 243 D of the Indian Constitution and various provisions under KPR Act, 1993, is intended to guarantee a minimum number of seats to SC, STs women and backward class citizen. Therefore, if a member of the said Castes, Tribes, and women etc., secure additional seat by election to general unreserved seats there would be no repugnancy at all. The claim of eligibility for the reserved seat does not exclude the claim for the general seat. It is an additional claim. Both the claims have to be decided on the basis that there is one election from the double member constituency.

Subject to the general or special order of the State Election Commission, the DC in case of Gram Panchayat and the State Election Commission in cases of Taluk and Zilla Panchayats the seats shall be reserved to the office of Adhyaksha and Upadhyaksha in the prescribed manner infavour of SC, ST Women and Backward class citizen as prescribed in the Act, various rules, and various orders and notifications issued by the State Government from time to time.

The election of Adhyaksha and Upadhyaksha for Gram Panchayat shall be held in the first meeting after constitution or reconstitution of Gram Panchayat within one month from the date of publication of list of elected members. In the case of Taluk Panchayat and in the case of Zilla Panchayat the Commissioner in the first meeting after constitution or reconstitution may fix the date for the election of Adhyaksha and Upadhyaksha and send to every member, notice of date so fixed not less than seven days prior to the date of meeting. Not less than two hours before the time fixed for the election of Adhyaksha and Upadhyaksha, any member may nominate any other member for being elected as Adhyaksha or Upadhyaksha as the case may be, by delivering to the concerned officer appointed for that purpose. In H.M. Nagaraju V. State of Karnataka. The nomination paper to contest for the office of Adhyaksha was presented just 45 minutes before the time fixed for such meeting was accepted. The acceptance of the same by Returning officer was challenged as improper. The court held that, as per Rule 5 of KPR (Election of Adhyaksha and Upadhyaksha of Gram Panchayat) Rule 1995, the nomination to the office of Adhyaksha is to be filed 2 hours before the time fixed for the meeting called for the purpose of holding election. Admittedly the time fixed for the election (or meeting) was 1 PM. The nomination was filed at 12.15

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PM, that means it was beyond the time as provided under rule. Therefore the acceptance of nomination paper was improper.

The decision of the Court was right in accordance with the Rule 5 of the KPR (Election of Adhyaksha and Upadhyaksha of Gram Panchayat) Rule, 1995, as any violation of rules is not excusable. In fact, such type of decision is model to all the members who wish to contest for a responsible office.

However, in the absence of clear notification regarding reservation by the Government whether the DC has authority to issue fresh notification canceling the defective notification purported to have been issued in violation of the provisions of the act? M.G. Achappa V. The Prescribed Officer to hold the election of Adhyaksha and Upadhyaksha of Gonikoppal Gram Panchayat, Virajpet Kodagu District, Madakeri, and Others. In the instant case as per the notification issued by the Government, the office of the Adhyaksha was reserved to backward class without further classifying ‘A’ and ‘B’. The D.C. canceling this notification has issued the fresh notification where the office of the Adhyaksha was reserved to Backward Class ‘A’ and Upadhyaksha post was reserved to general ladies. The authority of DC canceling the defective notification and issue of revised notification was challenged on the ground that it is done without jurisdiction. The Court held that the action of the DC is referable to statutory powers and cannot be termed as to without jurisdiction.

Even when the election to the office of Adhyaksha and Upadhyaksha could not be conducted for one or the other reason, the DC can exercise his power. In H.N. Sreenivas babu V. State of Karnataka and Others. The DC has appointed an officer under Section 47 of KPR Act, owing to the above circumstances. By an order made which is impugned herein the DC called upon the concerned Panchayat to elect Adhyaksha and Upadhyaksha. It is now contended that the DC having appointed administrator the members of Panchayat ceased to be members thereof and consequently when Panchayat is ceased to exist the only course is to hold fresh elections to the Panchayat. The Court held that the DC could exercise his powers to appoint an officer to perform the duties of Adhyaksha until the Adhyaksha is duly elected. In generic sense, the expression ‘vacancy in an office’ would mean absence of incumbent in an office. If there is no election to the post of Adhyaksha or Upadhyaksha,
there is a vacancy as such. In such an event, it is certainly open to DC to exercise his powers under Section 47 of the KPR Act. The Court held that the order made by DC under Section 47 of the KPR Act, is permissible for him to issue an order for fresh election to the office of Adhyaksha and Upadhyaksha.

After filing of nomination for the office of Adhyaksha and Upadhyaksha the concerned officer shall scrutinize all nomination papers delivered to him and shall read out the members present at such meeting the names of the members who in his opinion have been duly nominated together. The officer shall also verify the eligibility of the candidates who is contesting for the office of Adhyaksha or Upadhyaksha, especially caste or class eligibility. Further, when a person is ineligible to contest for the office of Adhyaksha in the first meeting, can he contest for the same post after the re-classification, if he becomes eligible? In K. Puttaswamy V. State of Karnataka and Others, the petitioner was elected to a Gram Panchayat and he was the owner of 8 hectares of land and his annual income was Rs. 10,000/-, he could not contest for office of Adhyaksha, as there was an income limitation. In the meanwhile owing to 73rd Amendment Act, 1992, the seats of Adhyaksha and Upadhyaksha were re-classified and income limit was removed and he became eligible to contest. His eligibility was challenged.

The Court held that under Section 45(1) of KPR Act, 1993, it has been so stated that Panchayat should elect Adhyaksha and Upadhyaksha in the meeting as per provision of the Act... The meeting that was called for has been adjourned and no nomination had been received in the meeting nor proposals of the names of the candidates had been presented nor were received in the meeting. Thus, until proposals of names have been given in the meeting the stage of making nomination can be said to have not been commenced under the act. As such the petitioner should not be deprived of exercising his right to be candidate for the afore said post by filling or getting filled the proposals of his name if so desired unless he is found otherwise disqualified.

The decision of the Court in the instant case has clarified the extension of eligibility after re-classification. No nomination had been received in the meeting nor proposals of names of candidates have been presented nor were received in the meeting. Under such
circumstances the decision of the court to effectuate the 73rd Amendment Act, 1992, permitting the respondent to contest for the office of Adhyaksha will not be against the spirit of Constitution.

What is the duty of the prescribed officer when a majority member of a Gram Panchayat opposed to elect a lone candidate belonging to Scheduled Tribe. In Katagihalli Anandappa V. State of Karnatakas, the office of Adhyaksha of Gram Panchayat was reserved for a person belonging to Scheduled Tribe. There was only one nomination. This was opposed by a majority of members. The prescribed officer refused to declare election and declared the election proceedings as “cancelled” and referred the matter to Government. The Court held that the prescribed officer is responsible for holding the election and declare the result, whether a person has been elected to the office of Adhyaksha or not. He has no jurisdiction to refer the matter to Government.

The reservation to the office of Adhyaksha or Upadhyaksha shall be made applicable to the candidate belonging to particular caste (for example Scheduled Caste or Tribe) even though the candidate is elected from general constituency.

For the constitution of Gram Panchayat seats shall be reserved in favour of SC, ST Women and Backward class citizen (i.e., for category ‘A’ and ‘B’). Section 5(2) of KPR Act, provides that if no person belonging to SC is available the seats reserved for that category shall also be filled by the person belonging to ST and vice-versa. Further, under Section 5(3) in respect of reservation of seats in favour of category ‘A’ and ‘B’ the above principle has been made applicable (i.e., interchangeability). However, the interchangeability of seats, which is available under Section 5 infavour of SC and ST, is not applicable to fill the office of Adhyaksha or Upadhyaksha in the absence of clear provision in the Act.

In Smt. Sowbhagya V. R.O. Horalavade Grama Panchayat and Asst Agricultural Officer, Nanjungud Taluk and Others. The office of Adhyaksha of Gram Panchayat was reserved for a member belonging to ST. There was no person belong to ST available to fill the office which is reserved for ST. The petitioner in this case made a claim that she belongs
to Sc and she be permitted to contest the election to the office of Adhyaksha which was reserved for St. Her nomination to the office of Adhyaksha was rejected, which was contended by her in the court. The Court held that, there was no provision in statute laying down rule that if no person belonging to St is available to fill office of Adhyaksha that Office has to be filled by a person belonging to Sc. It held that such permission is untenable in the statutory provisions. Further, the Court held that the office of Adhyaksha in Gram Panchayat couldn’t be kept vacant on the ground that no candidate belonging to St is available. That is contrary to the object of local self-government as provided under the provisions of the Act. Therefore the DC is directed to take necessary steps to re-allot the office of Adhyaksha of the said Gram Panchayat after following guidelines framed in this regard and see that the election is held to that office within eight weeks from the date of receipt of this order.

The interchangeability of seats to Gram Panchayat election has made available under Section 5(2) and (3) in favour of Sc and St and category ‘A’ and ‘B’. However under Section 44(2) the interchangeability is made available only in favour of category ‘A’ and ‘B’ to fill the office of Adhyaksha and Upadhyaksha and not in favour of SC and ST in filling the office of Adhyaksha or Upadhyaksha. Hence, in the absence of a specific provision, the Court in not permitting the petitioner to contest for the election of office of Adhyaksha is in accordance with the Act. Further in Doddanarasimha Reddv V. The Secretary, Karnataka State, Election Commission and Others. The petitioner who was elected under reserved category “Backward class-B” challenged the reservation of office of ‘Adhyaksha’ for a person belonging to ‘general women’ under the notification issued by the Secretary, Karnataka State Election Commission under Section 138 of the KPR Act, 1993 and Rule 3 and 4 of KPR (Reservation of Offices of Adhyaksha and Upadhyaksha of Taluk Panchayat) Rule, 1995, and under Article 14 of Constitution of India on the ground that:

(a) In the entire district no seat is reserved for backward class ‘B’ to the office of Adhyaksha in any Taluk Panchayat.

(b) During the first term, reservation has already been made for ‘General Woman’ in so far as the Taluk Panchayat to which the petitioner is elected.
(c) Once the reservation is made for a person belonging to ‘General Women’ it is impermissible to again reserve for ‘General Women’, without any reservation being made for persons belonging to Backward Class-B.

The High Court accepting the contention quashed the notification and said that the commission should make reservation as provided under sub-section (2) of Section 138 of KPR Act, 1993, and it must exercise the power in a fair and reasonable manner and keeping in view the object of the legislation.

In the last Para of Section 138(2) of the KPR Act, 1993, it is very clearly provided that “the offices reserved under this sub-section shall be allotted by rotation to different Taluk Panchayat and Rule 4 of KPR (Reservation of Offices, etc.) Rule, 1995 makes it very clear that the reservation of seats to offices of Adhyaksha and Upadhyaksha shall not be static and it should be subject to rotation”. In this case, since, the office of Adhyaksha was already reserved and the same had been enjoyed by the women of general category in such a case reserving the office of Adhyaksha to same category would definitely violate the Act.

