\200²ITEM NO.1A COURT NO.1 SECTION PIL

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL) NO(s). 21 OF 1999

BHIM SINGH Petitioner(s)

VERSUS

U.O.I & ORS Respondent(s)

WITH
W.P(C) NO. 404 of 1999
T.C.(C) NO. 22 of 2005
T.C.(C) NO. 23 of 2000
T.C.(C) NO. 24 of 2000
T.C.(C) NO. 36 of 2000
T.C.(C) NO. 37 of 2000
T.C.(C) NO. 38 of 2000
W.P(C) NO. 376 of 2003
And
T.P.(C) NO.450/2004

Date: 06/05/2010 These Petitions were called on for pronouncement of judgment today.

Mr. G.E. Vahanvati, AG (A.C.)

For Petitioner(s)/
Respondent(s) Prof. Bhim Singh, Petitioner-in-person
Mr. Vijay Pratap Singh, Adv.
Mr. Pushkin, Adv.
Mr. Dinesh Kumar Garg, Adv.

Applicant In Person

Mr. Pramod Dayal, Adv.

Mr. Prashant Bhushan, Adv.

Ms. Aparna Bhat, Adv.

Ms. Sushma Suri ,Adv

Mr. B.V. Balaram Das ,Adv

Mrs. Anil Katiyar, Adv.

Ms. Meenakshi Arora, Adv.

Mr. P. Parmeswaran, Adv.

Mrs. Jayashree Wad, Adv.
Mr. Ashish Wad, Adv.
Mrs. Tamali Wad, Adv.
Mr. Chirag S. Dave, Adv
Mr. Sameer Abhyankar, Adv.
For M/s. J.S. Wad & Co., Advs.

Ms. A. Subhashini, Adv.

Hon'ble Mr. Justice P. Sathasivam pronounced the Judgment of the Bench comprising Hon'ble the Chief Justice, Hon'ble Mr. Justice R.V. Raveendran, Hon'ble Mr. Justice D.K. Jain, His Lordship and Hon'ble Mr. Justice J.M. Panchal.

The writ petitions as well as transfer cases are dismissed. No order as to costs.

(R.K.Dhawan)
AR-cum-PS

(Veera Verma)
Assistant Registrar

(Signed reportable judgment is placed on the file)

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.21 OF 1999

Bhim Singh .... Petitioner(s)

Versus

Union of India & Ors. .... Respondent(s)

WITH

WRIT PETITION (CIVIL) NO.404 OF 1999,
TRANSFERRED CASE (CIVIL) NOS. 22 OF 2005, 23, 24, 36, 37 & 38 OF 2000 AND WRIT PETITION (CIVIL) NO. 376 OF 2003 AND TRANSFER PETITION (CIVIL) NO. 450 OF 2004

J U D G M E N T

P. Sathasivam, J.

1) The petitioners have filed the above writ petitions challenging the Members of Parliament Local Area Development Scheme (hereinafter referred to as the "MPLAD Scheme") as ultra vires of the Constitution of India. They also prayed for direction from this Court for scrapping of the MPLAD Scheme and for impartial investigation for the misuse of the funds allocated in the Scheme.

2) Though the challenge in the writ petitions and the transferred cases is to the constitutional validity of the MPLAD Scheme, in view of substantial question of interpretation of Articles 275 and 282 of the Constitution of India are involved, particularly, transfer of funds from the Union Government to the Members of Parliament, by

reference dated 12th July, 2006 a three-Judge Bench headed by Hon'ble the Chief Justice of India referred the same to a Constitution Bench. In this way, the above matters are heard by this Constitution Bench.

3) Brief facts:

On 23.12.1993, the then Prime Minister announced the MPLAD Scheme. This scheme was formulated for enabling the Members of Parliament to identify small works of capital nature based on locally felt needs in their constituencies. The objective, as seen from the guidelines of the Scheme, is to enable the Members of Parliament to recommend works of developmental nature with emphasis on the creation of durable community assets based on the locally felt needs to be taken up in their Constituencies. The guidelines prescribe that right from inception of the Scheme, durable assets of national priorities viz., drinking water, primary education, public health, sanitation and roads etc. are being created. In 1993-94, when the Scheme was launched, an amount of Rs.5 lakh per Member of Parliament was allotted which became rupees one crore per annum from 1994-95 per MP Constituency. This was stepped up to rupees two crores from 1998-99. Initially the Scheme was under the control of the Ministry of Rural Development and Planning and thereafter in October, 1994, it was transferred to the Ministry of Statistics & Programme Implementation. The Scheme is governed by a set of guidelines which were first issued by the Ministry of Rural Development in February, 1994. After the Scheme was transferred to the Ministry of Statistics and Programme Implementation, revised guidelines were issued in December, 1994, February, 1997, September, 1999, April, 2002 and November, 2005.

4) After taking us through the various constitutional provisions, the MPLAD Scheme and its guidelines, Mr. K.K. Venugopal, learned senior counsel, appearing for the petitioner in Writ Petition (C) No. 21/1999 made the following submissions:

(i) No money should be spent from the Consolidated Fund of Union

other than one provided under the Constitution of India.

(ii) Instead of decision taken by Union of India under Article 282 of the Constitution about "public purpose", it has given power to a Member of Parliament, which violates Article 282 of the Constitution of India.

(iii) MPLAD Scheme is a total abdication of powers and functions by the Union of India. Such a wholesale transfer of funds for the benefit of works or projects cannot be executed under Article 275 as "grants-in-aid of the revenues of a State", without proper recommendation of the Finance Commission.

(iv) The executive powers of the Union under Article 73 are co-extensive with the legislative powers of the Parliament, hence even executive powers of the Union cannot be exercised contrary to the entries in the List in Schedule VII of the Constitution so as to encroach on a subject falling in List II.

(v) The MPLAD Scheme is contrary to the 73rd and 74th Amendments to the Constitution of India. After the 73rd and 74th Amendments, the entire area of local self-government has been entrusted to Panchayats under Article 243G and to the Municipalities under Articles 243W, 243ZD and 243ZE read with Schedule-XII of the Constitution. By virtue of the said Amendments, the decision making power in regard to development rests with Panchayats and Municipalities, however, due to the present Scheme, the works are being given to individual MPs.

(vi) The MPLAD Scheme is inconsistent with Part IX and Part IX-A insofar as decision making process and inconsistent with the local self-government. The choices and functions of the Panchayats and Municipalities being denuded by the MPLAD Scheme, the Scheme is rendered wholly unconstitutional and bad.

5) Mr. Prashant Bhushan, learned counsel appearing for the petitioners in Writ Petition (C) No. 376 of 2003, in addition to the above submissions, highlighted the following points:

(i) Article 280 mandates the setting up of the Finance Commission, which would be constituted every five years. This Article enumerates the financial power of the Centre and the States to collect, levy appropriate taxes and even the executive powers are clearly spelt out in Article 73. As per Articles 280 and 275, it is the Finance Commission which is an independent body has the mandate to recommend the division of taxes between the Centre and the States as well as the assignment of grants-in-aid to the revenues of States. Though language of Article 282 appears to be wide enough to cover all grants, it obviously cannot be construed to mean that the Centre can give grants to States on a regular basis. The regular grants from the Centre to the States can be given only under Article 275 and that too in accordance with the Finance Commission's recommendations.

(ii) Article 282 is not intended to be used as a second channel of transfers from Centre to States. This Article only allows money to be defrayed by the Central Government for a particular public purpose though they may fall under State subjects.

(iii) Articles 112 to 114 have conferred power on the Union Government to appropriate funds for its own expenditure; however, a part of the same cannot be used for giving discretionary grants to the State.

(iv) The Centre by enlarging the scope of Article 282 has infringed the specific scheme designed by the Constitution regarding the flow of finances from the Centre to the States. Further, most of the centrally sponsored schemes running in different States are being funded through Article 282 only, which is clear misuse of the provisions of the Constitution.

6) In reply to the above submissions, Mr. Mohan Parasaran, learned Additional Solicitor General, appearing for the Union of India made the following submissions:

(i) The MPLAD Scheme is intra vires of the Constitution. The source of its power is traceable to Article 114(3) read with Articles 266(3) and 282 of the Constitution of India.

(ii) Article 282 has to be given its widest amplitude and should be interpreted widely so that the public purpose enshrined therein can effectively be achieved both by the Union and the States to advance Directive Principles of State policy.

(iii) The Scheme is being implemented based on the sanction which it receives from the Parliament on the passing of the Appropriation Act during every financial year. Appropriation for the Scheme is done after resort to the special procedure as applicable to Money Bills, as prescribed under Article 109. Articles 112(2) and 113(2) mandate that the expenditure proposed to be made from the Consolidated Fund of India are bound to be laid before both the Houses of Parliament in the form of "Demand for Grants" and is subject to the assent of the House of People.

(iv) The "Law" mentioned in Article 266(3) is the Appropriation Act traceable to Article 114(3). The MPLAD Scheme as a whole is based upon a policy decision and having a Parliamentary sanction in its implementation in the form of Appropriation Acts, no further enactment is required.

(v) From the date of inception of Constitution i.e. from 1950, by virtue of Article 282, the Union of India through Planning Commission implemented several welfare measures though most of the subjects would fall within the State subjects. (List II of the VII Schedule).

(vi) Use of expression "Grants" in Article 282 will have to be construed in a wider sense and it is not subject to any Article especially Article 275.

(vii) The Scheme is not inconsistent with the various other Schemes of Panchayats and Municipalities. On the other hand, it only supplements the welfare measures taken by them. There is no violation of concept of separation of powers.

