

(1991) 09 AHC CK 0049

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 18679 of 1986, 71040 of 1988, 3300 of 1987, 19252 of 1986 and etc. etc.

Anugrah Narain Singh and another

APPELLANT

Vs

State of Uttar Pradesh and others

RESPONDENT

Date of Decision : 20-09-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 171, 265
Uttar Pradesh Mahapalika (Alpakalika Vyavastha) Adhiniyam, 1966 — Section 1
Uttar Pradesh Municipalities Act, 1916 — Section 10A, 10AA, 30, 31
Uttar Pradesh Municipalities, Notified Area and Town Areas (Alpakalik Vyavastha) Adhiniyam, 1977 — Section 1
Uttar Pradesh Nagar Mahapalika Act, 1959 — Section 8A

Citation : AIR 1992 All 62 : (1992) 1 UPLBEC 170

Hon'ble Judges : V.K. Khanna, J; Ravi S. Dhavan, J

Bench : Division Bench

Advocate : M.S. Srivastava, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Ravi S. Dhavan, J.—A generation of young citizens or may be not so young, has grown up without experiencing or participating in civic elections. Millions of School children are taught the illusion of civic rights in a subject called civics in their course books which speaks of the Parliament, the State legislatures and the civic bodies, but they do not know what the latter is. They are taught to be a citizen without experience of being one. This generation has not seen, effectively, and has yet to see what local government is, and until they experience it, local government will remain an illusion out of the text books they are taught. This is what these cases are about. There are a number of them, but the issues are common. In some petitions, citizens seek a direction that civic elections be held, in others they question the right of the local bodies to impose afresh or enhance taxes on the principle that there will be "no taxation without representation". Then, there are petitions and arguments which have been addressed seriously

that the power which permits the functioning of the local bodies to be superseded be declared as ultra vires. Thus, the presence of the then learned Advocate General, U.P. Mr. Shanti Swaroop Bhatnagar.

2. Somewhere in the sixties a slip had occurred and it was the beginning of a paralytic stroke striking local bodies like municipalities and Corporations, when the elected representatives were either being bundled out of their offices or were facing a situation that they would not represent the local bodies for a long time to come. The frustration in not having elected representatives is the content of these petitions before this Court. Local self government for almost two decades was in state of suspended animation in this State, the inner strength to keep it going was waning, and did. the fear which the Mahatma carried and expressed himself in reference to self government was becoming a reality in this State and a few others in the nation. The Mahatma said "Self Government depends entirely upon our own inner strength, upon our ability to fight against heavy odes. Indeed self government which does not require that continuous striving to attain it and to sustain it is not worth the name.

3. There have been petitions pending for many years complaining that superseding local bodied with elected representatives as functionaries, is unconstitutional. The petitioners in some petitions have pleaded that there must be a return to local self government. The petitioners had been confronted with vehemence by the State Government and particularly by the local body of this city as constituted without elected representatives that to supersede local government is constitutional and the basis to tax has been justified by law which permits this to happen. The defence of the State, in effect, is that given the occasion, the right to supersede a local body is inherent in the State and cannot be questioned. This aspect makes the Court reflect on certain fundamental issues being (a) can a local body be superseded, (b) ought it to be superseded and (c) by whom and (d) when? This necessarily will entail an examination of the legislation by which local self government is permitted and then pondering on another question whether local self government and parliamentary democracy go hand in hand and were meant to exist as complementary to each other.

4. The other question which arises is whether the Constitution of India encourages local self government or leaves it to the mercy of the State to switch it off whenever it feels the necessity that it ought not to exist. This will need an examination of whether local self government was meant to be a basic feature of the Constitution and the grass roots for the survival of parliamentary democracy. The argument on behalf of the State virtually has been that there is no guarantee on local self government.

5. In 1916 the United Provinces Municipalities Act was handed down by the Viceroy's Council as a beginning of a major dose to start a pattern for running governments in urban United Provinces as it then was. This was a legislation virtually during the hey days of the Empire half a centre after the mutiny when Westminster was reconciling to the fact that a beginning to participation in local

affairs would be difficult to avoid. This legislation has the imprint of colonial rule and unfortunately subsequent legislations are not original and are a "scissors and paste affair". The concept of superseding an elected body is a seed which had already been laid in this colonial legislation. The builders of the Empire were not about to leave the elected representatives alone at the risk of their own representative position being put in jeopardy. A solitary colonial Collector, could supersede an elected body with a stroke. A Collector could do that even now.

6. About the time when the U.P. Municipalities Act 1916 was being handed down to the Government of India, there were deliberations on local self government in the British Parliament. The empire was at it's zenith and glorifying in its image of saying that it was an Empire where the sun never sets. While the empire was contemplating giving a concession of local, government to Us colonies it could ill afford another Mutiny. The lesson had been learnt in 1857. It was the participation in local government for the native but there was a constant check on it by the Sahab. The scene is the same today but the actors have changed. To dissolve the local governments 38 years after the republic and more than 40 after independence is easier than when the Viceroy ruled.

7. A look at the power by which the State Government can dissolve or supersede a Board as it stood in 1916 and as it stands today reveals that the content of the power is the same in fact there is more muscle to do so today than there was in 1916. Section 30 of the 1916 Act in this regard is relevant. This Court is examining the 1916 Act as it was the forerunner in the dissipating local government. The U.P. Nagar Mahapalika Adhi-niyam 1959 is more or less set in the same style.

8. The Raj arranged legislation to supersede the Board upon a representation made or otherwise should there be a default in performance of any duty or duties imposed on it under the 1916 Act or any other enactment or in the event of exceeding or abusing its powers. But to supersede a Board had a rider in that the Board would be intimated of the charges or its misdemeanour which warranted an occasion for its supersession. This is implied that the Board had an occasion to offer an explanation to resist this supersession or offer its defence and thereafter the "Provincial Government" was obliged to consider the merits and the contents of the explanation of the Board and set down its reasons. In case it came to the conclusion that indeed the Board had to be superseded or dissolved for a specific period the reasons to supersede or dissolve the Board and the order carrying out the intention of the provincial government was to be published in the Gazette. The contents of Section 30 as it originally stood bear out that the provincial government could exercise suo motu powers to dissolve or supersede a Board. There was much to be done before it could act and further a Board could be superseded by a representation made by anyone as indeed a Board which was indulging in anarchy needed to be checked. This power, as it stood, 73 years ago and is available to the State Government today must be seen in comparison.