When the office of Adhyaksha is reserved to Scheduled Caste, whether it should be filled up only from among SC male members elected from constituencies reserved for SC and whether women elected from constituency reserved for SC women is not eligible to be elected in view of separate reservation made for women under category of SC, BC category ‘A’ and of unreserved has been a controversial issue. Rule 3 of KPR (Reservation of Office of Adhyaksha and Upadhyaksha of Zilla Panchayat) Rule 1995 provides reservation for women in the categories of SC, ST, BC category ‘A’ and ‘B’ unreserved (general). The Government in view of Section 177 of the Act and the Rule 3 issued the notification reserving the office of Adhyaksha for SC and Upadhyaksha was for unreserved women. In M. Hemala Nayaka & Others V. Smt Raniyamma and Others the Government in view of Section 177 of the KPR Act and Rule 3 of KPR (Reservation of Offices of Adhyaksha and Upadhyaksha of Zilla Panchayat) Rule 1995, issued a notification on 7-3-1997, the Adhyaksha post reserved for Scheduled Caste and Upadhyaksha post was reserved for unreserved women. A meeting was convened on 7-4-1997. The respondent filed her nomination and it was accepted and she was declared elected to the office of Adhyaksha. The election of the respondent was challenged on the ground that she is ineligible to hold the
post. It was contended that the person who has been elected from the constituency reserved for SC women has no right or eligibility to contest for the office reserved for SC. The Court held that section 177(2) (c) of the KPR Act and the rules specifically provide for reservation for office of Adhyaksha and Upadhyaksha for women in respect of each of the categories. Hence, there is no substance in the contention (of Respondent) that the act and rules do not provide for reservation for women in each of the categories. In view of the law, women elected from the constituency reserved for SC women, is not eligible to contest to the post reserved for SC. Therefore, the acceptance of the nomination of such person to the office of Adhyaksha and declaring her election as Adhyaksha of Zilla Panchayat is illegal.

It is submitted the decision of High Court in the instant case needs reconsideration as it is against to the spirit and philosophy of the Constitution. Strictly speaking the provision under Article 243 D of Indian Constitution and Section 177 of the KPR Act, 1993 do not intend for exclusion of women in enjoying the office of Adhyaksha or Upadhyaksha in the Panchayati Raj administration. It is to help the weaker section to actively participate in the Panchayati Raj administration. In fact, that is genuine approach of empowering women. Further, it is only after the lapse of 43 years of implementation of Constitution, the reservations in favour of women are being extended in the Panchayati Raj administration uniformly throughout India. This is a positive step in favour of women who have been neglected for several years, and when the similar legislative bill which intended to extend the political reservation in House of People and in State Legislature is still pending before the Parliament for the last few years. Hence, I submit that, under such circumstances, if these kinds of decisions creep in then it may affect the very purpose of empowering women in their political sphere.

After the scrutiny of nomination the concerned officer appointed shall give the permission for withdrawal of nomination in writing. After the time fixed for withdrawal is over, if there is only one candidate who has been validly nominated, and has not withdrawn his candidature in the manner and within the time specified, the prescribed officer shall forthwith declare such candidate to be duly elected as Adhyaksha or Upadhyaksha as the case may be. If the number of candidates who have been validly nominated and who have not withdrawn their candidature is more than one then the prescribed officer shall proceed to
conduct the election. Election shall be conducted as prescribed in the Rules. After voting by all the members present and wishing to vote, the prescribed officer shall declare the candidate to whom the highest number of valid votes have been given to have been duly elected. When an equality of votes is found to exist between any two or more candidates then it shall be decided by lot, and on whom the lot falls had received an additional vote. He shall thereafter declare the candidate on whom the lot falls to have been duly elected. The prescribed officer shall cause a record of the minutes of the meeting. The member elected as Adhyaksha or Upadhyaksha, as the case may be shall enter upon his duties immediately after the declaration of result of the election.

When a vacancy occurs in the offices of Adhyaksha or Upadhyaksha the Secretary in case of Gram Panchayat to Executive Officer, the Executive officer in case of Taluk Panchayat to AC and Chief Executive Officer to the Commissioner in the case of Zilla Panchayat shall give notice of such vacancy, within seven days from the date of its occurrence, who shall thereupon take action in the manner provided for conducting the election of Adhyaksha or Upadhyaksha as the case may be. The provision for the election of Adhyaksha or Upadhyaksha shall, mutatis mutandis, is applicable for the purpose of filling up of casual vacancies of Adhyaksha and Upadhyaksha.

Any member within 15 days from the date of declaration of result may challenge the validity of election of Adhyaksha or Upadhyaksha as the case may be, by filing an election petition before the Munsiff in case of Gram Panchayat with Rs. 250/- as security for cost, in case of Taluk Panchayat before the Civil Judge with a deposit of Rs. 1000/- as security for costs and in case of Zilla Panchayat before the District Judge with a deposit of Rs. 2000/- as security for cost. The petitioner shall sign every election petition apart from the regular procedure, and it shall contain a concise statement of materials on which the petitioner relies. It shall also be verified in the manner laid down in the Code of Civil Procedure, 1908 (Central Act 5 of 1908) for the verification of pleading. Further the petitioner may claim any of the following:

a) That the election of the returned candidate is void;

b) That the election of the returned candidate is void and that he himself or any other candidate has been duly elected.
The Munsiff or Civil Judge or District Judge as the case may be, may after such enquiry as he deems fit and after giving an opportunity to be heard to the parties to the proceedings make an order: -

a) Dismissing the petition; or

b) Declaring the election of returned candidate to be void; or

c) Declaring the election of the returned candidate to be void and the petitioner or any other candidate to have been duly elected.

If the Munsiff or Civil Judge or District Judge as the case may be is of the opinion that the result of the election has been materially affected by the improper reception or refusal of a vote or by any non-compliance with the provision of the act or any of the rules, the concerned judge shall declare the election of the returned candidate to be void.

If any person who has presented an election petition has in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the Judge is of the opinion that in fact the petitioner or such other candidate received a majority of the valid votes, the concerned Judge shall after declaring the election of returned candidate to be void, declare the petitioner or such other candidate as the case may be, to have been duly elected:

But the petitioner or such other candidate shall not be declared to be duly elected if it is proved that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented in question his election. In Mallikarjuna Gowda V. Principal, Munsiff Hubli and Others, involved the question whether under Sections 15, 17(3) and (7) of KPR Act, 1993 and under CPC it is permissible to file an application by the petitioner to withdraw election petition? Further, is it also permissible to file an application by another interested party to implead himself as petitioner in place of withdrawing party and to prosecute election petition? In case other interested party has not himself having filed election petition within the period of limitation under the Act, whether such other interested party is eligible to be joined as petitioner at later stage of proceeding?
The Court held that, an election petition could be filed under Section 15 of the KPR Act, 1993, within the period prescribed and subject to the conditions set forth therein. Further, such an election petition will have to comply with Section 15 of KPR Act, as well. If the conditions are not complied with the election petition is liable to be dismissed under Section 17 of the KPR Act, without notice to the other side. Any candidate who is not a party to the proceedings can become a party to the proceedings as provided under Section 17(3) of KPR Act, if he complies with the conditions thereto, provisions regarding candidates being impleaded are also provided thereto. The Court further held that, a person who could have filed an election petition himself, if he has not filed such a petition within a period of limitation and subject to the conditions prescribed under Section 15, cannot by an indirect method transpose himself as petitioner.

To challenge the result of election the petitioner shall approach the Court only by an election petition with security for cost as prescribed under the act and rules. If the petitioner did not establish his claim that he himself or any other person shall be declared as returned candidate then the court cannot do so. Hence the procedure to file an election petition to declare the election of returned candidate to be void and their claim should be properly stated in the petition. Further the election petition should be filed within a limitation period.

After establishment of Gram Panchayat, Taluk Panchayat and Zilla Panchayat, every Panchayat shall be a body corporate in the name of particular Panchayat and shall have perpetual succession etc., according to Section 6, 119(2) and 158(2) of KPR Act. The term of office of every Adhyaksha and Upadhyaksha of the Gram Panchayat shall, cease on the expiry of his term of office as a member of the Gram Panchayat, unless he resigned or removed from the post for various reasons under Section 48 of the Act. The term of every Adhyaksha and every Upadhyaksha of Taluk Panchayat and Zilla Panchayat shall be twenty months from the date of his election or till he ceases to be a member of Taluk or Zilla Panchayat whichever is earlier, and until he resigns or removed from the office of Adhyaksha and Upadhyaksha under Sections 140 and 179 of the Act respectively. Every Adhyaksha and Upadhyaksha of all the three tiers may resign his office by writing under his hand by addressing to the following persons:
a) The Adhyaksha of Gram Panchayat to AC and Upadhyaksha to Adhyaksha of Gram Panchayat and in his absence to AC\textsuperscript{101}.

b) The Adhyaksha of Taluk Panchayat to the DC and Upadhyaksha to the Adhyaksha of Taluk Panchayat and in his absence to DC\textsuperscript{102}.

c) The Adhyaksha of Zilla Panchayat to Government and the Upadhyaksha to Adhyaksha of Zilla Panchayat and in his absence to Government\textsuperscript{103}.

The resignation of Adhyaksha and Upadhyaksha of Gram Panchayat, Taluk Panchayat and Zilla Panchayat shall take effect only after the expiry of 10 days in case of Adhyaksha and Upadhyaksha of Gram Panchayat and after expiry of 15 days in case of Adhyaksha and Upadhyaksha of Taluk and Zilla Panchayat. However, within the said period it can be withdrawn\textsuperscript{104}.

Every Adhyaksha or Upadhyaksha of the Gram Panchayat, Taluk Panchayat and Zilla Panchayat shall vacate his office if he ceases to be a member of Gram Panchayat, Taluk Panchayat and Zilla Panchayat respectively\textsuperscript{105}. Every Adhyaksha and Upadhyaksha of Gram Panchayat, or Taluk Panchayat or Zilla Panchayat shall after an opportunity is offered for hearing him, and if necessary after obtaining report from Taluk Panchayat in case of Adhyaksha and Upadhyaksha of Gram Panchayat and from Zilla Panchayat in case of Adhyaksha and Upadhyaksha of Taluk Panchayat and considering the same be removable from his office as Adhyaksha or Upadhyaksha by the Government for being persistently remiss in the discharge of his duties, and Adhyaksha or Upadhyaksha so removed who does not cease to be member shall not be eligible for re-election as Adhyaksha or Upadhyaksha during the remaining term of office as member to Gram Panchayat, or Taluk Panchayat or Zilla Panchayat as the case may be\textsuperscript{106}. An Adhyaksha or Upadhyaksha removed from his office as said above may be removed by the Government membership of Gram Panchayat or Taluk Panchayat or Zilla Panchayat as the case may be\textsuperscript{107}.