7) Mr. G.E. Vahanvati assisted this Court as amicus curiae and

submitted the following points:-

(i) The Parliament has plenary power to sanction expenditure. Besides the expenditure charged upon the Consolidated Fund of India under Article 112(3), Demand for Grants sought by the Union executive are also met from the Consolidated Fund of India. The Demands for Grants are voted in Parliament as per Article 113(2). The final authority to decide the quantum of monies to be sanctioned is the Lok Sabha. Lok Sabha has the final control over expenditure.

(ii) The Parliament has sanctioned monies to be paid out by the MPLAD Scheme by voting on the demand for grant forwarded by the Union Executive from the Ministry of Statistics and Programme Implementation. This has been done after appropriate voting on the Demand for Grant and passing of Appropriation Act which is a law within the meaning of Article 266(3).

(iii) Article 282 acts as an enabling provision to allow the Union or the State to make any grant by conferring the widest possible power. The only requirement to be satisfied is that the purpose for which such a grant is made is a 'public purpose'.

(iv) The role of MP in the MPLAD Scheme is purely recommendatory in nature and the entire function has been entrusted to the District Authority which belongs to the executive organ. The District Authority has to furnish completion certificate, audit certificate and utilization certificate for each work. If this is not done, further funds are not released. The Scheme makes it clear that the District Authority plays the key role whereas the Members of Parliament function is merely to recommend the work.

8) On the contentions urged, the following questions arise for our consideration:-

1. Whether the scheme is not valid as a grant under Article 282 of

the Constitution of India? Whether Article 275 is the only source for a regular and permanent scheme and whether Article 282 is intended to apply only in regard to special, temporary or ad-hoc schemes?

2. Whether having regard to Article 266(3) of the Constitution, apart from an appropriation by an Appropriation Act, an independent substantive enactment is required for the MPLAD Scheme instead of mere executive guidelines?

3. Whether the MPLAD Scheme falls under clauses (b), (bb) and (c) of Article 280 (3) of the Constitution, and exercise of such powers of the Finance Commission by Planning Commission make the Scheme unconstitutional?

4. Whether the Scheme obliterates the demarcation between the legislature and the executive by making MPs virtual members of the executive without any accountability?

5. Whether the MPLAD scheme is inconsistent with Part IX and Part IX-A of the Constitution by encroaching upon the powers and functions of elected bodies?

6. Whether the MPLAD Scheme, even if it is otherwise constitutional is liable to be quashed for want of adequate safeguards, checks and balances?

7. Whether the MPLAD Scheme gives an unfair advantage to the MPs in contesting elections by violating the provisions of the Constitution?

9) Thus, first we must determine the constitutional scheme regarding allocation of funds and what is the appropriate mode of such allocation, i.e. whether a special enactment is required for such allocation. Then, we must determine if the Parliament is empowered under Article 282 of the Constitution to make allocation under the MPLAD Scheme. Subsequently, we need to see whether a robust accountability mechanism is provided under the Scheme. And finally whether this Scheme violates the constitutional principle of separation of powers. Let us consider the contentions raised by both sides with reference to the constitutional provisions as well as

salient features and the guidelines issued then and there for implementation of the MPLAD Scheme.

Constitutional Scheme and Whether a Special Enactment is needed in order to allocate funds under the Constitution

10) The main issue relates to whether the funds ear-marked and being spent from the Consolidated Fund of Union for implementation of the MPLAD Scheme is in accordance with the constitutional provisions.

11) Part XII Chapter I of the Constitution relates to Finances. Article 266 of the Constitution refers to consolidated funds and public accounts of India and of the States. This Article explains what all are the components of the consolidated funds of India. Article 266 reads as under:

"266. Consolidated Funds and public accounts of India and of the States - (1) Subject to the provisions of article 267 and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of India", and all revenues received by the Government of a State, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of the State".

(2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or the public account of the State, as the case may be.

(3) No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution."

Sub-clause (3) of Art. 266 makes it clear that money from the consolidated fund of India can be extended only in accordance with law and for the particular purpose as well as in the manner as provided in the Constitution.

12) Mr. K.K. Venugopal, learned senior counsel, appearing for the petitioner in W.P.(C) No. 21/1999 heavily relying on sub-clause (3) of Art. 266 contended that in view of specific embargo, in the absence of separate law, the money from the consolidated fund could not be spent. He further pointed out that the Union of India has not indicated a separate legislation for implementing MPLAD Scheme. It is the claim of the learned counsel for the petitioners that the impugned scheme and the allocation of funds thereof is a clear violation of the specific arrangement devised in the Constitution regarding the transfer of funds from the Centre to the States.

13) Under Article 275 Grants-in-Aid are provided from the Consolidated Fund of India to the States which are in need of assistance. Article 275 is reproduced hereunder:

"275.Grants from the Union to certain States.- (1) Such sums as Parliament may by law provide shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States:

Provided that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of a State such capital and recurring sums as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that State or

raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that State:

Provided further that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of the State of Assam sums, capital and recurring, equivalent to-

(a) the average excess of expenditure over the revenues during the two years immediately proceeding the commencement of this Constitution in respect of the administration of the tribal areas specified in Part I of the table appended to paragraph 20 of the Sixth Schedule; and

(b) the costs of such schemes of development as may be undertaken by that State with the approval of the Government of India for the purpose of raising the level of administration of the said areas to that of the administration of the rest of the areas of that State.

(1-A) On and from the formation of the autonomous State under Article 244A,-

i) any sums payable under clause (a) of the second proviso to clause (1) shall, if the autonomous State comprises of all the tribal areas referred to therein, be paid to the autonomous State, and, if the autonomous State comprises only some of those tribal areas, be apportioned between the State of Assam and the autonomous State as the President may, by order, specify;

(ii) there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of the autonomous State sums, capital and recurring, equivalent to the costs of such schemes of development as may be undertaken by the autonomous State with the approval of the Government of India for the purpose of raising the level of administration of that State to that of the administration of the rest of the State of Assam.

(2) Until provision is made by Parliament under clause (1), the powers conferred on Parliament under that clause shall be exercisable by the President by order and any order made by the President under this clause shall have effect subject to any provision so made by Parliament:

Provided that after a Finance Commission has been constituted no order shall be made under this clause by the President except after considering the recommendations of the Finance Commission."

14) Article 280 mandates the setting up of the Finance Commission which would be reconstituted every five years or at such earlier time as the President considers necessary. The Finance Commission, which is an independent body, would be duty bound to ascertain the percentage of taxes to be devolved to the States which are collected by the Union under Article 270 as amount of grants-in-aid to be given to the States under Article 275. It was also highlighted by the learned senior counsel for the petitioners that after the 73rd and 74th Amendments, which introduced the Panchayati Raj Systems and Municipalities in the country, the Finance Commission is also mandated to take into account the resources needed by the States to augment the Consolidated Fund of a State to supplement the resources of the Panchayats and Municipalities in the State. These have to be done while taking into account the recommendations of the State Finance Commission. Article 280 of the Constitution reads as under:

"280.Finance Commission.- (1) The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by order constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President.

(2) Parliament may by law determine the qualifications which shall be requisite for appointment as members of the commission and the manner in which they shall be selected.

(3) It shall be the duty of the Commission to make recommendations to the President as to-

(a) the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds;

(b) the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India;

(bb) the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats in the State on the basis of the recommendations made by the Finance Commission of the State;

(c) the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State;

(d) any other matter referred to the Commission by the President in the interests of sound finance.

(4) The Commission shall determine their procedure and shall have such powers in the performance of their functions as Parliament may by law confer on them."

15) It is submitted that these are the main financial provisions of the Constitution that determine how the taxes would be levied, collected, appropriated and distributed between the Centre and the States. It is also pointed out that not only the financial powers of the Centre and the States to collect, levy, appropriate taxes clearly defined in the Constitution but even the executive powers are clearly spelt out in Article 73 which reads as under:

"Article 73 Extent of executive power of the Union

(1) Subject to the provisions of this Constitution, the executive power of the Union shall extend

(a) to the matters with respect to which Parliament has power to make laws; and

(b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:

Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution."

16) It is contended that as per Article 73 the executive power of the Union shall extend to the matters with respect to which the Parliament has power to make laws. Proviso to this Article specifically bars the Central Government from exercising executive powers in any State to matters with respect to which the Legislature of the State also has power to make laws. This means that the executive powers of the Centre are restricted to the subjects spelt out in the Union List. This means that the Centre cannot spend money on the subjects mentioned in the Concurrent and the State List unless provided for in the Constitution or any other law made by the Parliament.

17) However, it is the case of Mr. Mohan Parasaran, learned Additional Solicitor General, appearing for the Union of India that Articles 114 (3), 266(3) and 282 of the Constitution enable the Union of India to ear-mark funds by way of Grant for implementing schemes through the Member of Parliament. Mr. G.E. Vahanvati, appearing as amicus curiae has also reiterated that besides the expenditure charged upon the Consolidated Fund of India under Article 112(3), demand for grants sought by the Union executives are also met from the Consolidated Fund of India. He highlighted that the demands for grants are voted in the Parliament as per Article 113(2) and the final authority has to decide the quantum of monies to be sanctioned is the Lok Sabha. Lok Sabha has the final control over the expenditure. He further highlighted that after the grant has been voted and accepted by the Parliament, a Bill is introduced

to provide for appropriation of payments out of the Consolidated Fund of India. Such Bills are called Appropriation Bills. An Appropriation Bill is a Money Bill in terms of Article 110(1)(d) which has to be introduced as per Article 107 to be dealt with under Article 109. Even otherwise, according to him, House of People has plenary power to sanction payments and expenditure from the Consolidated Fund of India. These can be in the form of Grants to the Union Executive by means of Appropriation Act.