9. The Act as it was in 1916:

"Control of Board.

30. Power of loyal Government to supersede Board.-- If at any time, upon representation made or otherwise, it appears to the local Government that a board persists in making default in the performance of any duty or duties imposed on it by or under this or any other enactment, or in exceeding or abusing its powers, the local Government may, after taking into consideration the explanation of the board, by an order published with the reason for making it in the Gazette, supersede the board for a period to be specified in the order.

(Reproduced from the Collection of the Acts passed by the Lieutenant-Governor of the United Provinces of Agra and Oudh in Council in the year 1916, printed by the Superintendent, Government Press, United Provinces, 1916)."

The Act as it is today.

"Control of Board.

30. Power of State Government to dissolve or supersede board-- (If at any time the (State Government) is, after taking into consideration the explanation of the board, satisfied that the board (has made a willful) default in the performance of any duty imposed (upon) it by or under (this) Act or any other enactment or (has exceeded or abused) its powers, it may, by order (together) with the reasons therefore published in the official Gazette, dissolve the board or supersede it for such period as may be specified;

(Explanation-- The period of supersession specified in the order may, if the State Government so considers expedient, be extended from time to time by notification).

Note-- To remove doubts as to the powers of the State Government to vary, amend or enlarge the period specified in the order made u/s 30 it has laid down in Section of the Uttar Pradesh Municipalities (Supplementary) Act 1950 (V of 1951) that-

(a) the said section empowers and be deemed always to have empowered the State Government to vary, amend or enlarge the period from time to time, and nothing in Sections 10A and 31 of the said Act shall be construed as limiting or abridging the said power of the State Government;

(b) every order made before the commencement of this Act in purported exercise of any such power as is mentioned in clause (a) is and shall be deemed to be valid in law."

10. But today the power would be exercised by the State Government like this: A member of the public does not have the occasion to make a representation that a Board may be violating laws inconsistent with its functions as a Municipality. Public participation to question the accountability of running public institutions,

constituted by election has been taken away. A unanimous resolution of the Board to violate the law may be the decision of a majority but this is anarchy. Who is the Judge? The right to public to complain has been extracted out. The seed to whittle down local government had been planted, when the right to make a representation against a delinquent Board had been taken away. Unfortunately, this happened- when the nation was receiving independence and drew its status as Dominion and before it became a Republic.

11. The power to supersede or dissolve a Board rests exclusively with the Government. A representation or a complaint against a civic body (otherwise a civic right) is not with the citizen but the government. It did not take much time for this vicious circle to complete itself as the State by and large was becoming more powerful, then its weakest citizens who were denied the right to represent against an erring Board. The assessment was entirely at the initiative of the State Government through its civil servants running the district administration. The question again is whether the local self-government was meant to be part of the fabric upon which the Constitution of India rests. The right to participate in local self-government goes hand in hand with the right to criticise the manner in which it functions. When the right to represent against the conduct of the local government was taken away before the Constitution came, a threat to local government had been made.

12. The enactment as it existed before the Constitution was coming in, permitted the supersession or dissolution of the local body or Board at the hands of the State Government. This implied that should the Board need to be dissolved or superseded it would need to be intimated of the complaint against it, the obligation of considering the explanation of the Board and the decision of the State Government to be recorded and published. The mechanics to supersede or dissolve a Board was that it would need to be done individually. Coincidentally all Boards within the State can be superseded or dissolved but such coincidence may turn out to be too good to be true. Then, why would a State need a power to supersede or dissolve all the Boards in the State? To do it to a Board as an individual act does not erode the concept of local government. On the other hand, to do so to all the Boards by the slash of sword leaves the Constitution functioning with parliamentary democracy only with a federal Parliament and the State legislatures. Is this the pattern of democracy as handed down by our Constitution?

13. After 1857 it took half a century for the Raj to realise that local government is inevitable and must become an inherent right of the subjects of the British empire. The 1916 Act was in keeping with this policy. About 20 years later the concept of local government was being enlarged by enacting or orienting the Orient with participation in the Government. This was the Government of India Act 1935.

14. It made the obligation of the British Parliament to lay down the basis of local self-government nationwide as a foundation to parliamentary democracy which

was round the corner.

15. To understand local self-government in the present context one cannot escape from history, no matter how one tries. Since the respondents have taken so much interest in suggesting to the court that it is the right of the State to supersede a local body and get it superseded, two aspects will have to be examined. One, the relation between parliamentary democracy and local self-government, and secondly, local self-government as it was understood when it was being debated at the turn of the century. In the proceedings of the Council of the Governor General of India the discussion and the resolution re, recommendations of Decentralisation Commission with regard to municipalities as were held from 18 March, 1914 is very relevant. The Hon^{ble} Mr. Surendra Nath Banerjee was moving a resolution before the Council. The first paragraph of the resolution as is recorded in the proceedings of the council reads:

"Sir, I have the honour to move the Resolution which stands against my name, namely:--

"That this Council recommends to the Governor General in Council the adoption of the following recommendations of the Decentralisation Commission namely:--

(a) that subject to the maintenance of prescribed minimum balances, municipalities should have a free hand in respect of their budgets;

(b) that Municipal Council should usually elect their own Chairman;

(c) that District Boards should contain an elective majority chosen by the non-official members of the Sub-District Boards;

(d) that village panchayats should be formed where local circumstances and experience permit with power to carry out projects regarding village sanitation, village schools and minor village works."