The word ‘persistently’ not only mean obstinacy or perseverance or stubbornness but the court held that it is an attitude of mind. In \textit{T. Bhagyalakshmi V. State of Karnataka and Others}\textsuperscript{108} the petitioner in this case is Adhyaksha of Laxmipuram Gram Panchayat. She had issued 18 general licenses and 10 other licenses, which the law does not permit her to do so.
On a complaint by a member to Zilla Panchayat the Deputy Secretary of Zilla Panchayat visited the panchayat office and a report was submitted that some licenses issued without the approval of Panchayat. The C.E.O issued notice-calling explanation. She filed an explanation by secretary and since she was uneducated and sought excuse. The C.E.O reported the matter to Divisional Commissioner to take action under Section 48(4) of the Act. The Divisional Commissioner on the basis of report removed her from the office of Adhyaksha and asked her to continue as member of Gram Panchayat. The order of Divisional Commissioner was challenged. The learned counsel for the petitioner argued that,

a) There was no ‘persistent default’ by the petitioner as per Section 48(4) and
b) She had issued licenses under the recommendations of the Secretary, and the Secretary must have been forged some of the licenses.

The Court held that the word ‘persist’ or ‘persistently’ suggests an attitude of mind. In certain situation, even a single act by a person may reveal persistent attitude if the person sticks to his act of omission after he has been warned or his/her attention has been drawn to it. In the instant case no such thing was forth coming nor had Divisional Commissioner held an enquiry to satisfy that the petitioner was persistent or that she continued to issue license even after she was informed that law did not permit. On the other hand she had confessed that she had issued licenses under certain circumstances and prayed for excuse. If after the circular of warning and the reply she had continued to issue license, perhaps the authority would have been right in holding that there is persistent default. It is also definite case of the petitioner that she had issued license on the recommendations of the secretary and further contended that secretary must have forged some of the licenses. In the circumstances, Divisional Commissioner before making the order impugned ought to have satisfied by making an enquiry but without making any such enquiry proceeded to make the order impugned solely on the report of the Deputy Secretary and the C.E.O of the Zilla Panchayat and therefore, the order impugned was not maintainable.

The word ‘persistent default’ implies successive defaults inspite of warning or protest or opposition under Section 48(4), it also implies a course of action coupled with intention to continue in that course. However, this kind of default can be prevented if the minimum educational qualification is fixed or regular and proper training is given to them. However
the Secretary should also be made liable for not rendering proper advice to Adhyaksha in the administration.

5.5 MOTION OF NO-CONFIDENCE.

One of the most controversial aspects in the Parliamentary system of Government and the like model Government at the lower level is motion of no confidence. The Prime Minister at the national level, the Chief Minister at the State level and the Adhyaksha or Upadhyaksha of local self-government are expected to administer with the support of the majority members. He has to take the confidence of all the members and bridge the gap existed among the members to get the maximum number of good works which bring good name and refutation not only to him but also to his party. However, political ethics seems to have lost its credibility in these days as every member looks at the individual benefits. This is happening inspite of various anti defection law, where the majority members are always at hurry to remove him from his office under the tools of motion of no confidence. “The Encyclopedia of Parliament” defines a motion of expressing no confidence in the Government is also spoken as a ‘vote of censure’.

1) The provision relating to motion of no-confidence against Adhyaksha or Upadhyaksha of Gram Panchayat have been covered under Section 49 of KPR Act, which says that every Adhyaksha or Upadhyaksha of gram panchayat shall forthwith be deemed to have vacated his office if a resolution expressing want of confidence in him is passed by a majority of not less than two-third of total number of members of Gram Panchayat at a meeting specially convened for the purpose in accordance with the procedure as may be prescribed. But no such resolution shall be moved unless notice of the resolution is signed by not less than one-third of the total number of members and atleast ten days notice has been given to the intention to move the resolution.

However, no resolution expressing want of confidence against an Adhyaksha or Upadhyaksha shall be moved within one year from the date of his election. Where a resolution expressing want of confidence in any Adhyaksha or Upadhyaksha has been considered and negatived by a Gram Panchayat a similar resolution in respect of the same Adhyaksha or Upadhyaksha shall not be given notice of, or moved within one year from the date of decision of the Gram Panchayat. Section 49 of the KPR Act, has been
supplemented by the Karnataka Panchayat Raj (motion of no-confidence against Adhyaksha and Upadhyaksha of Gram Panchayat) Rules 1994. Under Rule 3 (1) a written notice of intention to make the motion under the proviso to Section 49 shall be in a prescribed form signed by not less than one-third of the total number of members together with a copy of the proposed motion shall be delivered in person by any two of the members signing the notice to the AC.

2) The AC shall thereafter convene a meeting for the consideration of the said motion at the office of the Gram Panchayat on the date appointed by him which shall not be later than 30 days from the date on which the notice under sub-rule (1) was delivered to him. He shall give to members a notice of not less than 15 clear days of such meeting in a prescribed form.

Where the holding of such meeting is stayed by an order of Court, the AC shall adjourn the said meeting and shall hold the adjourned meeting on a date not later than thirty days from the date on which he receives the intimation about the vacation of stay, after giving to the members, a notice of not less than 15 clear days of such adjourned meeting.

3) A notice in a prescribed form shall be given to every member including the Adhyaksha and Upadhyaksha.

4) The quorum of such meeting shall be two thirds of the total number of members of the Gram Panchayat. The AC shall preside at such meeting. For determination of two third of total number of members under this sub-rule any fraction arrived at shall be construed as one.

5) A meeting convened for the purpose of considering a motion under sub-rule (2) shall not for any reason be adjourned.

6) If there is no quorum within one hour after the time appointed for the meeting, the meeting shall stand dissolved and the notice given under sub-rule (1) shall lapse.

7) As soon as the meeting convened under sub-rule (2) commences the AC shall read to the members of the Gram Panchayat, the motion for the consideration of which the meeting has been convened and shall put it to vote without any debate.

8) The AC shall not speak on the merits of motion and he shall not be entitled to vote thereon.
9) If the motion is carried by a majority of not less than two-thirds of the total number of members of the Gram Panchayat sitting and voting the Adhyaksha or Upadhyaksha as the case may be, shall forthwith cease to function as such and the AC shall as soon as may be notify such cessation on the notice board of the Office of Gram Panchayat and also inform the Adhyaksha or Upadhyaksha, as the case may be, regarding such cessation, if he is not present at the meeting.

10) After the cessation is notified under sub-rule (9) the Adhyaksha or Upadhyaksha as the case may be shall, immediately handover all documents, moneys or other properties of Gram Panchayat in his custody to the Secretary of the Grama Panchayat.

11) The election to the office of Adhyaksha or Upadhyaksha shall not be held until the notification under sub-rule (9) removing the Adhyaksha or Upadhyaksha as the case may be, is published.

Under Sections 140(3) and 179 (3) of the KPR Act, every Adhyaksha and every Upadhyaksha of Taluk Panchayat and Zilla Panchayat respectively shall be deemed to have vacated his office forthwith if a resolution expressing want of confidence in him is passed by a majority of the total number of elected members of the Taluk Panchayat and Zilla Panchayat at a meeting specially convened for the purpose.

For passing a resolution expressing want of confidence in Adhyaksha or Upadhyaksha of a Gram Panchayat Sections 49 of the KPR Act shall be read with the rules as a complete code in themselves deliberately provided by the legislature having regard to the elective office of Adhyaksha and Upadhyaksha. Therefore it cannot be said sub-Rule (2) of Rule 3 for issue of notice by the AC merely directory. Further Rule requiring the AC to convene special meeting before expiry of 30 days from the date on which notice of such motion has been delivered to him is mandatory. Non-compliance with the rule would render motion invalid even if it were passed with requisite majority.

Members intending to move motion of no-confidence must give 10 days notice to AC to enable him to convene meeting of Gram Panchayat specially for the purpose of giving 15 days notice to members. But is it within the power of AC to issue 15 days’ notice to members of special meeting even within ten day’s time given to him? In Smt. Parvathi V.
A.C. Haveri, Sub-Division, Haveri and Another the notice of no-confidence motion, signed by one-third of the total number of members of the Panchayat submitted on 23-7-1997. Thereafter the AC called for the meeting fixing the date of the meeting as 22-8-1997, by the notice dated 29-7-97. The notice issued by the AC was challenged by the petitioner as it is illegal on the ground that AC has no authority whatsoever to call for meeting within the expiry of 10 days from the date of receipt of the notice. The Court held that under the proviso of Section 49 of the Act, at least 10 days notice is required to be given by the one-third of the total members to AC expressing their intention to move the no confidence. From the reading of Rule 3(1) and (2) of KPR (motion of no-confidence against Adhyaksha or Upadhyaksha of Grama Panchayat) Rule, 1994, with the proviso of Section 49 of the Act, it is clear that persons who intend to move the no confidence shall give at least 10 days notice to AC. This ten days notice to AC will not come in the way of AC to call for the meeting to consider the motion of no-confidence before the expiry of 10 days from the date he received the notice.

However, when some of the elected members’ right to vote in the proceedings of meetings has been taken away by order of Election Commissioner and when motion passed by majority of total number of elected members, excluding, those elected members who have no right to vote, whether such a motion is to be held as validly passed against Adhyaksha? In P. Mahadeva Prabhu V. The State of Karnataka and Others total elected members were 26; where 13 members had expressed no confidence as against the petitioner. But according to the petitioner, 13 did not represent the majority from among the total number of members of Taluk Panchayat. Four members of Taluk Panchayat were disqualified by the Election Commissioner on the ground that they have violated whip issued. The petitioner before the court challenged the said order. The Court dismissed the said writ petition confirming the orders of disqualification and he preferred writ appeals before Division bench. The Division Bench, pending hearing of writ appeals, passed an interim order, which shows the persons who are disqualified though ordered to be continued, as members have no right to vote in the proceedings of meeting. If that is so, the said four persons shall not be taken into account for the purpose of calculating the total number of elected persons. Therefore, the total elected members were only 22 excluding the persons whose right to vote had been suspended. From
the proceeding it was seen 13 members voted infavour of the resolution. That represented
the majority taking into account only 22 were elected members of Taluk Panchayat. Therefore there was no illegality in the resolution passed against the petitioner and consequently declaring that he had vacated the office.