18) Article 114 refers "Appropriation Bills" which reads as under:

"114. Appropriation Bills.-- (1) As soon as may be after the grants under article 113 have been made by the House of the People, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of India of all moneys required to meet--

(a) the grants so made by the House of the People; and

(b) the expenditure charged on the Consolidated Fund of India but not exceeding in any case the amount shown in the statement previously laid before Parliament.

(2) No amendment shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of India, and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final.

(3) Subject to the provisions of articles 115 and 116, no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this article."

Other enabling provision is Article 266 which we have already extracted. The next provision relied on by Mr. Mohan Parasaran, learned Additional Solicitor, appearing for the Union of India is Article 282 which reads as under:

"Miscellaneous Financial Provisions

282. Expenditure defrayable by the Union or a State out of its revenues - The Union or a State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws."

Article 109 refers to special procedure in respect of Money Bills which reads as under:

"109. Special procedure in respect of Money Bills - (1) A Money Bill shall not be introduced in the Council of States.

(2) After a Money Bill has been passed by the House of the People it shall be transmitted to the Council of States for its recommendations and the Council of States shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the House of the People with its recommendations and the House of the People may thereupon either accept or reject all or any of the recommendations of the Council of States.

(3) If the House of the People accepts any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Council of States and accepted by the House of the People.

(4) If the House of the People does not accept any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the House of the People without any of the amendments recommended by the Council of States.

(5) If a Money Bill passed by the House of the People and transmitted to the Council of States for its recommendations is not returned to the House of the People within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was

passed by the House of the People."
"Money Bills" has been defined in Article 110 which reads as follows:

"110. Definition of "Money Bills"(1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely:--

(a) the imposition, abolition, remission, alteration or regulation of any tax;

(b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;

(c) the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund;

(d) the appropriation of moneys out of the Consolidated Fund of India;

(e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;

(f) the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or

(g) any matter incidental to any of the matters specified in sub-clauses (a) to (f).

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Council of States under article 109, and when it is presented to the President for assent under article 111, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill."

19) Article 111 makes it clear that when a Bill is passed by the House of Parliament, it shall be presented to the President and the President shall give his assent to the Bill or withholds assent therefrom.

20) Article 112 speaks about Annual Financial Statement which we call as ‘Budget’ in common parlance. Article 113, which is also relevant, refers procedure in Parliament with respect to estimates which reads as under:

"113.Procedure in Parliament with respect to estimates - (1) So much of the estimates as relates to expenditure charged upon the Consolidated Fund of India shall not be submitted to the vote of Parliament, but nothing in this clause shall be construed as preventing the discussion in either House of Parliament of any of those estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the House of the People, and the House of the People shall have power to assent,

or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the President."

21) The above Articles make it clear that the Union or the State is empowered to spend money from the Consolidated Fund strictly in accordance with the relevant provisions. In other words, if Union of India intends to spend money from the Consolidated Fund of India, it shall be submitted in the form of demands for grants and only after approval by the Parliament, the same are to be spent for various Schemes.

22) Framers of our Constitution had consciously created scheme for distribution and allocation of funds for various subjects. Article 246(1) makes it clear that Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (Union List). Sub-clause (2) of the said Article gives power to Parliament to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (Concurrent List). As per sub-clause (3) of the said Article, subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (State List).

23) According to Mr. K.K. Venugopal, learned senior counsel appearing for the petitioner, even funds can be utilized by the Union only in respect of various items enumerated in List I and List III and not in any of the items in List II. According to him, even Appropriation Act cannot satisfy the embargo provided in Article 246. We have already referred to Article 266 which speaks about Consolidated Funds and Public Accounts of India and of the States. Sub-clause (1) of the said Article deals with income and sub-clause (3) refers to expenditure. We have also noted the assertion of the learned amicus curiae that the Parliament has plenary powers which

are enshrined in the Constitution of India to sanction expenditure. He asserted that insofar as expenditure is concerned, Parliament is competent to spend money for any welfare scheme or for public purpose even if those schemes are referable to certain items in List II (State List) of the Seventh Schedule. Part XII of the Constitution deals with Finance, Property, Contracts and Suits. Chapter I of Part XII deals with "Finance". The first part of Chapter I deals with "General" provisions, the second part of Chapter I deals with "Distribution of Revenue between the Union and the States" and the third part deals with "Miscellaneous Financial Provisions". The arguments of the learned senior counsel for the petitioners have revolved around Article 282 and according to him the scope of this Article is very limited and the same cannot be invoked for the purposes of justifying the Scheme. How far Article 282 protects the impugned scheme, we will discuss in the later part of our judgment.

24) While considering legislative procedure, we have to see Articles 107 to 117. Article 107 deals with provisions as to introduction and passing of Bills and provides that subject to the provisions of Articles 109 and 117 with regard to Money Bills and other Financial Bills, the Bill may originate in either House of the Parliament. Article 112 mandates that the President shall in respect of every financial year cause to be laid before both the Houses of the Parliament a statement of the estimated receipts and expenditure of the Government of India for the year referred to as the "Annual Financial Statement". Nowhere in the Constitution any reference is made to the word "Budget" but uses the expression "Annual Financial Statement". The above-mentioned Articles show that the estimates of expenditure must separately show the sum required to meet the expenditure as charged upon the Consolidated Fund of India as per Article 112(2)(a) and the sums required to meet

other expenditure proposed to be made from the Consolidated Fund of India as per Article 112(2)(b). The said Article further requires that the estimates of expenditure have to distinguish between expenditure on revenue account and other expenditure. The expenditures which are charged upon the Consolidated Fund of India are set out in Article 112(3). Article 113 deals with the procedure in Parliament with respect to the estimates. The said Article makes it clear that there can be no voting in relation to expenditure charged upon the Consolidated Fund of India. However, such expenditure can be discussed in either House of Parliament. It is also clear that besides the expenditure charged upon the Consolidated Fund of India under Article 112(3), the demands for grants sought by the Union Executive are also met from the Consolidated Fund of India. We have extracted Article 113 in earlier part of the judgment. The demands for grants are voted in Parliament as per Article 113(2). The said sub-clause contains the plenary power of the House of the People to assent or to refuse to assent to any demand subject to a reduction of the amounts specified therein. Elaborate procedure has been provided in the "Rules of Procedure and Conduct of Business in Lok Sabha". Rules 206 to 217 deal with "Demands for Grants". The above-mentioned Rules make it clear that the Demands for Grants are discussed and voted upon. Motions may be moved to reduce any demands. These are called "Cut Motions". By way of Cut Motions, grants may be rejected in totality or reduced by a certain amount or reduced by a token amount. The elaborate procedure found in the abovementioned Articles as well as the Rules of Procedure clearly show that Lok Sabha controls the amount to be sanctioned out of the demands for grants placed by the Government. Thus, the final authority to decide the quantum of monies to be sanctioned is the Lok Sabha.

25) Various Articles and the Rules of Procedure abundantly show that the Lok Sabha has the final control over expenditure. After the grant has been voted and accepted by the Parliament in terms of Article 113(2), a Bill is introduced. Under Article 114, a Bill has to be introduced to provide for appropriation of payments out of the Consolidated Fund of India. Such Bills are called Appropriation Bills. An Appropriation Bill is a Money Bill in terms of Article 110(1)(d), which has to be introduced as per Article 107 and has to be dealt with under Article 109. The procedure makes it clear that the recommendations of the Council of States are not binding on the House of People. The relevant Articles and the Rules of Procedure referred to above clearly show that,

(1) The Financial Statement has to be laid before both the Houses of Parliament in terms of Article 112;

(2) The estimates in relation to expenditure and demands for grants can only be discussed by the House of the People vide Article 113;

(3) After the grants are approved, as per Article 114, the same are incorporated in the Appropriation Bill;

(4) The Appropriation Bill is a Money Bill and a Money Bill cannot be introduced in the Council of States while the Annual Financial Statement is to be laid before both the Houses, a Money Bill can only be introduced in the House of the People vide Article 110;

(5) While the Council of States has no role to play in the matter of sanction of expenditure and demand for grants, in relation to a Money Bill, it can only make recommendations vide Article 109(2). This may or may not be accepted by the House of the People.

26) If we analyze the abovementioned Articles and the Rules of Procedure, the argument that the Appropriation Act by itself is not sufficient to satisfy the requirements of Article 266(3) cannot be accepted. It is true that the activity of spending monies on various projects has to be separately provided by a law. However, if Union Government intends to spend money for public purpose and for implementing various welfare schemes, the same are permitted by presenting an Appropriation Bill which is a Money Bill and by laying the same before the Houses of Parliament and after getting the

approval of the Parliament, Lok Sabha, in particular, it becomes law and there cannot be any impediment in implementing the same so long as the Scheme is for the public purpose.