"My resolution covers a wide surface of our system of local self-government. Ever since the days of Lord Ripon the encouragement of local self-government has been a prominent feature of the administrative policy of the Government of India. In one of his earliest utterances Lord Ripon, whose memory we, the people of India, cherish with affectionate gratitude, declared that he had it in charge from her Gracious Majesty, the late queen Victoria, to foster the growth of local self-government in India. This message was followed by the Resolution of the 18th May, 1882, which authoritatively laid down the principles of local self-government, and which we regard as our Magna Charta in that matter. Lord Morley, in his despatch of the 27th November, 1908 endorsed the principles of this Resolution. He regards local self-government as an integral part of his scheme of constitutional reform, which he thinks ought to be presented as a whole; and he urges the Government of India to adopt speedy measures for the effectual advancement of local self-government. With your permission, Sir, I will quote an extract from the despatch of the 27th November, 1908. "It is desirable", says Lord Morley, "to present our reformed constitutional system as a

whole," and he adds, "from this point of view, it is necessary to attempt without delay an effectual advance in the direction of local self-government." All that my Resolution seeks to bring about is an effectual and speedy advance of local self-government. Sir, I am confident of the sympathy and support of the Government of India in this matter for his Excellency the Viceroy was pleased to say the other day, the 23rd December, last, in reply to an address that was presented to him by the Corporation of Calcutta, that it was the earnest desire of the Government of India to advance the cause of local self-government, wherever possible."

16. Mr. Surendra Nath Benerjee during the course 2* of the proceedings referred to Lord Morley's despatch, which read:--

".....but I will read an extract from Lord Morley's despatch. He says If Local Self-Government has so far been no marked success as a training ground, it is mainly for the reason that the Constitution of the local bodies departed from what was affirmed in the Resolution to be the true principle that the control should be exercised from without rather from within. The Government should revise and check the acts of local bodies, but not dictate them. I have no doubt that the Government of India today will affirm and actively shape their policy upon the principle authoritatively set forth by their predecessors in 1882....."

17. Mr. Surendra Nath Banerjee continued :

".....Here again, Sir; I rely upon the authority of Lord Morley, who invites the Government of India to take active measures for the organisation of these village union. He says:

"I desire your Excellency in Council to consider the best way of carrying out a policy which would make the village the starting point of public life."

18. Mr. Surendra Nath Banerjee continued :--

"According to the same authority, the village is the fundamental, the indestructible unit of the Indian Social system, which has survived the overthrow of dynasties and the fall of empires. Sir, our (?) village organisations carry the mind back to the dawn of human civilisation and the early beginning of local self-government. They are dead now, but the instinct is there, deep down in the national consciousness, and under the fostering care of a wise and beneficent government, such as we now have it may be revived into a living flame. Our system of local self-government has been built up from the top. That, perhaps, was inevitable under the circumstances. But the time has now come when it should be strengthened from below and the foundations laid well and deep....."

19. The next day on 19 March, 1914, the Hon'ble Madan Mohan Malviya joined the debate. He stated :--

"..... I have long advocated it, and I hope the day is not very far distant when Local Governments will have much more independence and will be able to initiate measures of reform to a much longer extent than they can at present....."

20. Mr. Madan Mohan Malviya continued on the aspect of local self-Government to express:--

"Then, Sir, the Hon^{ble} Mr. Abbott has urged that if a non-official Chairman is appointed he will not be able to command expert advice. He has claimed that none but an official can command expert advice who but an official can command expert advice? Asked he, "not a non-official certainly," was his own answer. But the Hon^{ble} Member is entirely mistaken. Non-officials account for 98 per cent of the population: they form the great bulk of the community, officials are merely the servants of the community-honoured servants, trusted servants; but servants all the same. They derive their power and influence by reason of their being public servants."

21. In justification in answer to a suggestion of an Hon^{ble} Member that an official trust commands respect, Pt. Madan Mohan Malviya came out with a scathing remark:

"Well, Sir, I have leave of the Hon^{ble} Member with only one further remark. He asserted that, including himself, there is not one non-official member of this Council who, in his opinion, is fit enough to be Chairman of a Municipal Board. I have myself not had the honour, Sir, of serving as a Chairman of Municipal Board. But I have served as a senior Vice-Chairman. And I think nothing but unreasoning prejudice would suggest that the duties of a Chairman of Municipal Board are such that none but an official can discharge them. There are many non-official Indians who are discharging those duties with credit to themselves and great benefit to their town....."

22. Mr. Surendra Nath Banerjee joined the discussion and had no hesitation in placing on record that the Boards as constituted by officials should be relieved of their power. He said:--

"I now come, Sir, to the last branch of my Resolution, i.e. the creation of a Local Government Board for each province. At present, under existing conditions, control is exercised over local bodies by Magistrate the Commissioner of the Division and in some cases, by the Government. What I propose is that these authorities should be relieved of this power which should be vested in local Government Board."

23. Mr. Surendra Nath Banerjee continued and expressed:

".....India today is not what India was even in 1909: great changes have taken place even in the short period of quinquennity. In the words of the late lamented Lord Minto:

India has felt the full impact of that wave of progress which is sweeping through Asia bearing on its crest the gems of a vast and stupendous changes.

"But the framework of our system of local self-Government was fixed 30 years back and it has not been changed since then. In the meantime the administrative

machinery in its higher ranges has been re-adjusted to the novel conditions."

24. The remarks of Mr. Surendra Nath Banerjee are very pertinent whereas entries before Governor General and Council were calling for and succeeded in creating autonomy and constitution local self-Govern-ment. In this State we now see that reverse position and apprehension as were placed on record by Surendra Nath Banerjee on 19 March, 1914 were proved correct, despite that today there is no imperial power.

25. The debate continued on 19, March. The Home Member Sir Reginald Craddock had reservations on grant of autonomy to local Boards. An appropriate answer was given by Mr. Surendra Nath Banerjee in defending a local Board constituted by elected representatives. Mr. Surendra Nath Banerjee said:--

".....The Parliament of England was at first a small consultative body summoned by Simmon de Montfort, and it is the institution that governs the British Empire today. We are not at liberty sitting here as practical administrators, to look far into the future. We discuss questions on their meriis without reference to future developments that may take place. A venture to submit that ought to be the attitude of every practical and sound administration for sitting here and presiding over the destinies of great department dealing with the affairs of an Empire like this:

"Sir, it has been said that the Collector ought to be at liberty to consult whomsoever he pleases. He does that now. Why should you then fetter him with a council, is an argument which the Hon"ble the Home Member has brought forward. The Collector is certainly at liberty to consult whomsoever he pleases. Even if he had a council that liberty would not be taken away from him. But if there is a constituted council, there is the guarantee that the Council will advise with a sense of responsibility; but when you go to A, B and C, to this wind bag and to that wind-bag, to this man trying to advance his own interest of his relatives, where is the guarantee that the advice will be sound and disinterested? Therefore, when we suggest an Advisory Council, we suggest a responsible body who will neither be wind-bags nor interested persons. Thus, there is a distinct advantage in having a council of this kind advising with a sense of responsibility. Then, Sir, it has been said that the responsibility of the Collector will be taken away from him if there is such a council. I fail to understand how that will be so.".....