When an Adhyaksha of a Gram Panchayat is removed by motion of no confidence, is there any bar against the same person to contest again for the same post if he is the only candidate to the office of Adhyaksha, since the office of Adhyaksha reserved to a lone women belonging to St. The Court held that there is no bar to such person to contest for the same post after she had been removed by a motion of no-confidence since it is the duty of legislature to make law in the area said above

Section 179(3) of the Act, says every Adhyaksha or Upadhyaksha of Zilla Panchayat shall be deemed to have vacated his office forthwith if a resolution expressing want of confidence in him is passed by a majority of the total number of elected members of the Zilla Panchayat at a meeting specially convened for the meeting. An important question arises that, whether the ex-officio (i.e., non-elected members) members can give requisition to convene a special meeting to move motion of no confidence. Laxmappa balaganur V. State of Karnatak and Others In the instant case there are 46 total members in Zilla Panchayat. Of these 27 are elected members and 19 ex-officio members viz., M.Ps, M.L.As, M.L.Cs and Adhyakshas of Taluk Panchayats who were ex-officio members. A requisition made by 10 members for convening special meeting to move motion of 'No confidence' against Adhyaksha, which also include some non-elected members. The Adhyaksha failed to convene special meeting. Then the CEO was asked to arrange such meeting In this respect whether expression ‘total number of members’ used in section 180(2) (a) shall be read to mean only ‘total number of elected members’ excluding thereby non-elected members who are ex-officio members.

The Court held that the ex-officio members though barred from participating in special meeting and voting on motion of no confidence moved therein, are not barred from joining with elected members for the purpose of making request for convening special meeting. The fact that right to vote on motion of no-confidence against Adhyaksha is
exclusive to elected members and that elected members alone can remove Adhyaksha by passing with majority of total number of elected members no confidence motion against him (Adhyaksha) does not justify assumption that elected members alone can request for convening of special meeting, when statute, plainly provides for otherwise.

But, where the total membership of Zilla Panchayat is 46 consisting of 27 elected members and 19 ex-officio members, requisition made only by 10 members for convening special meeting is incompetent, as the strength of requisitions is less than 1/3 of “total number of members”. The Court further held that, if the “total number of members” is confined only to elected members then it would be re-writing the provision and it is not the province of Court.

Under Section 159(2) of the KPR Act, all the non-elected members to Zilla Panchayat shall be entitled to take part in the proceedings of and vote at, the meeting of Zilla Panchayat, except at a special meeting convened for the purpose of election of Adhyaksha and Upadhyakshas under sub-section (1) of 177 or considering a no-confidence motion under Section 179(3). It is implied from the above sections that if the non-elected members of Zilla Panchayat make a request to convene special meeting to move a motion of no confidence, it does not violate the Act.

The notice under either of the requisition or of the no-confidence motion does not arise in respect of non-elected members, In M.V. Shanthakumari and another V. Jagalur Taluk Panchayat and Others 16 The Court held that on a bare reading of Section 140(3) and other provisions it can safely be held that once there is no requirement under the law for the nominated members to take part in the proceedings or at the time of voting on no-confidence motion, issue of notice under either of the requisition or of the no-confidence motion does not arise at all. The question of issuing notice to such nominated members does not arise for consideration. When legislature has specifically provides that “majority of the total number of the elected members” it cannot be interpreted in any other manner so as to enlarge the scope to include all the members like nominated members who have been specifically excluded.
In certain circumstances if some members who had signed the notice of intention to make motion of 'no-confidence' have withdrawn the said notice, then what is the duty of CEO if he did not convene the meeting owing to withdrawal of notice by some members and whether CEO has authority to convene meeting for second time to consider the notice of expressing no-confidence motion against Adhyaksha? In K.S. Pampanna V. The Deputy Commissioner, Bellary and Others, the petitioner were the Adhyaksha of a Taluk Panchayat. Some of the members of the Taluk Panchayat issued a notice expressing no confidence against the petitioner. Thereafter some of the members who signed the notice expressed that they are withdrawing the said notice. In view of that the CEO decided not to call for the meeting to consider the notice given by the member expressing no confidence as against the petitioner. Thereafter the CEO called for the meeting for the second time fixing the date of meeting as 4-3-1998 to consider the notice expressing no confidence against the petitioner. Accordingly meeting was held on 4-3-1998 and motion of no confidence was placed before the committee for consideration. In the said meeting the motion was passed by two-thirds majority expressing no confidence against the petitioner. This resolution was challenged by the petitioner on the ground that on 12-12-1997 the CEO decided not to convene the meeting and therefore he had no authority to call for the meeting for the second time on the basis of the notice given earlier expressing no confidence against the petitioner. The proviso to Section 140 (3) of KPR Act, 1993 was introduced by Act No.29 of 1997, the said proviso reads as follows:

"Provided that no resolution expressing want of confidence in Adhyaksha or Upadhyaksha shall be moved within six months from the date of his election: Provided further that where resolution expressing want of confidence in any Adhyaksha or Upadhyaksha has been considered and negatived by the Taluk Panchayat, similar resolution in respect of Adhyaksha or Upadhyaksha shall not be placed for consideration within six months from the date of the earlier resolution"

In the instant case, on 12-12-1997 the motion of no confidence moved by certain members was not placed before the committee for consideration. If that is so, there is no prohibition to consider the motion of no confidence on 4-3-1998. In the said view of the
matter there is no substance in the contention of the learned counsel for the petitioner. Accordingly this writ petition was rejected.

Under Section 13(1) (c) of KPR Act, if a member of Gram Panchayat absents himself for more than three consecutive ordinary meetings of the Gram Panchayat without leave of Gram Panchayat or is absent from the Panchayat area for more than four consecutive months; whether his seat shall automatically deemed to be or to have become, as the case may be, vacant without the determination of AC regarding disqualification? In Gundappa Poojary V. AC, Puttur Sub-division, Puttur, D.K. District and Others\(^\text{118}\) In this case, a resolution passed by Gram Panchayat, removing the petitioner from the office of Adhyaksha on no confidence motion was challenged on the ground that two of the members of Panchayat had ceased to be members on account of their having remained absent in more than three consecutive ordinary meetings of Gram Panchayat without leave of said panchayat as also on account of their remaining absent from the panchayat area for more than four consecutive months.

Having absent in the above said manner the learned counsel for the petitioner argued that these two members had lost their membership of the Panchayat and could not therefore have participated in the no-confidence motion proceedings. Had the AC disqualified these two members on the above ground automatically the no-confidence motion would have been defeated of want of majority. But according to Section 13(2) of the Act if any question arises as to whether a person is, or has become subject to disqualification under sub-section (1), the AC may either \textit{Suo-moto} or on a report made to him in that regard decided the same. The Court held that, here no determination of AC regarding disqualification has been done and the petitioner has not claimed to raise the issue before the AC regarding the disqualification. In the absence of any determination as afore said, it is difficult to hold that these two members had lost their membership, so as to disentitle them to participate in the no-confidence proceedings. Secondly, there is nothing on record as at present to suggest that the petitioner has taken up the matter with the AC with the same seriousness as is shown in the present proceedings. Further if application-seeking disqualification of members is made to AC it is for the applicant to pursue his application. In the absence of such application, the writ petition is not maintainable.
Section 13(1) (c) says that if a member of Gram Panchayat absents himself for more than three consecutive ordinary meetings of Gram Panchayat without the leave of the Gram Panchayat or is absent from the panchayat area for more than four consecutive months his seat shall be deemed to be or to have become, as the case may be, vacant.

If we carefully analyses the dictionary meaning the word ‘deem’ in section 13(1)(c) means ‘believe’ or ‘consider’ or ‘judge’. When a member of Gram Panchayat is absent in the above manner then his seat shall be declared vacant. However there should be communication or order by the competent authority in this respect. In the absence of such order, declaring the seat as vacant is improper. However, the competent authority should act immediately and should not make any unreasonable delay on the guise that there is no persuasion.

5.6 MEETINGS OF PANCHAYATS.

Provisions for conducting meetings of Gram Panchayats, Taluk Panchayats and Zilla Panchayats in the State have been facilitated under Sections 52, 141 and 180 of the KPR Act, 1993 respectively. A meeting means the act of coming together, an assembly or conference of persons for a specific purposes. It can also be defined as the body of persons present at an assembly or conference, the meetings are for the transaction of business. The KPR Act, 1993 provides for conducting the meeting once in two months regularly without fail, for all the three tiers. Special meetings may also be conducted as prescribed in the Act. However, there is no meeting on the basis of season like winter, monsoon sessions etc., as it is prevailing in the legislative procedures of Parliament and State Legislatures. The procedure to conduct meetings of all the three tiers has been provided by the KPR Act and various other rules.

The quorum for a meeting of the Gram Panchayat shall be one-third of the total number of members. If the quorum is not present the meeting shall be adjourned for future day. Provided that if any meeting called for the purpose of election of Adhyaksha or Upadhyaksha is adjourned to the following day or to a future day for want of quorum, it shall not be necessary to have a quorum for such adjourned meeting. The Adhyaksha or in his
absence, the Upadhyaksha shall preside, and in the absence of both, the members present shall choose one from amongst themselves to preside for the occasion\textsuperscript{122}.

All question shall unless otherwise specifically provided, be decided by a majority of votes of the members present and voting\textsuperscript{123}. No member of a Gram Panchayat shall vote on, or take part in the discussion of, any question coming up for consideration at a meeting of a Gram Panchayat, if the question is one which, apart from its general application to the public, he has any pecuniary interest, and if the person presiding has such an interest, he shall not preside over the meeting when such question comes up for consideration\textsuperscript{124}. If the person presiding is believed by any member present at the meeting to have any such pecuniary interest in any matter under discussion, and if a motion to that effect be carried, he shall not preside at the meeting during such discussion or vote on or take part in it. Any member of the Gram Panchayat may be chosen to preside at the meeting during the continuance of such discussion\textsuperscript{125}.

As per Section 45(1) of the Act, on first meeting of Gram Panchayat where the Adhyaksha or Upadhyaksha is to be elected, the prescribed officer will preside while in subsequent meetings; the Adhyaksha will preside over it. But, then what should be the quorum of such meeting as the same is not clear from Section 53 of the Act. In Shekhar Bandu Prasanth V. Prescribed Officer/ Assistant Executive Engineer, Minor Irrigation Sub-Division-2 Chikodi and Others\textsuperscript{126} The Court held that, it is no doubt true that Section 53(2) of the Act will operate at the subsequent meeting but it does not mean that the requirement of quorum as laid in Section 53(1) of the Act is cut down by such provisions. Section 53(2) of the Act does not carve out any exception in connection with the quorum of any first meeting of Panchayat. On the contrary, that sub-section opens with the saving clause meaning thereby that if otherwise provisions are made about presiding over a meeting under any other provisions of the Act, they will operate. That would save what is provided under Section 45(1) of the Act, where the prescribed officer has to preside over the meeting without right to vote. Therefore, on a conjoint reading of Section 53(1) and (2) and Section 45(1) of the Act, it clearly emerges that on the first meeting of Gram Panchayat where Adhyaksha or Upadhyaksha is to be elected, the prescribed officer will preside while in subsequent
meetings where there is already an Adhyaksha duly elected will preside over it. So far as quorum is concerned the quorum must be 1/3 members for all meetings. The procedure for conducting the Gram Panchayat meeting has been provided in the KPR (Procedure at the meetings of Gram Panchayat) Rules, 1994.