27) As mentioned earlier, the law referred to in the Constitution for sanctifying expenditure from and out of the Consolidated Fund of India is the Appropriation Act, as prescribed in Article 114(3) which mandates that no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law based in accordance with the provisions of this Article. It provides that after the estimates of expenditure laid before House of People in the form of 'demands of grants' has been passed, a Bill is to be introduced to provide for the appropriation out of the Consolidated Fund of India of all monies required to meet the grants made by the House of People. In other words, withdrawal of moneys for the scheme is done only by means of an appropriation made by law in accordance with the provisions of Article 114. In pursuance of the aforesaid Constitutional provisions, it is pointed out on the side of the Government that upon demand of grant having been made under Article 113, Appropriation Bills were introduced and enacted in each year to appropriate moneys for the purposes of the MPLAD Scheme. In such circumstances, it is reasonable to accept that appropriation of public revenue for the purposes of the MPLAD Scheme has been sanctioned by the Parliament by Appropriation Acts.

28) As rightly pointed out by learned amicus curiae and learned Additional Solicitor General, the 'law' here is the Appropriation Act, traceable to Article 114(3) and the purpose is for the scheme and the moneys withdrawn for outlay for the scheme from out of the Consolidated Fund of India in the manner as provided in the Constitution. We are satisfied that all the tests laid down under the provisions of Article 266(3) have also been fully satisfied in the implementation of the MPLAD Scheme. Further Article 283(1) provides that 'law' made by the Parliament shall regulate withdrawal of money from Consolidated Fund of India. The Appropriation Act passed as per the provisions of Article 114 is 'law' for the purpose of the Constitution of India and the respondents are fully justified

in claiming that no separate or independent law is necessary since an item of expenditure forming part of the MPLAD Scheme or the activity on which the expenditure is incurred also, forms part and parcel of such Appropriation Act. In other words, Appropriation Acts are for the purposes of the Constitution of India and no further enactment is required on a proper interpretation of the Constitution of India. It is useful to refer the law declared by this Court in Rai Sahib Ram Jawaya Kapur vs. The State of Punjab, (1955) 2 SCR 225 [at page 238] which is as follows:

"... ... After the grant is sanctioned, an appropriation bill is introduced to provide for the appropriation out of the consolidated fund of the State of all moneys required to meet the grants thus made by the assembly (Article 204). As soon as the appropriation Act is passed, the expenditure made under the heads covered by it would be deemed to be properly authorised by law under Article 266(3) of the Constitution.

... ... The expression "law" here obviously includes the appropriation Acts. It is true that the appropriation Acts cannot be said to give a direct legislative sanction to the trade activities themselves. But so long as the trade activities are carried on in pursuance of the policy which the executive Government has formulated with the tacit support of the majority in the legislature, no objection on the score of their not being sanctioned by specific legislative provision can possibly be raised. Objections could be raised only in regard to the expenditure of public funds for carrying on of the trade or business and to these the appropriation Acts would afford a complete answer."

29) It is clear that no independent enactment is required to be passed. As rightly pointed out, neither Government of India nor any State is taking away the rights of anyone or going to set up any business or creating any monopoly for itself nor acquiring any property. It is only implementing a Scheme for the welfare of the people with the sanction and approval of the Parliament. We are satisfied that for the purpose of imposing restrictions on

the rights conferred under Article 19 or Article 300A, there may be requirement of an independent law but not for the purposes of satisfying the requirement of Article 14. It is worthwhile to reproduce the following passage from the above referred judgment:

"Specific legislation may indeed be necessary if the Government require certain powers in addition to what they possess under ordinary law in order to carry on the particular trade or business. Thus when it is necessary to encroach upon private rights in order to enable the Government to carry on their business, a specific legislation sanctioning such course would have to be passed."

Scope of Article 282 of the Constitution

30) Let us consider Article 282 which comes under the heading of 'Miscellaneous Financial Provisions". Heavy reliance was placed on this provision by Mr. G.E. Vahanvati, learned amicus curiae and Mr. Mohan Parasaran, learned Additional Solicitor General. We have extracted Article 282 in the earlier part of the judgment.

According to Mr. K.K. Venugopal learned senior counsel, appearing for the petitioner, Article 282 contemplates that the identification of a public purpose should precede the making of a grant because without such exercise being undertaken, no decision on the extent of the grant to be made can be taken. Under the MPLAD scheme, it was contended that the grant precedes the identification of the particular public purpose, and this is contrary to Article 282. It is also submitted that in the present case, the MPLAD scheme is a permanent Scheme for transfer of funds each year which can be done only under Article 275 of the Constitution while Article 282 is intended to meet an emergency or an unforeseen situation and it does not envisage a transfer of funds without any limit of time.

31) Mr. Prashant Bhushan, learned counsel appearing for the petitioners, submitted that a clear interpretation of the General

Financial Provisions of the Constitution especially Articles 280 and 275 is that the Finance Commission, an independent body, has the mandate to recommend the division of taxes between the Centre and the States and the assignment of Grants in Aid to the revenues of certain States. It is also argued that though the Constitution empowers the Finance Commission to distribute money between the Centre and the States, the power has been shifted to the Planning Commission, which was set up by a resolution of the Government of India in March 1950. According to him, the Planning Commission has never received any parliamentary sanction and has still become an alternative authority to make regular grants given to the States, at the discretion of the Centre. It is pointed out that there is no provision in the Constitution for a body like the Planning Commission and it may be described as a quasi-political body, when compared to the statutory body like the Finance Commission, which is quite independent of the Government. It is further contended that the money being given through the impugned scheme is in clear violation of the specific scheme devised in the Constitution regarding the transfer of funds from the Centre to the States. Article 282, a "Miscellaneous Financial Provision" was added to be used only as an emergency provision. It is their claim that although the language of Article 282 appears to be wide enough to cover all grants, so long as they are for a public purpose, it obviously cannot be construed to mean that the Centre can give grants to States on a regular basis. It was submitted that the regular grants from the Centre to the States can be given only under Article 275 and only in accordance with the Finance Commission’s recommendations; that the power under Article 282 is interpreted as providing an alternative channel of regular transfers from the Centre to the States, it would disrupt the delicate fiscal equilibrium which the Finance Commission is expected to bring about through the regular channel under Article 275; that the Constitution

makers could not have intended to bring about such a disruption; that if Article 282 was intended to be a second channel for regular transfers from the Centre to the States then it should have found a place along with Articles 268 to 281 under the heading "Distribution of Revenues between the Union and States"; that the fact that Article 282 is separated from those Articles and put under a separate heading, "Miscellaneous Financial Provisions" shows that it is not intended to be used as a second channel of transfers from the Centre to the States. Moreover, a reference was also made to the marginal note on Article 282 "Expenditure defrayable by the Union or a State out of its revenues" to argue that it indicates that the expenditure to be met by the Union or a State to meet a particular situation provided that it is for a public purpose. It is pointed out that any expansion of the scope of Article 282 would necessarily result in the corresponding abridgement of the scope of Article 275, which could not have been intended by the Constitution makers; and Article 282 permits the Centre and the States to incur expenditure even on subjects which are not within the legislative competence of the Centre or the States, as the case may be.

32) Under Article 73, the executive power of the Union to give grants extends to the matters with respect to which the Parliament has the power to make laws. This is an embargo on the Centre’s power to give discretionary grants to the States and this embargo is lifted by the non-obstante clause in Article 282 whereby the Centre can give discretionary grants to the States even when it has no legislative power on the subject. It was argued that the lifting of the embargo clearly suggests that the power to give grants under Article 282 is an emergency power to be used in exceptional circumstances. In any case, according to the petitioners, Article 282 only allows money to be defrayed by the Central Government for a particular public purpose though they may fall under State subjects. It, however, does not authorize the Central Government to exercise its executive power on State subjects within the States which is only allowed during an emergency under Article 353 of the

Constitution. Therefore, it is contended that Article 282 can be used to transfer money/provide grants to States for use of particular public purposes which may be in the State list but cannot apply to a scheme like the MPLAD Scheme in which a Member of Parliament exercises executive power within the States on matters in the State list.

33) We have already extracted Article 282 and reading of the same makes it clear that our Constitution is not strictly federal and is only quasi-federal. This Court in paras 71 to 73 of the judgment in Kuldip Nayar & Ors. v. Union of India & Ors., (2006) 7 SCC 1 held as under:

"71 But then, India is not a federal State in the traditional sense of the term. There can be no doubt as to the fact, and this is of utmost significance for purposes at hand, that in the context of India, the principle of federalism is not territory related. This is evident from the fact that India is not a true federation formed by agreement between various States and territorially it is open to the Central Government under Article 3 of the Constitution, not only to change the boundaries, but even to extinguish a State (State of West Bengal v. Union of India [1964] 1 SCR 371) . Further, when it comes to exercising powers, they are weighed heavily in favour of the center, so much so that various descriptions have been used to describe India such as a pseudo-federation or quasi- federation in an amphibian form, etc."

"72 The Constitution provides for the bicameral legislature at the center. The House of the People is elected directly by the people. The Council of States is elected by the Members of the Legislative assemblies of the States. It is the electorate in every State who are in the best position to decide who will represent the interests of the State, whether as members of the lower house or the upper house."

"73 It is no part of Federal principle that the representatives of the States must belong to that State. There is no such principle discernible as an essential attribute of Federalism, even in the various examples of upper chamber in other countries."

34) In State of Karnataka v. Union of India and Anr. (1977) 4 SCC 608, in para 220 of the judgment, Untwalia, J. (for Singhal J., Jaswant Singh J. and himself) observed as under:

"Strictly speaking, our Constitution is not of a federal character where separate, independent and sovereign State could be said to have joined to form a nation as in the United States of America or as may be the position in some other countries of the world. It is because of that reason that sometimes it has been characterized as quasi-federal in nature....."