26. The debate on the progress of local self-Government continued before the council's chamber. The debate which took place on 19, March records that Mr. Surendra Nath Banerjee asked the following questions:

Progress of local self-Government.-- 1.(a) will the Government be pleased to indicate the progress of local self-Government in India by giving for each year province by province for the last five years the number of elected members for each Municipality, District Board and local and other Boards under the Local Self-Governments Acts?

(b) Do the Government propose to direct that such statements should be published in future year by year?

27. Mr. Surendra Nath Banerjee was persistent in asking questions on the progress of local self-Government and in reference to the discussion which had taken place earlier. In reference to progress in local self- Government, the Governor General of India in Council was being intimated of the General policy of the British Government as not being opposed to injecting local self-Government with independence to the local bodies through elected representatives. The official report of Lord Crewe, Secretary of State to the Governor General in Council otherwise Baron Harding of Penshurst is relevant and is as follows:

APPENDIX B (Referred to in Answer to Question 2)

India Office, London 11th July, 1913

Revenue No. 83

TO HIS EXCELLENCY the Right Honourable the Governor-General of India in Council

My Lord,

I have examined with interest the letter from Your Excellency's Government of the 6th March, 1913, No. 4- Recommendations Education, and its of the Royal Com- enclosures, in which you mission on Decen- deal with the recom- tralisation on the mendations of the Ro- subject of Munici- yal Commission, on palities in India. centralisation on the subject of municipali- ties in India. You report that, as a result of a fresh examination of the whole question, you find evidence that there has been a steady advance in the efficiency of local bodies, and that future prospects are generally hopeful, and you forward a summary of the observations of local Governments on the specific recommendations of the Commission. 2. I see clearly the magnitude of the obstacles that have to be overcome before India can acquire in any great or general measure the public opinion on local affairs, and the will and ability to cope with municipal duties, that exist in Western countries, but it is also true that no progress can be expected if the question is approached in too cautious a spirit. You refer to the position of local Governments as immediately responsible for efficient administration, and propose in addressing them to indicate your assurance that it will be found possible in the more backward provinces to proceed steadily on the general lines of advance laid down by the Commissioner, and while maintaining all essential control to abstain from all unnecessary interference in matters of detail, and in particular to relieve officials of their municipal duties whenever possible. I agree that any attempt to exact uniformity in local administration, or to apply wholesale to existing conditions the general recommendations of the Commission, would be foredoomed to failure, and I fully concur in the view that local Governments must be left to decide how far the circumstances of their provinces admit of an advance towards the management by the people of their

own local affairs. I also recognise that something has been done in recent years of plenty to give full effect to the policy of freeing municipal revenues from certain charges which more properly fall on Government, e.g. for Police, and I am glad to observe that Your Excellency's Government are separately considering the possibility of giving further effect to the suggestions of the Commission in paragraph 833. The principle stated in paragraph 818 of the report, on which these suggestions are based, is in my opinion sound.

3. There are, however, certain large considerations that appear to me of importance in dealing with municipal administration, and I notice in the papers forwarded with your letter indications that these may not be fully appreciated at present by some authorities.

4. Your Excellency's Government has given many pledges of an anxiety to promote, in municipal as in other case, the development of sanitation and education as matters of Imperial concern. But the success of these great movements depends, not merely on financial grants and the provision of expert officers, but on the extent to which the people can be brought to help in furthering them, not only individually but also collectively. The existence, therefore, throughout the country of moderately efficient municipal institutions is, as it appears to me, a necessary condition of permanency in the success of your efforts. Expert control is, as remarked in paragraph 4 of your letter, necessary to efficiency in these matters, but it cannot take the place which should be occupied by interested and active municipal authorities. You refer to the fact that in the resolution of the 18th May, 1882 the promotion of municipal and local self-Government was described as an instrument of political and popular education, and as being chiefly desirable from this point of view. It may also from one point of view be regarded as an extension of Lord Mayo's scheme of financial decentralisation and an endeavour to provide local agencies to take charge of local services of sanitation and elementary education, and some support to the suggestion of the Commission in paragraph 837 may be found in such a line of argument. I think it desirable that the attention of local Governments should again be drawn to the consideration that any permanent success of your efforts in the direction of sanitary and educational progress depends largely on the extent to which it is found possible to foster the vitality of municipal authorities.

5. However that may be, it was recognised in 1882 that the movement was not directed primarily to immediate improvement in administration, but to the attainment of an efficiency based on intelligent co-operation of the people themselves in the sphere of public duty affecting their daily needs, and it was foreseen that failure would doubtless occur. Failures have occurred, and may still be expected; but there have also encouraging successes, and the former should not be allowed to weigh too heavily against the need to enlist the co-operation of the people and their representatives in the improvement of sanitation and education. Such co-operation must rest on an interest in the work and a feeling

of responsibility, and these in turn can only be secured by entrusting to municipalities an adequate sphere of work, adequate funds, and sufficient powers of decision in respect of both. In this connection I would suggest for your consideration, with reference to paragraphs 836 and 837 of the Commissioner's report, and to paragraph 7 of your letter, that it may be found that earmarked grants for sanitation and education are less fruitful in the long run in festering the growth or responsibility than local self-Government grants as to which the local bodies have discretion. On the other hand, the risk attending unearmarked grants can hardly be regarded as a very serious one, since the sphere of municipal work as described by the Commission in paragraph 815, in such that their expenditure must directly or indirectly promote sanitation or education.

6. I request that you will give weight to these remarks in addressing the local Government as to the opinions which form an enclosure to your letter under reply, I do not propose to discuss these opinions in detail, since I accept your view that the local Government must decide, in consultation with you, how best to foster and adequately finance municipal self-Government within their provinces.