No resolution of a Gram Panchayat shall be modified or cancelled within six months after the passing thereof, except by a resolution passed by not less than one-half of the total number of members at an ordinary or special meeting, notice, whereof shall have been given fulfilling the requirement of sub-section (3) of Section 52 setting forth fully the resolution which it is proposed to modify or cancel at such meeting and the motion or proposition for the modification or cancellation of such resolution.127

Minutes shall be kept of the names of the members and the officers, if any, present, and of the proceedings at each meeting of the Gram Panchayat and if any member present at the meeting so desires, of the names of the members voting respectively for or against any resolution, in a book to be provided for the purpose and after they are read over and agreed to, shall be signed by the Adhyaksha or Upadhyaksha or person presiding at such meeting, and shall at all reasonable times be open to inspection by any member of Gram Panchayat. Any person may inspect the copy of the minutes of the meeting. The minute’s book shall always be kept in the office of the Gram Panchayat and shall be in the custody of the secretary of the Gram Panchayat. A copy of every resolution passed by the Gram Panchayat shall within ten days from the date of meeting, be forwarded by the secretary to the Executive Officer.128

Any member may call the attention of the Adhyaksha to any neglect in the execution of the Gram Panchayat work, to any waste of Gram Panchayat property or to the wants of any locality and may suggest any improvements, which may appear desirable. Every member shall have right to move resolutions and to interpellate the Adhyaksha on matters connected with the administration of Gram Panchayat, subject to such rules, as may be prescribed.129
No disqualification or defect in the election or appointment of any person acting as member, or as the Adhyaksha of gram panchayat or Chairman or member of a committee of a Gram Panchayat constituted or appointed under this Act, shall be deemed to vitiate any act or proceedings of the Gram Panchayat or of any such committee, as the case may be, in which such person has taken part whenever the majority who were parties to such act or proceeding, were entitled to act. No resolution of a Gram Panchayat or of any committee appointed under this act shall be deemed invalid on account of any irregularity in the service of notice upon any member provided that the proceedings of the Gram Panchayat or committee were not prejudicially affected by such irregularity.

Until the contrary is proved every meeting of a Gram Panchayat or of a committee constituted under this act, in respect of proceedings whereof a minute has been made and signed in accordance with this act, shall be deemed to have been duly convened and held and all the members of the meeting shall be deemed to have been qualified and where the proceedings are the proceedings of a committee, such committee shall be deemed to have been duly constituted and to have had the power to deal with the matters referred to in minute. During any vacancy in a Gram Panchayat or committee of a Gram Panchayat, the continuing members may act as if no vacancy had occurred.

Sections 141 and 181 of the Act, deals with meetings of Taluk and Zilla Panchayats respectively. A Taluk Panchayat or Zilla Panchayat shall hold a meeting for the transaction of business at least once in two months and make regulations not inconsistent with this act, or with any rules made there under with respect to the day, hour, notice, management and adjournment of its meetings and generally with respect to the transaction of business thereto. Every meeting of Taluk Panchayat or Zilla Panchayat shall ordinarily be held at the respective head quarters.

The date of first meeting of the Taluk Panchayat or Zilla Panchayat after the first constitution or re-constitution or the date of subsequent meeting for the purpose of election of Adhyaksha or Upadhyaksha, as the case may be, shall be fixed by the AC in case of Taluk Panchayat and by the Commissioner in the case of Zilla Panchayat who shall preside at such meeting and date of each subsequent ordinary meeting shall be fixed at the previous meeting.
of the Taluk Panchayat or Zilla Panchayat, provided that Adhyaksha may for sufficient reasons, after the day of meeting to a subsequent date. The Adhyaksha may, whenever he thinks fit, and shall, upon the written request of not less than one-third of the total number of members and on a date within fifteen days from receipt of such request, call a special meeting. Such request shall specify the object for which the meeting is proposed to be called. If the Adhyaksha fails to call a special meeting the Upadhyaksha or one-third of the total number of members may call the special meeting for a day not more than 15 days after presentation of such request and require the Executive officer in case of Taluk Panchayat and CEO in case of Zilla Panchayat to give notice to the members and to take such action as may be necessary to convene the meeting. Ten clear days' notice of an ordinary meeting and seven clear days' notice of a special meeting specifying the time at which such meeting is to be held and the business to be transacted thereat, shall be sent to the members and pasted at the office. Such notice shall include, in the case of a special meeting any motion or proposition mentioned in the written request made for such meeting.

One third of the total number of members of the Taluk Panchayat or Zilla Panchayat shall form a quorum for transacting business at the meeting. If, at the time appointed for the meeting a quorum is not present, the person presiding shall wait for thirty minutes and if within such period there is a quorum proceed with the meeting; but if within such period there is no quorum, the presiding officer shall adjourn the meeting to such hour on some future day as he may fix. He shall similarly adjourn the meeting at any time after it has begun if his attention is drawn to the want of quorum. At such adjourned meeting at which there is quorum the business, which would have been brought before the original meeting shall be transacted. Every meeting shall be open to the public unless the presiding authority considers that any enquiry or deliberations pending before Taluk Panchayat or Zilla Panchayat as the case may be should be held in camera and the said authority may at any time cause any person who interrupts the proceedings to be removed.

The provisions of Sections 53(2), (3), (4) and (5) shall apply mutatis mutandis, in respect of presiding the meeting of Taluk Panchayat and Zilla Panchayat, deciding the question by majority, taking part in discussion and presiding in meeting who has pecuniary interest. No proposition shall be discussed at any ordinary meeting unless it has been
entered in the notice convening such meeting or in the case of a special meeting, in the written request for such meeting. A member may propose any resolution connected with or incidental to the subjects included in the list of business. The Adhyaksha may propose any urgent subject or a routine nature not included in the list of business if no member objects to it. No permission shall be given in the case of a motion or proposition to modify or cancel any resolution within six months after the passing thereof except in accordance with the Provisions. The order in which any business or proposition shall be brought forward at such meeting shall be determined by the presiding authority who in case it is proposed by any member to give particular proposition, shall put the proposal to the meeting and be guided by the majority of votes for or against the proposal; Any ordinary meeting, with the consent of majority of members present be adjourned from time to time, but no business shall be transacted at any adjourned meeting other than left indisposed at the meeting from which the adjournment took place.

The provisions of Section 54 shall apply mutatis mutandis in respect of modification or cancellation of resolution subject to the fulfilling the requirement given in Section 141 (2)(b) and 180 (2) (b) of the Act.

The proceedings of every meeting shall be recorded in the minute’s book immediately after the deliberations of the meeting and shall after being read over by the presiding authority of the meeting be signed by him. The action taken on the decision shall be reported at the next meeting. A copy of every resolution passed at the meeting shall, within 10 days from the date of the meeting, be forwarded to CEO in case of Taluk Panchayat and in the case of Zilla Panchayat to the Government. During the vacancy in a Taluk Panchayat or Zilla Panchayat or any committee thereof continuing members may act as if no vacancy had occurred. The provisions of section 56 and 57 shall apply mutatis mutandis in respect of interpellations and resolutions and validity of proceedings to Taluk Panchayat and Zilla Panchayat as the case may be.

Personal Observations.

Under Section 62(1) (a) of the Act, the Adhyaksha of Gram Panchayat shall convene, preside and conduct the meetings. The Upadhyaksha shall exercise the powers and perform
the duties of the Adhyaksha, when Adhyaksha is absent or on leave or is incapacitated from functioning or when the office of Adhyaksha is vacant he shall preside over the meetings. In the absence of both, the members present shall choose one amongst themselves to preside for the occasion. However the situation prevailing in the Gram Panchayat meetings are not conducive. The members are not quite aware of the provisions of the Panchayat Raj Act. It is obviously because of the ignorance owing to their literacy. The following statement gives the details about the educational qualifications of the members, Adhyaksha and Upadhyaksha of 14 sample Gram Panchayats.

Table V.1
Educational Qualifications of Members of 14 Sample Gram Panchayats of Mysore District.

<table>
<thead>
<tr>
<th>Category of members</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>Illiterate</td>
<td>V std to IX std but SSLC Fail</td>
<td>SSLC pass, but PUC fail</td>
<td>PUC pass but Degree fail</td>
<td>Degree</td>
<td>PG</td>
<td></td>
</tr>
<tr>
<td>I Members</td>
<td>170</td>
<td>61 (35.88%)</td>
<td>65 (38.23%)</td>
<td>20 (11.76%)</td>
<td>3 (1.76%)</td>
<td>20 (11.76%)</td>
<td>1 (.58%)</td>
<td></td>
</tr>
<tr>
<td>II Adhyaksha</td>
<td>14</td>
<td>1 (7.14%)</td>
<td>12 (85.71%)</td>
<td>-</td>
<td>1 (7.14%)</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>III Upadhyaksha</td>
<td>13</td>
<td>2 (15.38%)</td>
<td>6 (46.15%)</td>
<td>3 (23%)</td>
<td>2 (15.38%)</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
</tbody>
</table>

Source: From the Records of sample Gram Panchayats of Mysore District.

It is clear from the above table that the majority members including the Adhyaksha and Upadhyakshas are illiterates and who have studied 5th standard to 9th Standard. In the category of members who have studied between 5th standard to 9th standard only few members are able to read and write Kannada language. The number of members who have passed SSLC and above is very less.

The Gram Panchayat meeting begins with the welcome speech made by the secretary. Usually, the meeting will be presided by the Adhyaksha, Upadhyaksha and the Secretary.
The Secretary then read out all circulars, notifications etc., issued by the Government under the various provisions of the Act and rules. In the next process the members are very interested to know the quantum of money released by the Government under the various scheme. Then members make hot discussion for the distribution of money for various works to be carried out in their constituencies. It is here the Gram Panchayat meeting would turn to ugly scene. If the Government had released small amount then it would be very difficult for the Adhyaksha, Upadhyaksha and to Secretary to convince the members for allotment of money. Some members aggravate the situations and under so many circumstances the Adhyaksha, Upadhyaksha and the Secretary would be manhandled\textsuperscript{147}.

Majority members of the Gram Panchayat, Taluk Panchayat and Zilla Panchayat are doing or executing piece work or contract (work) either directly or indirectly even though this attracts the prohibition under Section 12(h) of the Act, which leads to disqualifications. The members are more interested in getting the bills passed for the works they have done. Very least number of members is bothered about the welfare of the people of their constituency. This is the most unfortunate thing happening in Gram Panchayat\textsuperscript{148}.