35) In para 276 of the judgment in S. R. Bommai and Ors. v. Union of India and Ors. (1994) 3 SCC 1, B.P. Jeevan Reddy J. observed:

"The fact that under the scheme of our Constitution, greater power is conferred upon the center vis-à-vis the States does not mean that States are mere appendages of the center. Within the sphere allotted to them, States are supreme. The center cannot tamper with their powers. More particularly, the Courts should not adopt an approach, an interpretation, which has the effect of or tends to have the effect of whittling down the powers reserved to the States....must put the Court on guard against any conscious whittling down of the powers of the States. Let it be said that the federalism in the Indian Constitution is not a matter of administrative convenience, but one of principle the outcome of our own historical process and a recognition of the ground realities. ...enough to note that our Constitution has certainly a bias towards center vis-à-vis the States (Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan [1963]1SCR491). It is equally necessary to emphasise that Courts should be careful not to upset the delicately crafted constitutional scheme by a process of interpretation."

36) This quasi-federal nature of the Constitution is also brought out by other decisions of this court. [See State of West Bengal v. Union of India [1964] 1 SCR 371; State of Rajasthan and Ors. v. Union of India [1978] 1 SCR 1; ITC Ltd. v. Agricultural Produce Market Committee [2002] 1 SCR 441; State of West Bengal v. Kesoram

Industries Ltd. [2004] 266 ITR 721(SC)

37) In this context, the scope of Article 282 requires to be considered. Article 282 allows the Union to make grants on subjects irrespective of whether they lie in the 7th Schedule, provided it is in public interest. Every Article of the Constitution should be given not only the widest possible interpretation, but also a flexible interpretation to meet all possible contingencies which may arise even in the future. No Article of the Constitution can be given a restrictive and narrow interpretation, particularly, when the said Article is not otherwise subject to any other Article in the Constitution. Article 282 is not an insertion by the Parliament at a later date, on the other hand, the said Article has been in the Constitution right from the inception and has been invoked for implementation of several welfare measures by Central grants. It is useful to refer a decision of the Constitution Bench of this Court in M. Nagaraj vs. Union of India, (2006) 8 SCC 212 wherein this Court held as follows:

"19. The Constitution is not an ephemeral legal document embodying a set of legal rules for the passing hour. It sets out principles for an expanding future and is intended to endure for ages to come and consequently to be adapted to the various crises of human affairs. Therefore, a purposive rather than a strict literal approach to the interpretation should be adopted. A constitutional provision must be construed not in a narrow and constricted sense but in a wide and liberal manner so as to anticipate and take account of changing conditions and purposes so that a constitutional provision does not get fossilised but remains flexible enough to meet the newly emerging problems and challenges."

38) It is not in dispute that several welfare schemes were sponsored and are being formulated by the Union of India in implementing Directive Principles of the State Policy. Though they

may essentially fall within the legislative competence of the State and some of the schemes are monitored by this Court, the said schemes are implemented through grants out of the Consolidated Fund of India by resorting to Article 282.

39) The expression "public purpose" under Article 282 should be widely construed and from the point of view of the scheme, it is clear that the same has been designed to promote the purpose underlying the Directive Principles of State Policy as enshrined in Part IV of the Constitution of India. It is not in dispute that the implementation of the Directive Principles is a general responsibility of the Union and the States. The right to life as enshrined in Article 21 in the context of public health are fully within the ambit of State List Entry 6, List II of the 7th Schedule. It is also settled by this Court that in interpreting the Constitution, due regard has to be given to the Directive Principles which has been recorded as the soul of the Constitution in the context of India being the welfare State. It is the function of the State to secure to its citizens "social, economic and political justice", to preserve "liberty of thought, expression, belief, faith and worship" and to ensure "equality of status and of opportunity" and "the dignity of the individuals" and the "unity of the nation". This is what the Preamble of our Constitution says and that is what which is elaborated in the two vital chapters of the Constitution on Fundamental Rights and Directive Principles of the State Policy. The executive activity in the field of delegated or subordinate legislation has increased. In the constituent Assembly debates, Dr. B.R. Ambedkar has underscored that one of the objectives of the Directive Principles of State Policy is to achieve economic democracy and left that in the hands of future elected representatives.

40) Even under the Government of India Act, 1935, a similar provision was contained in Section 150(2) under the heading "Miscellaneous Financial Provisions". The Constitution makers have clarified the expression ‘purpose’ by making it a ‘public purpose’ thereby clearly circumscribing the general object for which Article

282 may be resorted to, that is for a ‘public purpose’. It was pointed out before us that similar provisions are also found in the Constitutions of other countries such as USA and Australia. Reference was made to the first clause of Article I(8) of the Constitution of the United States of America, which states that "the Congress shall have the power to lay and collect taxes, duties, imports and excise to pay the debts and profit for the common advance and general welfare of the United States." It was also pointed out that a similar provision exists in the Australian Constitution under Section 81, stating that all revenues or moneys raised or received by the Executive Government of the Commonwealth shall form one consolidated Revenue Fund, to be appropriated for the purposes of the Commonwealth in the manner and subject to charges and liabilities imposed by this Constitution. It was pointed out that Section 94 of the Australian Constitution is an amalgamation of Articles 266(3) and 282 of the Indian Constitution.

41) The analysis of Article 282 coupled with other provisions of the Constitution makes it clear that no restriction can be placed on the scope and width of the Article by reference to other Articles or provisions in the Constitution as the said Article is not subject to any other Article in the Constitution. Further this Article empowers Union and the States to exercise their spending power to matters not limited to the legislative powers conferred upon them and in the matter of expenditure for a public purpose subject to fulfillment of such other provisions as may be applicable to the Constitution their powers are not restricted or circumscribed. Ever since the inception of the Constitution several welfare schemes advancing the public purpose/public interest by grants disbursed by the Union have been implemented. It is pointed out that MPLAD is one amongst the several schemes which have been designed and implemented under Article 282. Mr. Mohan Parasaran, learned Additional Solicitor General pointed out that apart from the MPLAD

scheme several other welfare schemes are being implemented such as

(1) Integrated Child Development Scheme

(2) Targeted Public Distribution Scheme

(3) Sarva Siksha Abhiyan

(4) Mid-day Meal Scheme

(5) Antyodaya Anna Yojana

(6) National Old Age Pension Scheme - now known as Indira Gandhi Old Age Pension Scheme

(7) National Immunity Scheme - now known as Janani Suraksha Yojana

(8) Jawahar Rozgar Yojana

(9) National Rural Health Mission

As a matter of fact, he pointed out that some of the schemes are also closely being monitored by this Court by passing appropriate orders from time to time.

42) The above analysis shows that Article 282 can be the source of power for emergent transfer of funds, like the MPLAD Scheme. Even otherwise, the MPLAD Scheme is voted upon and sanctioned by the Parliament every year as a Scheme for community development. We have already held that the Scheme of the Constitution of India is that the power of the Union or State Legislature is not limited to the legislative powers to incur expenditure only in respect of powers conferred upon it under the Seventh Schedule, but it can incur expenditure on any purpose not included within its legislative powers. However, the said purpose must be 'public purpose'. Judicial interference is permissible when the action of the government is unconstitutional and not when such action is not wise or that the extent of expenditure is not for the good of the State. We are of the view that all such questions must be debated and decided in the legislature and not in court.

Accountability under MPLADS

43) Mr. K.K. Venugopal, learned senior counsel as well as Mr. Prashant Bhushan, learned counsel submitted that the Scheme has been

so devised that the grant is, in effect, made to the Members of Parliament and is not made to the beneficiary or the public purpose, which may be a Panchayat or a Municipality, a University, a Research Institute or the like.

44) In the light of the said contentions relating to the Scheme and misuse of funds and also the allocation relating to inconsistency with the local government, we have carefully gone through the guidelines of the MPLAD Scheme. As already mentioned, the Scheme was announced by the Prime Minister in the Parliament on 23.12.1993. The guidelines were issued in February, 1994 covering the concept, implementation and monitoring of the Scheme. The guidelines were periodically updated in December 1994, February 1997, September 1999, April 2002 and November 2005. It was pointed out by learned counsel for the State that with the experience gained over a decade and having considered the suggestions made by the Members of Parliament in the interactive discussions taken by the Minister of State (Independent Charge) of the Ministry of Statistics and Programme Implementation, MPLAD's Committees of Parliament, Planning Commission and Comptroller and Auditor General of India, it was felt by the government to carry out a comprehensive revision of guidelines which necessitated the government to frame new guidelines in November, 2005. Since several comments were made about the implementation of the Scheme, let us refer only to the relevant guidelines of the Scheme, which are extracted below:

"1.3 The objective of the scheme is to enable MPs to recommend works of developmental nature with emphasis on the creation of durable community assets based on the locally felt needs to be taken up in their Constituencies Right from inception of the Scheme, durable assets of national priorities viz. drinking water, primary education, public health, sanitation and roads, etc. are being created.

2.2 Lok Sabha Members can recommend works for their respective constituencies. Elected Members of Rajya Sabha can recommend works for implementation in one or more districts as they may choose in the State of their election. Nominated Members of Lok Sabha and Rajya Sabha can recommend works for implementation in one or more districts anywhere in the country.

2.4 All works to meet the locally felt community infrastructure and development needs with emphasis on the creation of durable assets in the respective constituency are permissible under MPLADS except those prohibited in Annexure II to the Scheme. MPs may choose some works for creation of durable assets of national priorities namely drinking water, education, public health, sanitation, and roads under the Scheme.