7. I accept your proposals on the subject of the presidency Municipalities and Rangoon, and would only remark that in such cities, where there is a responsible public press and representation in the provincial councils, the case for entrusting large powers and extended freedom to the municipal bodies appears to be specially strong.

I have the honour to be, My Lord,

Your Lordship's most bedient humble servant.

(signed) CREWE"

Almost 60 years ago and before the Government of India Act, 1935, came the Simon Commission led by Rt. Hon^{ble} Sri John Simon, M.P. who as Chairman of the Indian Statutory Commission submitted a report on the future of India Government which was to be in the years to follow. The other members of the Commission were Viscount Burnham, Lord Strathcon, Mr. E. Cadegan, M.P., Mr. Vernon Harts horn Coloel Lane Fox, M.P. and Major Atlee. Sir Jon Simmon gave two broadcasts beginning June 25, 1930 over the " British Broadcasting Corporation to explain the future of Government in India. The text of the Broadcasts were published. Referring to the constitutional changes which were recommended by the Commission Sri John Simon speaking on behalf of the Commission said:

"Now let me turn to British India. When the British crown took over India from the East India Company a definite policy was laid down for the administration of India by Queen Victoria's celebrated Proclamation of 1858. For present purposes that policy can be described as that of fitting Indians to administer their own country. As years passed many Indians felt that their educational qualifications

fully entitled them to an increased share in the responsibilities of administration. It was British education and British principles of policy that encouraged these ambitions, and if we put ourselves (as we are bound to try to do throughout) in the place of the Indians who felt this we shall realise how natural the feelings was. After some twenty years a system of local self-Government was introduced with a view to enabling Indians to take a larger part in administering their local affairs. This was done by establishing in each district a local Board, and in each considerable town a local municipality, both classes of body being for the most part constituted on the democratic principle of elected representation. This was followed in 1991 by an enlargement of the provincial legislative councils, and the adoption of the principle of election in the choice of some of their members. There were still further enlargements of these councils in 1904. And, when the world war broke out the way was being prepared for yet further advance. But up to what date in nearly all provinces there was an official majority on these councils representing the Government The cause for which the war was fought resulted in a quickening among the intelligentsia of India of a feeling of national self-consciousness, and it was in this atmosphere that Mr. Montagu on August 20th 1917, made his momentous announcement on India policy to the House of Commons. That policy was declared to be the increasing association of Indians in every branch of the administration, and the gradual development of selfgoverning institutions with a view to the progressive realisation of responsible Government in India as an integral part of the British Empire"

It was declared that, the progress of this policy could only be/achieved by successive stages : that the time and manner of each advance could be determined only by Parliament, upon whom responsibility lay for the welfare and advancement of the Indian peoples. And it was further declared, both by Mr. Montagu and in the Government of India Act of 1919, that much would depend on the co-operation received from those upon whom new opportunities of service would be conferred, and by the extent to which it was found that confidence could be reposed in their sense of responsibility.

28-29. Constitutional changes as they were coming step by step after the initiative taken by Lord Mayo in 1870 and by Lord Ripon in 1882, the intention was to encourage the participation of Indians in municipal administration. The purpose was to have local self-Government, as the empire would have liked to call it, run by natives. What is local Government as also who it was meant to be for India under the Raj has been concisely noticed in an Article by William, R. Robason in the Encyclopaedia of Social Sciences. This article in reference to local Government says:

"Local Government-- In general local Government may be to involve the conception of a territorial, non-sovereign community possessing the legal right and the necessary orgnisation to regulate its own affairs. This in turn presupposes the existence of a local authority with power to act independently of external control as well as the participation of the local community in the

administration of its own affairs. The extent to which these elements are present must in all cases be a question of degree. For there is inevitably an ultimate limit the freedom of action of the local authority, as otherwise it would occupy the position of a sovereign State, while it is likewise obviously impossible for all the citizens to participate at all times in the acts of the local authority. It should also be borne in mind that insistence on modern electoral systems and decision by majority vote as the only valid criteria of local autonomy would exclude many significant phenomena, such as the Indian village, where decision goes by the general sense of community."

30. In reference to India on this particular aspect the article reads:

"It was not until the middle of the nineteenth century that the elective principle was introduced in the presidency cities of Calcutta, Bombay and Madras. Between 1842 and 1862 municipal institutions were established by legislation in other towns, either at the option of the inhabitants or later at the instance of the provincial Governments. As a result of the efforts of Lord Mayo in 1870 and of Lord Ripon in 1882 to further the participation of Indians in Municipal administration there was passed a series of provincial Acts providing for the election of a larger Indian element to the local authorities, and at the same time a pronounced impetus was given to the improvement of rural local Government. The typical form consisted at first of rural Board exercising power over a large area; proportion of the members were elected by the local tax payers and the Board was presided over by the district officer. The domination of the local Board, by this officer, who is the servant of the Central Government proved a definite obstacle in the development of local Government in any real sense. After the passing of the Government of India Act of 1919 new provincial legislatures were constituted on a more autonomous basis and local Government affairs were transferred to ministers responsible to those legislatures. As a result of the district officer was replaced on the rural Board by an elective Chairman."

Three centuries ago when a trading company was turning into an administrator, the origin of local self-Government in India begins with a corporation in which Indians had no say, while this Court is hearing these cases, three centuries after local Government was established, super session of local bodies cannot be digested on the ground that introduction of local Government came without public participation.

31. The emerging process of local Government into local self Government has been noticed by Mr. Justice Alan Gledhill in his book, The Republic of India. The relevant extracts are:--

"Local Government in each presidency town was first vested in the Governor and council. In 1688 the corporation of Madras was established by company's Charter. In 1726 corporations were established in the three presidency towns by Royal Charter. The Act of 1793 empowered the Governor-General to appoint justice of the peace to provide for conservancy, road repairs, and police out of

tax on land and houses. One outstanding difference between British and Indian local Government, which has continued from the time that Act was passed, is the difficulty in India of holding members of local bodies pecuniarily responsible for expenditure of public money in abuse of their powers or neglect of their duties. The omission from the Act of 1793 of any provision for audit and accounting has not been remedied.