In the Taluk Panchayat and Zilla Panchayat the number of illiterates are very less. Yet, the unruly scenes in the meetings of Taluk Panchayat and Zilla Panchayat are common. It is because of the fact that the Karnataka Panchayat Raj Act, 1993 does not provide for the establishment of office like ‘Speaker’ to control and maintain the decorum of the meeting. Since, the Adhyaksha generally representing the ruling party at Taluk Panchayat and Zilla Panchayat, he cannot take or render the impartial decisions. In a majority of circumstances it will be biased decision. In this respect the tools of no-confidence motion does not help to solve the problem, as all the actions of Adhyaksha will be usually supported by the majority members of his party. It is true that Section 268 of the KPR Act, provides that, when the Gram Panchayat, Taluk Panchayat and Zilla Panchayat exceeds or abuses its power or is not competent to perform or makes persistent default in the performance of the duties imposed on it under this Act, or any other law for the time being in force, the Zilla Panchayat in the case of Gram Panchayat and the Government in the case of any Taluk or Zilla Panchayat may by an order published in the Official Gazette, dissolve such Taluk Panchayat or Zilla Panchayat.
What we have observed in the Taluk and Zilla Panchayats meetings that, for petty reasons the members try to disrupt the whole proceedings of the meeting. Especially at the district and taluk level, politics, personal grudge and political enmity is at large which cannot be controlled mere by the various Acts, rules etc., Abusing, alleging and exploiting the weaker section representatives in the guise of dominant caste criteria are common scenes in our state. Supporting this the Government also failed to release the funds for various developmental works.

The whole situation prevailing at this level was in a suffocated way that the meeting cannot be conducted in a smooth and amicable way by creating friendly atmosphere. To overcome all these lacunae the office like speaker is must at least at the levels of Taluk and Zilla Panchayat. However, if it is impossible to provide the provisions for ‘Speaker’ post suitable amendments may be made to Section 143 and 183 of the Act, which presently provide that Taluk and Zilla Panchayat may require the presence of Government officers at meetings respectively. By amendment these deputed officers may be asked to act as Speakers.

5.7 FUNCTIONS, DUTIES AND POWERS.

The Panchayats are the creations of State Government under the obligations of Constitution. These Panchayats should perform the functions and duties and exercise the powers within the limitations provided under the act. The Gram Panchayat shall perform the functions specified in Schedule I of the act. The Taluk Panchayat and Zilla Panchayats shall perform their functions as specified in Schedule II and III of the Act respectively. By virtue of notifications issued by the State Government under Section 312 of the Act, which provide for amendments of Schedules some schemes have been interchanged or transferred are re-allocated certain functions between the Gram Panchayat, Taluk Panchayat and Zilla Panchayats. Provided that where the State Government or Central Government provides funds for the performance of any function specified in Schedule I, II and III. The Gram Panchayat, Taluk Panchayat and Zilla Panchayat shall perform such functions in accordance with the guidelines or norms laid down for performing such functions.
Apart from the functions specified in Schedule I and the schemes and programmes mentioned under the various notifications, it shall be obligatory on the part of a Gram Panchayat in so far as the Gram Panchayat fund at its disposal will allow, to make reasonable provisions within the Panchayat area in regard to the following matters namely: -

1. Providing sanitary latrines including community latrines and its maintenance.
2. Maintaining water supply works.
3. Revision of tax etc., periodically.
4. Ensuring enrolment of children to primary schools.
5. Achieving universal immunization.
6. Registration of birth and deaths.
7. Providing sanitation and proper drainage.
8. Maintenance of record relates to population census and livestock census and other important function, relates to dwelling house, health exhibition, seminars and contribution, to medical and other charitable institutions, may be made at its discretion.¹⁵¹

Further, the Government may, by notification and subject to such conditions as may be specified therein: -

a) Transfer to any Gram Panchayat the management and maintenance of a forest situated in the Panchayat area;

b) Make over to the Gram Panchayat the management of waste lands, pasture lands, or vacant lands belonging to the Government situated within the Panchayat area;

c) Entrust the Gram Panchayat with the collection of land revenue on behalf of Government and the maintenance of such records as are connected therewith;

d) Entrust such other functions as may be prescribed;

Provided that no entrustment under clause (c) shall be made without the concurrence of the Gram Panchayat concerned. Further when any transfer of the management and maintenance of a forest is made under clause (a), the Government shall direct that any amount required for such management and maintenance of an adequate portion of the income from such forest be placed at the disposal of the Gram Panchayat. The Government may, by notification withdraw or modify the functions assigned under this section.¹⁵²
As regards the Taluk Panchayat is concerned besides performing functions specified in the Schedule II, and the guidelines of State Government or Central Government, it shall be obligatory on the part of Taluk Panchayat, in so far as the Taluk Panchayat fund at its disposal will allow, to make reasonable provision within the area under its jurisdiction in respect of the following matters, namely:

i. Construction and augmentation of water supply works to the level of not less than forty liters per capita per day;

ii. Filing half yearly report regarding the activities of Gram Panchayats within the taluk regarding:
   a) Holding of Gram Sabha;
   b) Maintenance of water supply works;
   c) Construction of individual and community latrines;
   d) Collection and revision of taxes, rates and fees;
   e) Payment of electricity charges;
   f) Enrollment in schools;
   g) Progress of immunization.

iii. Providing adequate number of class rooms and maintaining primary school buildings in proper conditions including water supply and sanitation;

iv. Acquiring land for locating the manure pits away from the dwelling house in the villages.

The Government may assign to a Taluk Panchayat, functions in relation to any matters to which the executive authority of the Government extends or the functions, which have been assigned to the State government by the Central Government. Further, the Government may, by notification, withdraw or modify the functions assigned under this section.

Under Section 184 of the Act, it shall be obligatory on the part of Zilla Panchayat so far as the Zilla Panchayat fund at its disposal will allow, to make reasonable provision within the area under its jurisdiction, in respect of the following matters, namely:
1. Establishment of health centers including maternity centres so as to cover the entire population within five years, as per the norms laid down by the Government;

2. Construction of underground water recharge structures to ensure availability of water in the drinking water wells;

3. Prevention of drilling of irrigation bore wells in the vicinity of drinking water wells to ensure adequate drinking water, specially in lean season;

4. Drawing up a plan for social forestry development in each taluk and spending not less than such percentage of the district plan allocation every year as may be specified by the government from time to time^155.

The provision of Section 146 shall apply *Mutatis mutandis* to Zilla Panchayat in respect of assignment of functions etc.,^156.

It has been made clear under Sections 58, 145 and 184 of the Act, and Schedules I, II and III and under the various notifications issued under KPR Act, 1993, regarding the functions duties and powers the Panchayats are expected to discharge and perform the functions as specified. However, under Section 58 (1-A) of the Act, it has been observed that as per the records and the opinions expressed by the peoples of Panchayats just by Gram Panchayat fund all the obligatory works cannot be carried out. Because, the income of the Gram Panchayat by levying tax and fees is not satisfactory and they are exclusively relied upon the funds that may be released either by State Government or Central Government for a particular purpose. This can also be seen from chapter 6. It has been observed from the findings that nothing has been achieved in providing ten percent latrines to the household every year and community latrines in the entire 14 sample Gram Panchayats as obligation by its own fund^157. Because in this respect all the Gram Panchayats are depending on the Nirmal Gram Yojane which provides the subsidiary for construction of individual family latrines. The enrollments of children to primary schools have been achieved from 95-100%, but there was no adequate programme to bring back the students who have been dropped out of the school. However in all the 14 Sample Gram Panchayat the water supply, immunization and street light facilities are found satisfactory.
Under the obligatory functions of Taluk Panchayat, the Taluk Panchayat too has failed in providing any thin\textsuperscript{a} for individual and community latrines and lot to be achieved in respect of construction of classrooms to primary and high school. For example as many as 1317 rooms are required to be constructed for primary schools in the district as per the reports prepared by Mysore Zilla Panchayat\textsuperscript{158}. After the constitution of Gram Panchayat, Taluk Panchayat and Zilla Panchayat they shall be a body corporate by their name and shall have perpetual succession and common seal etc\textsuperscript{159}. However an officer specially authorized by the Government in case of Zilla Panchayat and Chief Executive Officer in case of Taluk Panchayat and the Executive Officer in case of Gram Panchayat may inspect the officers, premises of, or works taken up by and books and registers and other documents and call for any return etc\textsuperscript{160}. The technical supervision and inspection may also be made by the heads of department which include feasibility, economic viability, the technical quality of the work and the expenditure being incurred and the follow up actions of the works or development schemes relating to their departments\textsuperscript{161}. Further, when the Government in case of a Zilla Panchayat, Zilla Panchayat in case of Taluk Panchayat and Taluk Panchayat in case of Gram Panchayat is informed on complaint made otherwise, that any Zilla Panchayat or Taluk or Gram Panchayat has made default in performing any duty imposed on it, by or under this Act, or by or under any law for the time being in force and if satisfied, after due enquiry that any Zilla Panchayat, Taluk Panchayat or Gram Panchayat, has failed in the performance of such duty it may fix a period for the performance of that duty\textsuperscript{162}.

However, when there is a clear cut picture about the powers and functions of all the three tiers, the higher tiers cannot be intervened except in a manner specified above and the higher tiers have no power to deal with such matters belong to lower tiers. In Taluk Panchayat V. State of Karnataka and Others\textsuperscript{163}. The Court held that under Section 312 of KPR Act, 1993, power to amend Schedules I, II and III has been conferred on the Government. In 1994, the State Government exercising its powers made certain amendments in Schedules II and III. As regards Schedule III which deals with Zilla Panchayat item No. 20 i.e., Scheme relating to women and child development appears to have been omitted, while Schedule II dealing with the Taluk Panchayat, item No.20 i.e., the scheme relating to women and child development have been maintained. The programme relating to women and child
development have been taken out from the list of field of activities of Zilla Panchayat and it having been maintained only in the list relating to Taluk Panchayat\(^\text{164}\). The Zilla Panchayat can be said and is held to have no power to deal with such matters or make selection or appointment of supplying agencies. The Court held that as the women and child development scheme and programme had been taken out from the list of field of activities of Zilla Panchayat, the Zilla Panchayat could not exercise the powers as it goes with in the realm of Taluk Panchayat. A writ of Mandamus was issued against the Zilla Panchayat not to interfere with the petitioner’s fields of activities with respect to scheme of women and child development.

Out of 28 departments coming under the purview of the Zilla Panchayat, the Deputy Director, Public Education Department is also one. Education including primary and secondary schools are also the area functions specified in the Schedule III\(^\text{165}\). The Director of High School Education or Commissioner of Public Instruction or any other officer under Panchayat Raj department do not have any power to intervene with the private management even though they have power to issue circular in streamlining the education. In *Victor I.Lobo V. The Management, The Belgaum Diocese Board of Education, Camp, Belgaum And Others*\(^\text{166}\). In the instant case, a circular issued by the Commissioner of Public Instructions dated 15.1.1990 requiring the private management to obtain permission of chief secretary of Zilla Parishad concerned and of Director of High School Education for effecting intra-district and inter-district transfer of teachers from one high school to another high school under same management within the district and outside, was challenged on the ground that the Commissioner of Public Instructions has no competence to entrust such power to Zilla Parishad to interfere with the transfer of teachers in private educational institution. The Court held that, only the State Government can entrust additional powers to Zilla Parishad and that too by issuance of notification to that effect and by publishing same in Official Gazette. Commissioner’s circular is of no legal consequence and Zilla Parishad has no power to interfere with transfer of private school from one such school to another under same management. Under Section 182 of Karnataka Zilla Parishad, Taluk Panchayat Samithis, Mandal Panchayat and Nyaya Panchayat Act, 1983, nowhere it provides that Zilla Parishad can interfere with the administration of private aided institutions. The provision only
entrusts Zilla Parishad to establish and maintain primary and secondary school in the district, which has to be necessarily done by it out of its own endeavors and fund.