2.6 Each MP will recommend works up to the annual entitlement during the financial year preferably within 90 days of the commencement of the financial year in the format at Annexure III to the Scheme to the concerned District Authority. The District Authority will get the eligible sanctioned works executed as per the established procedure laid down by the State Government for implementation of such works subject to the provision in these Guidelines.

2.10 District Authority: District Collector/District Magistrate/Deputy Commissioner will generally be the District Authority to implement MPLADS in the district. If the District Planning Committee is empowered by the State Government, the Chief Executive Officer of the District Planning Committee can function as the District Authority. In case of Municipal Corporations, the Commissioner/Chief Executive Officer may function as the District Authority. In this regard if there is any doubt, Government of India in consultation with the State/UT Government, will decide the District Authority for the purpose of MPLADS implementation.

2.11 Implementing Agency: The District Authority shall identify the

agency through which a particular work recommended by the MP should be executed. The executing agency so identified by the District Authority is the implementing agency. The Panchayati Raj Institutions (PRIs) will preferably be the Implementing Agency in the rural areas and works implementation should be done through Chief Executive of the respective PRI. The Implementing Agencies in the urban areas should preferably be urban local bodies and works implementation should be done through Commissioners/Chief Executive Officers of Municipal Corporations, Municipalities. Further, the District Authority may choose either Government Department unit or Government agency or reputed Non-Governmental Organization (NGO) as capable of implementing the works satisfactorily as Implementing Agencies. For purposes of execution of works through Government Departments, District Authority can engage units for example, Public Health Engineering, Rural Housing, Housing Boards, Electricity Boards, and Urban Development Authorities etc, as Implementing Agencies.

3.1 Each MP shall recommend eligible works on MP’s letter head duly signed. A letter format from the MP to the District Authority is at Annexure III to the Scheme. Recommendations by representative(s) of MPs are not admissible.

3.3 The District Authority shall identify the Implementing Agency capable of executing the eligible work qualitatively, timely and satisfactorily. The District Authority shall follow the established work scrutiny; technical, work estimation, tendering and administrative procedure of the State/UT Government concerned in the matter of work execution, and shall be responsible for timely and effective implementation of such works.

3.4 The work and the site selected for the work execution by the MP shall not be changed, except with the concurrence of the MP concerned.

3.5 Where the District Authority considers that a recommended work cannot be executed due to some reason, the District Authority shall inform the reasons to the MP concerned, under intimation to the

Government of India and the State/UT Government within 45 days from the date of receipt of the proposal.

3.14 Decision making powers in regard to technical, financial and administrative sanctions to be accorded under the Scheme, vest in the district level functionaries. To facilitate quick implementation of projects under this Scheme, vest in the district level functionaries. To facilitate quick implementation of projects under this Scheme, full powers should be delegated by the State/UT Governments to the district functionaries. The District Authorities will have full powers to get the works technically approved and financial estimates prepared by the competent district functionaries before according the final administrative sanction and approval. The District Authority should, before sanctioning the work, ensure that all clearances for such works have been taken from the competent authorities and the work conforms to the Guidelines.

4.1 The annual entitlement of rupees two crores will be released in two equal instalments of rupees one crore each by Government of India directly to the District Authority (District Collector/ District Magistrate/ Deputy Commissioner or the Chief Executive of the Municipal Corporation, or the Chief Executive of the District Planning Committee as the case may be), under intimation to the State/UT Nodal Department and to the Member of Parliament concerned.

5.4 The District Authority will submit for every year the audited accounts, reports and certificates to the State Government and the Ministry of Statistics and Programme Implementation.

5.8 The District Authorities have been implementing MPLADS since 1993-94. They are to submit periodically works Completion Report, Utilization Certificate, and Audit Certificates. These Certificates are to be furnished to the Ministry of Statistics and Programme Implementation right from inception."

Clause 6.2 of the Guidelines enumerates the role of the Central Government and Clause 6.3 defines the role of the State/UT Government. Clause 6.4 enumerates the role of the District Authority and Clause 6.5 refers to the role of the Implementing Agencies. Annexure-II contains List of works which are prohibited under MPLAD Scheme. Annexure-IVE enumerates type of works in which the MPLAD Scheme funds to be implemented. Annexure-IX refers about Audit Certificate and the details to be furnished by the auditor.

45) From the perusal of the above clauses contained in the guidelines of MPLAD Scheme, it is clear that there has been a close coordination between the authorities, namely, the Central Government, State Government and the District Authorities. It is also clear that every Member of Parliament (Lok Sabha) is authorized to only recommend such works which would be of general public utility in his own constituency that too for a public purpose. The Member of Rajya Sabha is to select work as per the scheme in his State. The role of the Member of Parliament is very limited to the initial choice of a selection of projects subject to the choice of project being found eligible by the District Authority/Commissioner or Municipal Authority, if found otherwise feasible.

46) The issue raised by the petitioners that under the guise of the Scheme there is arbitrary and malafide use of powers by MPs in allocating the work and using the funds does not hold good in the light of the following information: There are three levels of accountability which emerge from a study of the working of the Scheme, (1) the accountability within the Parliament, (2) the Guidelines, and (3) the steps taken which are recorded in the Annual Reports.

47) The Lok Sabha has set-up an Ad-hoc Committee on the working of MPLAD Scheme. The website of the House states that:

"The Committee on Members of Parliament Local Area Development Scheme (Lok Sabha), an ad hoc Committee was constituted for the first time on 22 February, 1999 by the Speaker as per provisions of

Rule 254(1) of the Rules of Procedure and Conduct of Business in Lok Sabha. Initially the Committee consisted of 20 Members. Later, the membership was raised to 24. The Chairman is appointed by the Speaker from amongst the Members of the Committee."

Lok Sabha Ad-hoc Committee on MPLAD in furtherance of its functions viz; to analyse the actual benefits of the scheme realized, the deficiencies and pitfalls encountered in the implementation of this scheme and the corrective measures which could be taken for the smooth implementation of the scheme on the basis of past experience of over a decade presented its Fifteenth Report by the Ministry of Statistics and Programme Implementation on the subject 'MPLADS- A Review' in December 2008.

48) The Committee in order to answer the questions that arose in the Era Sezhiyan Report and also the views expressed against the MPLAD scheme by Shri J.M. Lyngdoh, former Chief Election Commissioner on behalf of India Rejuvenation Initiative commented on i) uncontrolled management of the bureaucracy, (ii) Lack of Monitoring System, and (iii) Irregularities in Implementation.

49) In order to bring financial discipline at the district level and reduce the accumulation of unspent funds with the Districts, a new condition of unspent balance for the MP being less than rupees one crore was imposed during the financial year (2004-05). The release procedure was further streamlined and strengthened by prescribing for the original (not photo-copy) of the Monthly Progress Report, duly signed by DC/DM under his seal. This resulted in bringing down the unspent balance. To reduce the accumulated funds further and to improve accountability, some more conditions have been laid down for release of MPLADS funds in a new MPLADS funds release and management procedure which was adopted with effect from 1st June 2005. Now the District Authorities have to submit Utilization Certificates and Audit Certificates also for the earlier releases in addition to fulfilling the aforesaid two conditions before second installment in any given year is considered for release to any MP.

50) Software has been developed and launched on 30th November 2004 by the Ministry of Statistics and Programme Implementation. The same had been adopted by majority of the districts and the reports of completed and ongoing projects in respect of 361 districts out of 428 Nodal districts have already come on the website of the Ministry. The Ministry had nominated 78 officers of JAG and SAG level working in the Ministry, as Nodal Officers for the districts for entering the data in respect of the ongoing and completed works. This had facilitated substantial improvement in the data entry in the software. So far, data in respect of 1,006 MPs has been uploaded. Result oriented reviews of the Scheme have been taken up by the Secretary and Additional Secretary of the Ministry at All-India level.

51) As discussed earlier, under the MPLAD Scheme, the MP concerned recommends works. The District Authority verifies the eligibility and technical feasibility of each recommended work. Decision making power in regard to technical, financial, administrative sanctions accorded under the scheme, vests in the district level functionaries. The sanctioning of eligible works and their execution is done by the District Authorities and State Governments monitor the MPLAD works implementation. Beside this, the nodal District Authority has to coordinate with other districts falling in the same constituency (in case of Lok Sabha constituencies) and with all the districts in which the MP has recommended work (in case of Rajya Sabha MPs). Thus the nature of the Scheme is such that it requires considerable technical, administrative and accounting expertise, highly efficient coordination with various agencies and organizations and a high degree of logistic and managerial support for its successful implementation. Only the District Authorities possess all the above mentioned requisite competence and can effectively implement the scheme at the District level. Barring few irregularities, which are taken care of by the State

Audit

Authorities, the funds allocated under the MPLAD Scheme are being properly monitored for better utilization to achieve the objectives of the Scheme.

52) The information furnished shows that the Scheme has benefited the local community by meeting their various developmental needs such as drinking water facility, education, electricity, health and family welfare, irrigation, non-conventional energy, community centres, public libraries, bus stands, roads, pathways, bridges, sports infrastructure etc. Mere allegation of misuse of the funds under the Scheme by some MPs by itself may not be a ground for scrapping of the Scheme as checks and safeguards have been provided. Parliament has the power to enquire and take appropriate action against the erring members. Both Lok Sabha & Rajya Sabha have set up Standing Committee to monitor the works under the Scheme.