32. The work of the Justices appointed under the Act of 1793 was not good. In 1845, in Bombay, administrative power was concentrated in the Conservancy Board, consisting of two Europeans and three Indian Justices elected by all the Justices under the Chairmanship of the Senior Presidency Magistrate. This was an important development, for, as we shall see, there is a tendency to push this principle of concentrating the powers of a local Board in a special committee or committee as far as possible. In 1865 the Justice became a corporate body, with control over the budget, but executive power was vested in a salaried official, and no expenditure was legal without the signature of a Controller of Accounts. A Stage of comparative stability was reached in 1888, when the Act still in force, though with amendments, was passed. As in the other two presidency towns, administration in Bombay under the Act has these features:-- a limited electorate, a large corporation with control over finance, and a strong executive centered in a Government, through the Chief Executive Officer, and by its powers in case of (the corporation's default to carry out the corporation's statutory duties and charge the expenses to its funds, retains a large measure of control".

33. That the municipalities were to be constituted by elected members returning to constitute a municipal Board has also been noticed by Alan Gledhill.

"5. THE INTRODUCTION OF THE ELECTIVE PRINCIPLE IN 1882 Lord Ripon sponsored resolutions of his council laying down a policy for legislation regarding Municipalities and local Boards. Lord Ripon did not anticipate an immediate improvement in efficiency, but hoped that the Boards would become the schools for Indian politicians, Every Municipality or Board was to have an elected majority and a non-official president. Municipalities were to be relieved of responsibility for the police, but to "accept responsibility for public Health and Education. Instead of control from within through the official members of the Boards, Government was to exercise control from without, by supervision of the activities of the Boards, by exercising powers to intervene when their activities were illegal, or endangered life or safety or the public peace, powers to perform at their cost statutory duties they had neglected, powers to suspend or supersede the Board or individual members for persistent misconduct or neglect. In rural areas no Board was to have a larger territorial jurisdiction than a sub division.

This policy could only succeed by faith that immediate regression would be succeeded by ultimate progress, and this faith was not forthcoming in official circles. The provincial Legislation which followed made only a partial attempt to carry out the policy laid down in the resolution. Though Municipal Committees

were now partly elected, the change was not popular, and often official presence was necessary to secure the election of a non-official president. Many Indians who might have served with distinction on municipalities declined to endure the humiliating task of electioneering, a fact recognised in the Constitution of many Indian public bodies of today by the provision for nomination, though to an extent too small to violate the elective principle," (Ibid page 64.)

34. Local self Government through elected bodies is the correct breeding ground for political experience. It is with this hope that Ripon had a vision that Boards with elected representatives would become a school for Indian politicians. But, like during colonial rule, superseding the Board with elected representatives, the use of this power continues today to be used or misused by various State Government in the name of the State. This aspect also does not remain unnoticed by Gledhill.

"II. GOVERNMENT CONTROL OF LOCAL AUTHORITIES A Board is obliged to keep Government fully informed of its activities, and to submit to Government inspection of any work in progress. Any resolution, or order, or licence may be cancelled, and any Act prohibited if it is illegal, or ultra vires of its powers or dangerous to life or safety or the public peace. In an emergency the Collector may do any Act within the competence of a Board necessary for the public safety at its expense. If a Board defaults in a statutory duty, Government may order it to be done, or do it at the Board's expense. Elected members may be removed for wilful refusal to do their duty, and the Board may be dissolved or superseded for persistent default or abuse of powers. Unfortunately it has in the past been too often necessary to make use of these powers." (Ibid page 68.)

35. Who will decide when this local self Government in a democracy is to be switched off. In the camouflage of orderliness and efficiency, the totalitarian system may easily persuade the ignorant that in such a change will the future improve from the present lot. It is in reference to this that Sir Stafford Cripps who otherwise had a close connection with India with preindependence days observed

".....Once so deceived, the people become an easy prey to those who would deprive them of their liberty.

One safeguard in such circumstances is for those who believe truly in democracy and liberty to combine together so to revise the form of their democratic machinery as to enable it to provide the people efficiently with their needs while at the same time preserving their liberty in those things that are essential.

If, then, there can be put into this machine the energy of the people's democratic will to liberty a workable and efficient form of Government liberties, or to demand the continuance of privilege and licence for a limited class in society in the circumstances of today is to invite the rapid destruction of our democracy.

A great satisfaction can often be derived from speaking in somewhat vague terms of great new principles and from picturing some Utopia in glowing words. Principles and policies must, of course, be altered with changing times, and the working out of these is a matter of prime importance for the future, but the more humdrum task of keeping the mechanism of our democracy in a fit State to function is of the first importance if ever we are to be able to achieve through democracy, new policies, reach, by that road, the uptopia of our visions.

A GREAT SERVICE TO DEMOCRACY AND IN URGENT TASK

.....

It is an urgent task to change the machinery of our democracy so as to make it at least the efficient equal of its totalitarian rivals, while at the same time preserving to our people the priceless heritage of their freedom which the others have for the time being forfeited.

Civilisation is faced today with the necessity of devising forms of Government which will lead into one composite whole, the efficiency of totalitarian control and planning in the economic field with the cultural and political freedom that democracy alone can provide.

Our country is perhaps better able than any other to produce this synthesis and so give a new leadership to the world towards an era of prosperity and peace which at the moment seems strangely distant.

We are now witnessing the death pangs of an old civilisation and (the suffering travail of a new being brought to birth. It is our duty and opportunity to assist this process by working to develop these new forces and new forms, and not to hinder and prevent their emergence by a rigid adherence to the traditions and methods of the past.

The new democracy that it is to be born will have its full inheritance from the past, but must be fitted to the circumstances and conditions of the new world in which it is to flourish and grow strong.

I beg those who have prepared to this end to add their power and influence to the development of our new democracy which will mean for us and for the younger generation in particular a brighter and fairer prospect beyond the gloom and fears of the present time."

Sir Stafford Cripps was writing in despair as about the time he was writing the Third Reich was gnawing at Europe and Mussolini as a fascist leader was flexing his muscles in Italy. Sir Stafford Cripps was expressing his apprehension that if democracy is the system, it must adapt itself rapidly to changing economic and political circumstances in which it has to operate, but the principle of it is not to be lost.