The circular issued on 15-1-1990 in favour of Zilla Parishad is ultra virus for the simple reason that, it has not been made by the State Government but, by one of its servants namely Commissioner, Department of Public Instructions without publication in Gazette. Hence in the eye of law the circular dated 15-1-1990 is of no legal consequence. The Court further held that no prior permission was required to be obtained from the Chief Secretary of Zilla Parishad for effecting transfer of an employee from one aided institution to another aided institution under the same management.

The decisions of High Court in the above two cases may be inferred as under. Regarding the spheres of functioning in accordance with the notification under the Act, the limitation and confinement of the individual tiers have been specified. In such a circumstance, except, in a manner provided under various section, it is not proper for higher tier to intervene in the administration of the lower tier. As for the transfer of high school teacher from one high school to another under the same private management the State Government alone can entrust the power to Zilla Parishad by publishing the same in official gazette. This can be done at very rarest circumstances. Hence, the circular issued by the Commissioner has no legal consequences, and he has no competence to issue circular affecting the transfer of private high school teacher.

5.8 TAXES AND FEES.

Finance is the lifeblood of an institution. It is the inherent right of modern Government to impose taxes, but is specially granted and restricted by the Constitution. It is especially so in regard to those institutions that entrust to themselves the task of socio-economic development of a community. The Constitution under Article 243H has facilitated the Legislature of a State, by law, -

a) Authorize a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;

b) Assign to a Panchayat such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits.
However, it is an experience from the past, that the most, difficult problem that local authorities have to face is finance. Under the KPR Act, 1993, every Gram Panchayat shall in such manner and subject to such exemptions as may be prescribed and not exceeding the maximum rate specified in Schedule IV, levy tax upon buildings and lands which are not subjects to agricultural assessment, within the limits of the Panchayat area: Provided that where an owner of the building or land has left the Panchayat area or cannot otherwise be found, the occupier of such building or land shall be liable for the tax leviable on such owner. A Gram Panchayat may levy water rate for supply of water for drinking and other purposes. A Gram Panchayat may also levy all or any of the following taxes and fees at such rates as the Gram Panchayat may by-laws determine but not exceeding the maximum specified in Schedule –IV and in such manner and subject to such exemptions as may be prescribed, namely, -

a) Tax on entertainment other than cinematograph shows;
b) Tax on vehicles, other than motor vehicles;
c) Tax on advertisement and hoarding;
d) Pilgrim fee on persons attending jatras, festivals, etc., where necessary arrangements for water supply, health and sanitation are made by the Gram Panchayats;
e) Market fee on persons who expose their goods for sale in any market place;
f) Fee on the registration of cattle brought for sale in any market place;
g) Fee on buses and taxies and auto-stands provided adequate facilities are provided for the travelers by the Gram Panchayat; and
h) Fee on grazing cattle in the grazing lands.168

Under Section 200 of the Act the recovery of taxes and other dues by the Gram Panchayat shall be as follows:
i) When any tax, cess, rate or fee becomes due, Gram Panchayat shall, with the least practicable delay, cause to be presented to the person liable for the payment thereof a bill for the amount due from him, specifying the date on or before which amount shall be paid.169
If any person fails to pay any tax or fee any other sum due to the Gram Panchayat under this act or the rules or bye-laws on or before the specified date of payment the Gram Panchayat shall cause a notice of demand in the prescribed form to be served on the defaulter. The presentation of every bill and the service of every notice of demand shall be effected by the secretary or an officer duly authorized by him in this behalf in accordance with the procedure relating to service of notice. If the tax, rate, fee or other amounts for which a notice of demand has been served is not paid within thirty days from the date of such service, the Gram Panchayats may recover the amount due along with a penalty of ten percent of the sum due, by distraint and sale of the movable property of the defaulter in the prescribed manner. Further fees for-

a) Every distraint made,
b) Every notice of demand issued and
c) The cost of maintaining any livestock seized shall be chargeable at such rates as may be prescribed.

Notwithstanding anything contained in the forgoing sub-sections, any tax, rate or fee payable to a Gram Panchayat shall be recoverable as arrears of land revenue. Subject to such rules as may be prescribed, any person aggrieved by the assessment, levy or imposition of any tax, rate or fee under Section 199 of KPR Act, may appeal to the prescribed authority, whose decision shall be final.

5.8.A. Composition of Taxes in Factory Areas.

When the owner of any industry or factory established in any Panchayat area provides sanitary and other amenities for the buildings and land used for the industry or as factory quarters for employees and for other purposes connected with the undertaking the Gram Panchayat may in lieu of the taxes, rates or fees, payable under this Act in respect of such buildings and lands receive such amount annually as may be agreed upon between the Gram Panchayat and such owner. Where no such agreement as is referred under Section 199(1) can be reached, the matter may be referred to Zilla Panchayat and the Zilla Panchayat may, after giving to the Gram Panchayat and the owner concerned an opportunity of being heard, determine the amount payable by such owner, and such determination shall be binding on the Gram Panchayat and such owner. The Zilla Panchayat may by notification direct that the
provisions of sub-section (1) shall be applicable to such other establishments as may be specified in such notification."

It is clear from Sections 199-202 that under KPR Act, only the Gram Panchayats have been empowered to levy the taxes, rates etc. However against any assessment any person aggrieved by the assessment, levy or imposition of any tax, rate or fee may appeal to the prescribed authority under Section 201 of the Act, whose decision shall be final. However the appellate authority should comply with some fundamental procedure like speaking order and the assessing authority should also comply with the provisions of the act before levying the tax etc. In M/s Paparam Bricks and Tiles, Hinkakl, Mysore V Hinkal Village Panchayat, Mysore & Another. In the instant case, the petitioner industry paying property tax at the rate of Rs. 640/- till 1986-1987. In 1987-1988 and 1988-89 the petitioner served with demand notice dated 10-12-88 directing him to pay a sum of Rs. 25,662/- being the enhanced property tax. The petitioner protested this and an appeal were made to Zilla Panchayat, which confirmed the enhancement of tax. In the meanwhile he approached the civil court and while the petition is pending he approached the High court in 1995. In the year 1994 i.e., on 4-7-1994 (subsequent to the demand notice of 6.12.1988) one more demand notice is issued to a sum of Rs. 1, 12,934-00 demands for property tax is each year’s affairs. It is continuous as long as it is not paid. This was questioned through a writ petition.

The Court held, when the order was made by the appellate authority i.e., Zilla Panchayat it is a non-speaking order without assigning reasons much less proper reasons for rejecting the statutory appeal. In so far as delay in questioning the orders made by the appellate authority before the Civil Court by filing the civil suit, the time spent there should be taken into consideration while condoning the delay, if any approaching the High Court.

That apart, it is also stated that payment of property tax is every day’s and year’s affairs and since the petitioner is questioning the latest demand notice issued by the respondent Gram Panchayat dated 6-7-94 in which all the earlier demand notice have been merged including the demand notice dated 16-7-1985. There is no much less inordinate delay in approaching this court questioning the correctness or otherwise of the demand notice for payment of property tax for the assessment years 1987-1988 to 1993-1994 and also

In the instant case, what is being questioned is not only the order made by the appellate authority dated 12-7-1990 in which order the earlier demand notice dated 16-4-1988 has merged, but also subsequent demand notice for the subsequent years bearing on the rejection of the appeal by the appellate authority. Cause being continuous, it cannot be said that there is any delay by the petitioner in approaching this court for the relief's as indicated earlier.

The appellate authority (Zilla Panchayat) has mechanically enhanced the property tax. The magnanimity of Gram Panchayat order for enhancing the property tax is not viewed properly by the appellate authority i.e., Zilla Panchayat and simply rejected the appeal.

Whether the Gram Panchayat has complied with the provisions of Zilla Parishad Act 1983, and the rules framed there under before enhancing the property tax from Rs. 680 to Rs.10, 680 per year. Hence, the order of appellate authority in confirming the enhancement of property tax and the matter was remitted back to appellate authority (Zilla Panchayat) to reconsider the appeal and give positive finding whether Gram Panchayat has complied with or not the provisions of Karnataka Zilla Parishad Act, 1983. Till such time, the respondents were restrained from enforcing the demand notice dated 4-7-1994 demanding the property tax for the year 1986-87 to 1993-94.

Another important question which came before the court is that whether the Gram Panchayat is entitled to collect the fee and levy fee under the KPR Act, 1993 in respect of livestock’s like sheep, cattle and goats when there is bar under the KAPMR Act. In Akkiramanapura Grama Panchayat, Koratagere Taluk, Tumkur District V. State of Karnataka and Others 178, the petitioner in this petition claimed that in terms of the provisions of the KPR Act, 1993, the Gram Panchayat is entitled to collect fee and levy fee under the said Act. He also stated that the petitioner has necessary power and jurisdiction to collect or levy market fee in respect of livestock like sheep, cattle and goats. He further claimed that the Gram Panchayat has right to collect the market fee and such right is not taken away under the
provisions of Agricultural Produce Market Act, and if fees are collected there is no violation of any of the provisions of the KAPMR.

The standing counsel for APMC states that the Section 8 of KAPMR Act is a non-abstante clause and it provides for a bar for any local authority in establishing, authorizing or continuing or allowing to establish any place in the market area for the marketing of any notified agricultural produce. He also states that after the amendment of the proviso to Section 8 of KAPMR Act, by Act 17 of 1980, to the Gram Panchayat has no right to levy market fee on the sale price of cattle, sheep and goats, which were exempted earlier. The Court held that the, petitioner is admittedly Gram Panchayat and the said Panchayat is governed by the KPR Act, 1993. Section 199 of the said Act provides for recovery of taxes and other dues. The KPR Act further provides for 'Market' means a place for the sale of goods for animals publicly exposed where ordinarily or periodically at least four shops, stalls or sheds are set up or where at least ten animals are brought for sale\textsuperscript{179}. The Court further held that the petitioner’s contention couldn’t be accepted in view of non-abstante clause in terms of Section 8 of the KAPMR Act. The KAPMR Act is a special Act providing for a levy of fee under the Act in respect of the marketing done in the market area, in respect of the notified agricultural produce in the market area. Admittedly, the KAPMR has established sub-market, which is a market area as understood under the Act. Section 8 (proviso) read as follows: -

“After the Amendment of proviso to Section 8 of KAPMR Act, (by Act 17 of 1980) the Village Panchayat has no right to levy market fee on the sale of cattle in a market, faire or jatra”.