53) The second level of accountability is provided by the Guidelines themselves. As noted above, these guidelines have been continuously revised, the latest being the fourth time resulting in the Guidelines of 2005. As we have already adverted to, the Guidelines make it clear that the MPLAD Scheme is for the recommendation of works of developmental nature, especially for the creation of durable community assets based on local needs. According to the Guidelines, these include durable assets of national priorities like drinking water, primary education, public health, sanitation and roads. Clearly, the Scheme does not give a carte blanche to the MPs with respect to the kind of works they can recommend.

54) Furthermore, under the Guidelines, once the MP recommends any work, District Authority in whose jurisdiction, the proposed works are to be executed, will maintain proper accounts, follow proper procedure for sanction and implementation for timely completion of works. [vide Clause 3.2]

Annex II provides those works which are prohibited under the Scheme:

LIST OF WORKS PROHIBITED UNDER MPLADS

1. Office and residential buildings belonging to Central, and State Governments, their Departments, Government Agencies/ Organizations and Public Sector Undertakings.

2. Office and residential buildings, and other works belonging to private, cooperative and commercial organizations.

3. All works involving commercial establishments/units.

4. All maintenance works of any type.

5. All renovation, and repair works except heritage and archeological monuments and buildings with specific permission available from the Archeological Survey of India.

6. Grants and loans, contribution to any Central and State/UT Relief Funds.

7. Assets to be named after any person.

8. Purchase of all movable items except vehicles, earth movers, and equipments meant for hospital, educational, sports, drinking water and sanitation purposes belonging to Central, State, UT and Local Self Governments. (This will be subject to 10% of the Capital Cost of the work for which such items are proposed)

9. Acquisition of land or any compensation for land acquired.

10. Reimbursement of any type of completed or partly completed works or items.

11. Assets for individual/family benefits.

12. All revenue and recurring expenditure.

13. Works within the places of religious worship and on land belonging to or owned by religious faith/group.

Further accounting and monitoring procedure is provided by the Guidelines themselves under Clause 5 and 6 of the Guidelines, 2005.

55) We have perused through the Annual Reports of the Scheme which provide for transparency and accountability in the working of the Scheme. Measures that have been introduced in this regard are highlighted below:

1. Software for monitoring MPLADs Works was launched in November 2004. The software enables online monitoring of details of works and the analysis of this data is used to bring out various reports, once the data entry and uploading in respect of a constituency is completed.

2. As per the Right to Information Act, 2005 and the rules framed there under, all citizens have the right to information on any aspect of the MPLAD Scheme including works recommended/sanctioned/executed under it, costs of work sanctioned, implementing agencies, quality of works completed, user agencies etc.

3. It has been stipulated under the guidelines that for greater public awareness, for all works executed under MPLAD Scheme, a plaque (stone/metal) indicating the cost involved, the commencement, completion and inauguration date and the name of the MP sponsoring the project should be permanently erected."

56) All these information which are available through their website clearly show that the Scheme provides various levels of accountability. The argument of the petitioners that MPLADS is inherently arbitrary seems unfounded. No doubt there may be improvements to be made. But this court does not sit in judgment of the veracity of a scheme, but only its legality. When there is evidence that an accountability mechanism is available, there is no reason for us to interfere in the Scheme.

57) Further, the Scheme only supplements the efforts of the State and other local Authorities and does not seek to interfere in the functional as well as financial domain of the local planning authorities of the State. On the other hand, it only strengthens

the welfare measures taken by them. The Scheme, in its present form, does not override any powers vested in the State Government or the local authority. The implementing authorities can sanction a scheme subject to compliance with the local laws. Various guidelines make it clear that the Scheme has to be implemented with the co-ordination of various authorities and subject to the supervision and control of the nodal Ministry i.e. Ministry of Statistics and Programme Implementation. The respondents have highlighted that the collective responsibility ensures in implementing the Scheme and over the years, various checks are also put in place, including the measures to make the scheme more transparent in all respects. We are satisfied that the Government of India is not delegating its power to the Members of Parliament to spend the money contrary to the mandate of the constitutional provisions.

Separation of Powers

58) Another contention raised by the petitioners is that the Scheme violates the principle of Separation of Powers under the Constitution. The concept of Separation of Powers, even though not found in any particular constitutional provision, is inherent in the polity the Constitution has adopted. The aim of Separation of Powers is to achieve the maximum extent of accountability of each branch of the Government.

59) While understanding this concept, two aspects must be borne in mind. One, that Separation of Powers is an essential feature of the Constitution. Two, that in modern governance, a strict separation is neither possible, nor desirable. Nevertheless, till this principle of accountability is preserved, there is no violation of separation of powers. We arrive at the same conclusion when we assess the position within the Constitutional text. The Constitution does not prohibit overlap of functions, but in fact provides for some overlap

as a Parliamentary democracy. But what it prohibits is such exercise of function of the other branch which results in wrestling away of the regime of constitutional accountability.

60) In Rai Sahib Ram Jawaya Kapur and Ors. v. The State of Punjab, AIR 1955 SC 549, this Court held that:

"The Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another. The executive indeed can exercise the powers of departmental or subordinate legislation when such powers are delegated to it by the legislature. It can also, when so empowered, exercise judicial functions in a limited way. The executive Government, however, can never go against the provisions of the Constitution or of any law."

61) In Kesavananda Bharati vs. State of Kerala & Another, (1973) 4 SCC 225 and later in Indira Gandhi vs. Raj Narain, AIR 1977 SC 69, this Court declared Separation of Powers to be a part of the Basic Structure of the Constitution. In Kesavananda Bharati's case, (supra) Shelat & Grover, JJs. in para 577 observed the precise nature of the concept as follows:

"There is ample evidence in the Constitution itself to indicate that it creates a system of checks and balances by reason of which powers are so distributed that none of the three organs it sets up can become so pre-dominant as to disable the others from exercising and discharging powers and functions entrusted to them. Though the Constitution does not lay down the principle of separation of powers in all its rigidity as is the case in the United States Constitution but it envisages such a separation to a degree as was found in Ranasinghe's case . The judicial review provided expressly in our Constitution by means of Articles 226 and 32 is one of the features upon which hinges the system of checks and balances."

62) The specific nature of this concept in our polity has also been reiterated time and again.

In Special Reference No.1 of 1964 (1965) 1 SCR 413, this court held:

"...Whether or not there is distinct and rigid separation of powers under the Indian Constitution, there is no doubt that the constitution has entrusted to the Judicature in this country the task of construing the provisions of the Constitution and of safeguarding the fundamental rights of the citizens. When a statute is challenged on the ground that it has been passed by a Legislature without authority, or has otherwise unconstitutionally trespassed on fundamental rights, it is for the courts to determine the dispute and decide whether the law passed by the legislature is valid or not. Just as the legislatures are conferred legislative authority and there functions are normally confined to legislative functions, and the function and authority of the executive lie within the domain of executive authority, so the jurisdiction and authority of the Judicature in this country lie within the domain of adjudication. If the validity of any law is challenged before the courts, it is never suggested that the material question as to whether legislative authority has been exceeded or fundamental rights have been contravened, can be decided by the legislatures themselves. Adjudication of such a dispute is entrusted solely and exclusively to the Judicature of this country.

[Emphasis supplied]

63) In Indira Nehru Gandhi v. Raj Narain (1975) Supp SCC 1, Ray, J. noted that:

"The doctrine of separation of powers is carried into effect in countries like America and Australia. In our Constitution there is separation of powers in a broad sense...the doctrine of separation of powers as recognized in America is not applicable

to our country."

64) The learned Chief Justice noted (in para 47) that the rigid separation of powers as under American Constitution or Australian Constitution does not apply to our country. He further noted that:

"The American Constitution provides for a rigid separation of governmental powers into three basic divisions the executive, legislative and judicial. It is an essential principle of that Constitution that powers entrusted to one department should not be exercised by any other department. The Australian Constitution follows the same pattern of distribution of powers. Unlike these Constitutions, the Indian Constitution does not expressly vest the three kinds of power in three different organs of the State. But the principle of separation of powers is not a magic formula for keeping the three organs of the State within the strict confines of their functions. As observed by Cardozo, J., in his dissenting opinion in Panama Refining Company v. Ryan (1934) 293 US 388, 440 the principle of separation of powers "is not a doctrinaire concept to be made use of with pedantic rigour. There must be sensible approximation, there must be elasticity of adjustment in response to the practical necessities of Govt. which cannot foresee today the developments of tomorrow in their nearly infinite variety". Thus, even in America, despite the theory that the legislature cannot delegate its power to the executive. a host of rules and regulations are passed by non-legislative bodies, which have been judicially recognised as valid." [Emphasis supplied]

65) In State of Rajasthan v. Union of India (1978) 1 SCR 1, this Court observed:

"This Court has never abandoned its constitutional function as the final Judge of constitutionality of all acts purported to be done under the authority of the Constitution. It has not refused to

determine questions either of fact or of law so long as it has found itself possessed of power to do it and the cause of justice to be capable of being vindicated by its actions. But, it cannot assume unto itself powers the Constitution lodges elsewhere or undertake tasks entrusted by the Constitution to other departments of State which may be better equipped to perform them. The scrupulously discharged duties of all guardians of the Constitution include the duty not to transgress the limitations of their own constitutionally circumscribed powers by trespassing into what is properly the domain of other constitutional organs. Questions of political wisdom or executive policy only could not be subjected to judicial control. No doubt executive policy must also be subordinated to constitutionally sanctioned purposes. It has its sphere and limitations. But, so long as it operates within that sphere, its operations are immune from judicial interference. This is also a part of the doctrine of a rough separation of powers under the Supremacy of the Constitution repeatedly propounded by this Court and to which the Court unswervingly adheres even when its views differ or change on the correct interpretation of a particular constitutional provision." (para. 40)

66) In Minerva Mills Ltd. and Ors. v. Union of India (UOI) and Ors. (1980) 3 SCC 625 it was observed:

"93. It is a fundamental principle of our constitutional scheme, and I have pointed this out in the preceding paragraph, that every organ of the State, every authority under the Constitution, derives its power from the Constitution and has to act within the limits of such power.... Under our Constitution we nave no rigid separation of powers as in the United States of America, but there is a broad demarcation, though, having regard to the complex nature of governmental functions, certain degree of overlapping is inevitable. The reason for this broad separation of powers is that "the concentration of powers in any one organ may" to quote the words of Chandrachud, J. (as he then was) in Smt. Indira Gandhi’s

case (supra) "by upsetting that fine balance between the three organs, destroy the fundamental premises of a democratic Government to which we are pledged."