It is a non-abstante provision providing for a prohibition for any local authority in either establishing or marketing in respect of any agricultural produce. Further, this amendment has thus brought about a radical change. It has totally deprived of the local authority like the Panchayat, the power to establish or use any place even for a retail sale of cattle, sheep and goats.
5.9 CONCLUSION.

It is clear from the above; that no act or rule is final soon after the Government has gazetted the same. The Constitution has provided the provision for the judicial review of the Act and it has been considered as one of the basic structures of the Constitution.

The primary duty of the court is to see that whether the democratic spirit has been ensured or not. While interpreting the act, rule, the court has to examine the free and fair election, social justice concept, empowerment of SC, ST and women and other aspect relates to democratic functions of PRIs, besides carrying the constitutional obligation.

Further, the ambiguity, uncertainty etc, only the judiciary can overcome prevailing in the provisions by interpreting in accordance with the spirit of the Act. In fact, the State Legislature has brought many amendments to the KPR Act, 1993 consequent to the judgments in many cases. However, all the provisions arise under the act cannot be solved unless it comes before the Court. The Court can act only when the aggrieved person approached it. Otherwise it cannot give any directions to any authority.

There are other problems in conducting the free and fair elections where money and muscle power still plays a vital factor in the rural area by the dominant caste. This will be continued even after the election. For example, if a member belongs to weaker section is elected as Chairman of a Gram Panchayat he/she will have to discharge his/her duties under the apprehension or duress of dominated high caste members in the Gram Panchayat. This kind of exploitation cannot be challenged before the court of law as it is beyond the imagination to prove the same with the proper evidence. Further, there will be no support from the society for such genuine causes. What we meant to say is that, the concept of free and fair elections should not be confined only up to the point of election, but this spirit should also be made available in empowering the powers to weaker sections. Another important aspect under the KPR Act, 1993 is that motion of no-confidence, where for no fault of Adhyaksha and Upadhyaksha even if they are discharging the duties without remiss or committing the persistent default if he does not yield to the illegal demands of his own party members, then he will be the victim of motion-of no-confidence. Further, though the Gram Panchayat has been permitted to levy the tax as per Section 199 and Schedule IV of the
Act, it is not clear as far as some items are concerned. For example, though the Gram Panchayat has been permitted to levy water rate, the maximum rate has not been fixed. Consequently some Gram Panchayat are levying exorbitant water rates. For example the Siddalingapura Gram Panchayat is levying Rs. 35/- water rate per month, which has been opposed unanimously by all the residents of Grama Panchayat\(^{181}\) however, there were no such complaints in the remaining 13 sample Gram Panchayats.

Further, the pilgrim fee if, collected properly and regularly could bring good financial resources to Gram Panchayats. But, since the salaries of the bill collector is very less majority of them look for the alternatives. The tax and fee will be collected but usually he will give no receipt by making a big loss to Gram Panchayat revenue\(^{182}\).

However, in the absence of clear provisions, the Court cannot intervene and give proper direction. It is also not the province of the court. It shows that court too has its own limitations and confines in interpreting the act. However, the over all interpretations of the Court are to strengthen the grass root level institutions. But what is important is that the Court apart from upholding the spirit of the Constitution and KPRAct, 1993, it has also created embarrassment in some cases. This can be seen from Prof:B.K.Chandrashekar and Hemala Nayak cases.
NOTES AND REFERENCES:

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5) 1994 (3) Kar L.J. 240 A
7) 1998 (2) Kar. L.J. 441 (DB).
11) 1996 (3) Kar L.J. 168 (DB).
13) Prof. B.K. Chandrashekhar and others V. State of Karnataka, ILR 1999 Kar. 2513.
14) *Legal Dictionary*, Harimohan sinha and Dheeraj Narula; Pioneer Publications Delhi, P.64.
21) *Ibid.*, Rule 14 (2) (a) & (b)
22) ILR 1998 Kar. 1813.
23) KPR Act, 1993, Secs. 11, 127 (1) & (2) and 166(1) and (2).
29) Article 243 D (5) Article 334, deals with Reservation of seats and special representation to cease after sixty years from the commencement of the Constitution.
31) Secs. 11, 127 (2) and 166 (2) of KPR Act, 1993.
35) Ibid., Rule 18 (1).
36) Ibid., Rule 19 (1).
37) Ibid., Rule 22 (1).
38) Ibid., Rule 22 (4).
39) Ibid., Rule 29 (1) (2) & (3).
40) Ibid., Rule 29 (4) (a) (b) (c).
41) Ibid., Rule 30 (1).
42) Ibid., Rule 32.
43) Ibid., Rule 33.
44) Ibid., Rule 39.
45) Ibid., Rule 58.
46) Ibid., Rule 59.
47) Ibid., Rule 60.
48) Ibid., Rule 66.
49) Ibid., Rule 70.
50) Ibid., Rule 71.
51) Ibid., Rule 74.
52) Ibid., Rule 75.
53) AIR 2001 Kerala 199.
54) KPR Act, 1993, Sec. 15 (1).
55) Ibid., Sec. 15 (2) (a).
56) Ibid., Sec. 15 (3).
57) Ibid., Sec. 16 (1) (2) and (3).
58) Ibid., Sec. 17 (1) to (9)
59) Ibid., Sec. 18 (1).
60) Ibid., Sec. 18 (2).
61) Ibid., Sec. 19.
62) Ibid., Sec. 20.
63) Ibid., Sec. 21.
64) Ibid., Sec. 22.
65) Ibid., Sec. 23.
66) Ibid., Sec. 24.
67) Ibid., Sec. 132.
68) Ibid., Sec. 171 (1).
69) Ibid., Sec. 20 (2).
70) Ibid., Secs. 132 (2) and 171 (2).
74) Laxmappa V. Election Officer Ranebannur and Others, 1995 (1), Kar, L.J. 289A
75) KPR Act, 1993, Sec. 120.
76) Ibid., Sec 159.
78) 1996 (7) Kar L.J (DB).
79) KPR Act, 1993, Secs 44, 138 and 177
80) Constitution of India, Article 243 D (4).

82) The Preamble of Indian Constitution “We the people of India having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC, REPUBLIC and to secure to all its citizen Justice, Social, Economic & Political………..

83) V.V. Giri V. D. Suri Dora, AIR 1959, SC 1318, 1325-26: (1960) 1 SCR 426.

84) KPR Act, 1993, Secs. 44(2), 138 (2) (3) (4) and 177 (2) (3) & (4)


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91) 1995 (1) Kar. L.J. 395
93) C.Ramappa V.B. Bolegowda & Others 1998 (6) Kar. L.J. 576 A.
95) 1999 Kar L.R. 2831.
97) Rule 83, Supra Sl.No. 32.
99) Order 1, Rule 10 (2) of CPC 1908.
100) KPR Act, 1993, Sec 46.
113) Babu Doda Patil V. State of Karnataka, 1996(7) Kar. L.J. 215 A
114) AIR 1999 Karnataka 246: 1999 (3) Kar. L.J. 225 A.
115) KPR Act, 1993, Sec. 180 (2) (a)
116) AIR 2001 Karnataka 345.
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119) Random House of Dictionary of English Language, second edition, unabridged,
120) KPR Act, 1993. Sec 52.
121) Ibid., Sec. 53 (1).
122) Ibid., Sec. 53 (2).
123) Ibid., Sec. 53 (3).
124) Ibid., Sec. 53 (4).
125) Ibid., Sec. 53 (5).
126) 1994 (3) Kar. L.J.1 (DB)
127) KPR Act, 1993. Sec. 54.
128) Ibid., Sec. 55.
129) Ibid., Sec. 56.
130) Ibid., Sec. 57.
131) Ibid., Secs. 141 (1) and 180 (1).
132) Ibid., Sec 141 (2) (a) and 180 (2) (a).
133) Ibid., Sec 141 (2) (b) and 180 (2) (b).
134) Ibid., Sec 141 (2) (c) and 180 (2) (c).
135) Ibid., Sec 141 (2) (d) and 180 (2) (d).
136) Ibid., Sec 141 (2) (e).
137) Ibid., Sec 180 (2) (e).
138) Ibid., Sec 141 (2) (f) and 180 (2) (f).
139) Ibid., Sec 141 (2) (g) & (h) and 180 (2) (g) and (h).
140) Ibid., Sec 141 (2) (i) and 180 (2) (i).
141) Ibid., Sec 141 (2) (j) and 180 (2) (j).
142) Ibid., Sec 141(2) (k) and 180 (2) (k).
143) Ibid., Sec 141 (3) and 180 (3).
144) Ibid., Secs. 141 (4) and 180 (4).
145) Ibid., Sec. 141 (5) and 180 (5).
146) Ibid., Sec 142, 181 144 and 183.
147) Based on the Personal observations in Madapura Grama Panchayat
      (H.D Kote Taluk) meeting.
148) These observations are based on the basis of the meetings in the entire 14 sample
      Gram Panchayats of Mysore District.
149) KPR Act, 1993, Secs. 58, 145 and 184.
151) KPR Act, 1993, Secs 58 (1-A)(2) and (3).
152) Ibid., Sec 59,
153) Ibid., Sec 145.
154) Ibid., Sec 146.
155) Ibid., Sec 184 (2)
156) Ibid., Sec 185
157) Not even a single community latrine has been constructed in the entire 14 sample Gram Panchayats of Mysore District from their own funds.
158) As per Brief Report of Mysore District prepared by Zilla Panchayat, P.8
159) KPR Act, 1993, Secs. 6, 119 and 158.
160) Ibid., Secs 232 and 234
161) Ibid., Sec 233
162) Ibid., Sec 235 (1)
163) AIR 2001 Karnataka 320.
165) List XV of Schedule III.
168) KPR Act, 1993, Sec. 199.
169) Ibid., Sec 200 (1).
170) Ibid., Sec 200 (2).
171) Ibid., Sec 200 (3).
172) Ibid., Sec 200 (4).
173) Ibid., Sec 200 (5).
174) Ibid., Sec 200 (6).
175) Ibid., Sec 201.
176) Ibid., Sec 202.
179) KPR Act, 1993, Sec 2 (22).
180) Based on the Personal Observations of Tandavapura Gram Panchayat (Nanjangud Taluk) where the women belong to Scheduled Caste has been elected as Chairman.
181) Based on the opinions expressed by the Village respondents of Siddalingapura Gram Panchayat through the Schedule.
182) The salary of a Bill collector is only Rs. 900/- to Rs. 1500/- per month as per G.O. No. 102 dated 10th January 1994.