[Emphasis supplied]

67) Again, in the Constitution Bench judgment in A.K. Roy v. Union of India AIR 1982 SC 710, Chandrachud, C.J. speaking for the majority held at para 23 pg. 723 that "our constitution does not follow the American pattern of strict separation of powers".

68) This court has previously held that the taking away of the judicial function through legislation would be violative of separation of powers. As Chandrachud, J. noted in Indira Nehru Gandhi case (supra), "the exercise by the legislature of what is purely and indubitably a judicial function is impossible to sustain in the context even of our co-operative federalism which contains no rigid distribution of powers but which provides a system of salutary checks and balances." [para. 689] This is because such legislation upsets the balance between the various organs of the State thus harming the system of accountability in the Constitution. Thus, the test for the violation of separation of powers must be precisely this. A law would be violative of separation of powers not if it results in some overlap of functions of different branches of the State, but if it takes over an essential function of the other branch leading to lapse in constitutional accountability. It is through this test that we must analyze the present Scheme.

69) In the present case, we are satisfied that there is no violation of concept of separation of powers. As we have noted above, there is no rigid separation of powers under the Constitution and each one of the arms at times perform other functions as well. The Member of Parliament is ultimately responsible to Parliament for his action as an MP even under the Scheme. All Members of Parliament be it a Member of Lok Sabha or Rajya Sabha or a nominated

Member of Parliament are only seeking to advance public interest and public purpose and it is quite logical for the Member of Parliament to carry out developmental activities to the constituencies they represent. There is no reason to believe that the MPLAD Scheme would not be effectively controlled and implemented by the District Authority in the case of Panchayats and Commissioners/Chief Executive Officers, in the case of Municipalities and Corporations with adequate safeguards under the guidelines.

70) Furthermore, Chapter 3 of the Guidelines provide the procedure to be followed for the implementation of the Scheme. As per the guidelines, the MP's function is merely to "recommend a work" [vide Chapter 3.1]. The District Authority and Chief Executive Officer have been entrusted with the absolute authority to discharge upon the feasibility of works recommended, assess the funds required for execution of the work, implementation of works by engaging an implementing agency, supervision of work and ensure financial transparency by providing audit certificates and utilization certificate. As such it is clear that the District Authority and Municipal Authority play a pivotal role in implementation and execution of MPLAD Scheme. Major role is played by Panchayats, Municipalities and Corporations under MPLAD Scheme in execution and implementation of works. As rightly pointed out by the learned amicus curiae and Additional Solicitor General, the Scheme concentrates on community development and creation of assets at the grass-root level and in such circumstances, the same cannot be interfered with by the courts without reasonable grounds. As mentioned earlier, the role of an MP in MPLAD Scheme is merely recommendatory in nature and the entire execution has been entrusted to the District/Municipal Authority which belongs to the executive organ. It is their responsibility to furnish completion certificate, audit certificate and utilization certificate for each work and if this is not done further funds can not be released.

71) It is also the grievance of the petitioners that with the

passing of 73rd and 74th Amendments to the Constitution introducing Part-IX in relation to the Panchayat and Part IX-A in relation to Municipalities, the entire area of local self-government has been entrusted to Panchayats under Article 243G read with Schedule 11 and to the Municipalities under Articles 243W, 243ZD and 243ZE read with Schedule 12 of the Constitution. According to them the MPLAD Scheme is inconsistent with Part-IX and IX-A insofar as the entire decision making process in regard to community infrastructure of works of development nature for creation of durable community assets including drinking water, primary education, public health, sanitation and roads etc. is given to the Member of Parliament even though the decision-making process in regard to these very same matters is conferred to the Panchayats and Municipalities. The MPLAD Scheme, according to them, is in direct conflict with Part-IX and IX-A of the Constitution. It was argued that the Scheme introduces a foreign element which takes over part of the functions of the Panchayats and Municipalities. It was further contended that the implementing agency need not be the Panchayat or Municipality. Hence, the discretion, power and jurisdiction of the Panchayat and Municipality to decide on what project is to be located in which site is to be implemented through which agency is taken away. In other words, according to the learned counsel for the petitioners, this power being denuded by the Scheme, the Scheme is rendered wholly unconstitutional and bad.

72) We are not inclined to accept this contention raised by the petitioners. The extracts of the Guidelines we have produced above make it clear that even though the District Authority is given the power to identify the agency through which a particular work recommended by the MP should be executed, the Panchayati Raj Institutions (PRIs) will be the preferred Implementing Agency in the rural areas, through the Chief Executive of the respective PRI, and the Implementing Agencies in the urban areas would be urban local bodies, through the Commissioners/Chief Executive Officers of

Municipal Corporations, Municipalities.

Whether MPLADS leads to unfair advantage of sitting MPs as against their rivals

73) Finally, an argument was made by the petitioners that the scheme violates the democratic principle of free and fair elections. It was argued that sitting MPs had a clear edge over their opponents as they had MPLAD Scheme at their disposal which they could spend or promise to spend. It was argued that there is a possibility of misusing the money available under the Scheme and it gives unfair advantage to sitting MPs.

74) This argument is liable to be rejected as it is not based on any scientific analysis or empirical data. We also find this argument a half-hearted attempt to contest the constitutionality of the Scheme. MPLADS makes funds available to sitting MPs for developmental work. If the MP utilizes the funds properly, it would result in his better performance. If that leads to people voting for the incumbent candidate, it certainly does not violate any principle of free and fair elections.

75) As we have already noted, MPs are permitted to recommend specific kinds of works for the welfare of the people, i.e. which relate to development and building of durable community assets (as provided by Chapter 1.3 of the Guidelines). These works are to be conducted after approval of relevant authorities. In such circumstances, it cannot be claimed that these works amount to an unfair advantage or corrupt practices within the meaning of the Representation of the Peoples Act, 1951. Of course such spending is subject to the above Act and the regulations of the Election Commission.

Conclusions

76) In the light of the above discussion, we summarize our conclusions as follows:

1) Owing to the quasi-federal nature of the Constitution and the specific wording of Article 282, both the Union and the State have the power to make grants for a purpose irrespective of whether the subject matter of the purpose falls in the Seventh Schedule provided that the purpose is "public purpose" within the meaning of the Constitution.

2) The Scheme falls within the meaning of "public purpose" aiming for the fulfillment of the development and welfare of the State as reflected in the Directive Principles of State Policy.

3) Both Articles 275 and 282 are sources of spending funds/monies under the Constitution. Article 282 is normally meant for special, temporary or ad hoc schemes. However, the matter of expenditure for a "public purpose", is subject to fulfillment of the constitutional requirements. The power under Article 282 to sanction grant is not restricted.

4) "Laws" mentioned in Article 282 would also include Appropriation Acts. A specific or special law need not be enacted by the Parliament to resort to the provision. Thus, the MPLAD Scheme is valid as Appropriation Acts have been duly passed year after year.

5) Indian Constitution does not recognize strict separation of powers. The constitutional principle of separation of powers will only be violated if an essential function of one branch is taken over by another branch, leading to a removal of checks and balances.

6) Even though MPs have been given a seemingly executive function, their role is limited to ‘recommending’ works and actual implementation is done by the local authorities. There is no removal of checks and balances since these are duly provided and have to be strictly adhered to by the guidelines of the Scheme and the Parliament. Therefore, the Scheme does not violate separation of powers.

7) Panchayat Raj Institutions, Municipal as well as local bodies have also not been denuded of their role or jurisdiction by the Scheme as due place has been accorded to them by the guidelines, in the implementation of the Scheme.

8) The court can strike down a law or scheme only on the basis of

its vires or unconstitutionality but not on the basis of its viability. When a regime of accountability is available within the Scheme, it is not proper for the Court to strike it down, unless it violates any constitutional principle.

9) In the present Scheme, an accountability regime has been provided. Efforts must be made to make the regime more robust, but in its current form, cannot be struck down as unconstitutional.

10) The Scheme does not result in an unfair advantage to the sitting Members of Parliament and does not amount to a corrupt practice.

77) Accordingly, we hold that the impugned MPLAD Scheme is valid and intra vires of the Constitution and all the writ petitions,transfer petition as well as the transferred cases are liable to be dismissed as devoid of any merit, consequently, the same are dismissed. No order as to costs.

.....CJI.
(K.G. BALAKRISHNAN)

.....J.
(R.V. RAVEENDRAN)

.....J.
(D.K. JAIN)

.....J.
(P. SATHASIVAM)

.....J.
(J.M. PANCHAL)

NEW DELHI;
MAY 6, 2010