36. The argument on behalf of the Government, gives this court the impression that freedom will negate freedom. But which patriarch will assess this? Local

bodies as they have been constituted in the State and as are the subject matter of these writ petitions are "a government imposed from without". The phrase is borrowed from what the Mahata Wrote while reflecting on democratic and self government in an article in the Harijan. He wrote while referring to the Constituent Assembly, which was to be formed, but the context is appropriate in reference to the cases before this Court, when he said :

"Again, the Constituent Assembly alone can produce a constitution indigenous to the country and truly and fully representing the will of the people. Undoubtedly such a constitution will not be ideal, but it will be real, however, imperfect it may be in the estimation of the theorists or legal luminaries, self government to be self government has merely to reflect the will of the people who are to govern themselves. If they are not prepared for it, they will make a hash of it. I can conceive possibility of a people fitting themselves for right government through a series of wrong experiments, but I cannot conceive a people governing themselves rightly through a government imposed from without, even as the fabled Jackal could not walk like a peacock with feathers borrowed from his elegant companion. A diseased person has a prospect of getting well by a personal effort. He cannot be healthy for others.

The risks of the experiments are admitted there is likely to be impersonation. Unscrupulous persons will mislead the illiterate masses into voting for wrong men and woman. These risks have to be run if we are to evolve something true and big. The constituent assembly, if it comes into being as I hope it will as a result of an honourable settlement between us and the British people, the combined wit of the best men of the two nations will produce an Assembly that will reflect fairly truly and best mind of India. Therefore, the success of the experiments at the present stage of India's history depends upon the intention of the British statement to part with power, without engaging India in a deadly unorganised rebellion."

37. Were the assertions of Mahatama Incorrect? Every citizen who aspires to participate in political life cannot be a Member of Parliament or a Member of the Legislative Assembly. But, why cannot he operate in his local area? Put all these discontents into a common cauldron and let people not participate and speak in this local affairs, a seething discontent will explode the cauldron. In today's context the court cannot ignore the polarisation of citizens in a republic into fundamentalists aligned with religion, dogmatists and terrorists, a phenomenon which negates the expression "citizen".

38. Referring to local self government while delivering the Tagore Law Lecturers Justice William O. Douglas of the United States "Supreme Court" observed :--

"England is a small homogenous society. Australia, Canada, India and the United States are not. The small town of America, as well as the large cities need a large degree of home rule, if matters are to run smoothly and efficiently. The selectmen of an American community, like the panchayat of the Indian village,

can make more sensible rules governing local affairs than the lawmakers in a faraway capital"..... Democracy cannot, indeed, flourish with political power concentrated at distant points. Democracy must have healthy root at the town and village level."

39. Local self government was meant to go on progressively with greater participation of the people whether in village or in urban areas. This continuity in bringing local self government with people's participation at the grass root level of democracy was to be protected and perfected and not to be forgotten. From down below up to the centripetal power culminating in federal government there was to be a process of representative government. In this reference, Granville Austin in his book "The Indian Constitution : Cornerstone of the Nation" observed :--

"Considering the unusually lengthy and relatively (speaking in colonial terms) successful experience India had with representative government, it is not surprising that Indians should have favoured a parliamentary constitution. They had been associated with local self government since the late nineteenth century, and from the 1909 Government of India Act through those of 1919 and 1935, Indians came to play an increasing role in both the executive and legislative sides of provincial and central government. The numbers who had participated in these fields of government could not have exceeded several thousand, but their influence was considerable. They had learned to work the system well and to like it despite the difficult ties engendered by their lack of final authority. Why, said K. M. Munshi, should the Assembly turn its back on a hundred year old tradition of parliamentary government in India. The electorate, however, greatly restricted totalled nearly thirty millions in 1937, thus giving India an impressive number of persons who had had some experience over the period of a generation with the processes of representative government.

40. The experience of local self government was never meant to be lost. Article 171 of the Constitution of India being a pattern by which the legislative councils are to be filled by direct election from specially elected representatives. Municipalities or municipal corporations or local bodies are one such institution which contribute in constituting legislative councils. In reference to this Graville-Austin says:--

"Nearly three weeks later, on 19 August, Ambedkar produced a new provisions, one that ultimately appeared as Article 171 of the Constitution. One half of the seats in legisla-tive Council should be filled by direct election from special electorates in territorial constituencies, electorates, consisting of municipal, district and other local governing bodies and of university graduates and higher school teachers. One third of the members were to be elected according to proportional representation by the members of the lower houses from outside their own number, and the final one sixth of the membership was to be nominated by the Governor. There remained a tentative air about these arrangements, however, for the new article provided that parliament could alter

the composition of the upper houses if it desired. This has not so far come about."

What has happened in Uttar Pradesh could happen in other states of the Union. The possibility cannot be ruled out. After all this situation has happened in more than one State and the parliamentary system has functioned, but without the grass roots in local self Government. The result is already on the surface to see. The Indian citizens participation in local self Government particularly in this State has been lost. Local self Government and the civic responsibility as a citizen will go hand in hand. Civic responsibility begins but disappears if the citizens' participation in local self Government repeating itself year after year will give an opportunity to a politician even in a parliamentary democracy to use an electorate as a vote bank. This aspect also has not gone unnoticed and Sir W. Ivor Jennings, otherwise a constitutional expert, who had been a constitutional Adviser to the Government of Ceylon and Pakistan observers:

"It must be remembered, too, that there are politicians whose appeal to the under privileged is strong, but whose real purpose is not to establish a social democracy but to supplant it with a dictatorship of which they are to be the instruments. One must not blame the electors, it would be surprising if the homeless population which sleeps in Calcutta's arcades, the slum-dwellers of Bombay, the refugees in Karachi's insanitary colonies, the scheduled castes of Andhra, the boys who throng the approaches to Colombo's railway station, the porters in the coal-yards, and the landless villagers throughout Asia, were not in favour of bloody revolution. One tends to forget that they are as sensitive and as able as a good, solid English trade-unionist: but the English trade-unionist has won for himself a right to be a person, to hold his job as long as he pulls his weight, to have a house and a garden, to live in conditions which three quarters of Asia's teeming millions would regard as luxury, to have children better educated than himself, and to have his family treated when they are sick. There are people richer, and certainly without cause to be happier. This is an aspect of Britain's homogeneity which I have already stressed, but its importance is seldom realised. In Asia there is greater wealth, more spectacular and more flamboyant, while at the other extreme are hundreds of millions living at a level which Western Europe has long since forgotten and North America never known. Most of those who capitalise these contrasts and these miseries are not representatives of the people. They do not, as they claim to be, speak for "the masses". They are middle-class intellectuals whose social sympathies have out-run their reason, or woolly minded people whose ambitions have been frustrated by personal deficiencies or a defective home life, or young men in a hurry who got caught up in a movement and cannot get out without thinking themselves to be renegades. Their task is deliberately to subvert the methods of democracy; they delight in outwitting those politicians who try to live on their wits. They use the corrupt methods of the worst party machines with an efficiency greater than that of the party machines with an efficiency greater than that of the party "boss". They distribute largesse among their own followers: they provide jobs whenever they can get hold of the patronage; they even give contracts in return

for contributions to party funds; they organise strikes wherever they can and whether the strikers are likely to win or lose; they support workers' demands even when (as they sometimes are) They are quite absurd; and they delight in doing these things because their objective is to overthrow the democratic machine. By these methods, too, they obtain a substantial following which is prepared to obey orders; which will, for instance, engage in mass impersonation at elections, or start a minor riot to discourage other electors from going to the poll, or (if the police are not wary) run off with the ballot boxes. They are quite prepared to make promises which they are unable to keep, because they do not intend to keep them; they can talk the most utter nonsense with impunity, and enjoy it, because they appeal to the illiterate and the downtrodden, the people who have no means of assessing possibilities, but who, having nothing to lose, are prepared to listen to any assertion that they have much to gain."

41. To thwart such irresponsible politician's supersession was devised. The power to supersede an elected Board is truly colonial. The idea is not original, but out of date. The only difference is that under the Raj supersession was an individual Act of the District Officer.

42. In an account by a member of Indian Civil Services, on the administration under the Raj, the mechanics of superseding a local municipality has been described. It gives one the impression that the democratic process has been retarded today instead of advancing into a more sophisticated structure. In his book "The Men who Ruled India", -- Philip Wodruff comments in reference to local politics and municipalities. He says:

"The standard of local politics in the early 1920 was often one through which the municipalities in England had passed in the seventeenth or eighteenth Centuries. If the factions were evenly balanced, a member would be locked into his bathroom just before leaving home and the crucial vote taken while he was still trying to get out. Or the office clock would be advanced and one party, but not the other, warned to be present ten minutes early. Far more interest was often taken in intrigue, in personal appointment, and in achieving a personal triumph, than in administration. The smaller town sometimes got themselves into a hopeless tangle, their dues heavily in arrears, their streets dirty and unlighted. Such Boards would have to be superseded and handed back to the district officer, who for three years or so would ruthlessly collect arrears of taxation and see that money allotted to services was in fact spent. And then the Board would be reconstituted."

43. The Government of India Act, 1935 in the legislative list made a reference to local self Government. The purpose apparently was not negate it but encourage it. Within fifteen years came to the Constitution of India, the text of which in some respect represented the Government of India Act, 1935. Local self Government was mentioned in the Government of India Act, 1935; In the legislative List was a reference to local Government. The citizen's right to make a representation against an anarchic local Government had already been deleted

before the Constitution of India came in. The Worst was still to come. Fifteen years after the republic came a legislation following an ordinance, a new concept giving way to the Raj by Ordinance Raj in the year 1966, declaring that five city corporations, those of Kanpur, Agra, Varanasi, . Allahabad and Lucknow, hitherto functioning with elected representatives until 31 January, 1966, would from the next day stand superseded and the elected representatives vacate their respective offices. This was the beginning of an end. The legislation which acted as a catalyst under such a State of affairs is known as the Uttar Pradesh, Nagar Mahapalika (Alpkalin Vyavastha) Adhiniyam, 1966 otherwise the U.P. Act No. IV of 1966. Eleven years later came more or less similar enactment for the municipalities and for local bodies known as notified area and town areas. This was Uttar Pradesh Municipalities, Notified Area and Town Areas (Alpkalin Vyavastha) Adhiniyam, 1977. Thus, following city corporations, municipalities, notified area and town . areas were facing supersessions and elected representatives were being bundled out of their public offices.

44. If local Government is the fabric of the Constitution then it must function in continuity except where its dissolution or supersession is for a very temporary period. The concept of local Government must be clear. Local Government is understood to be that part of the country which by delegation from a federal or Central Government is conducted by bodies (o conduct it within the specified areas. The examples of these are Parishes, Boroughs, local Government, district, country boroughs and counties. These are the generalities. Now the Court has to see the reference which are to be found in the Constitution of India. There are twp expressions, "Local Government" and "local self .Government". Both the expression have been mentioned in the Constitution of India. Lis II-- the State lit Entry 5 reads:--

"5. Local Government that is to say the Constitution and powers of municipal corporations, improvement trusts, district Boards, mining settlement authorities and other local authorities for the purposes of local self Government or village administration."

45. The Constitution itself, then outlines by reference to (a) existence of local Government and (b) what local Government is. The existence of local Government has been part of the skeleton on which democracy is to be based under the Constitution. Then local Governments would be entitled in themselves, that is to say, corporate personalities. The Constitution goes further by explaining that local Government would in fact be local self Government. The phrase in Entry 5 reads : "For the purposes of local self Government or the village administration."

46. This entry is self explanatory. One need not go into any other external side to extract the meaning of local Government. The interpretation of this entry is that there shall be a local Government but it will be constituted as local self Government. This simply descends to mean that there will be Government of the people, by the people and for the people, but not a corporate entity run by those

who are not the people. The entry in the Constitution of India has been extracted out of the Government of India Act-- 1935. The Constitution of local Government as local self Government is, thus, explained in continuity for the last half century to permit local Government to exist as local self Government. To see it otherwise does not reconcile with the Constitution.

47. The process which degrades local self Government to local Government is hostile to the text of the Constitution and is arbitrary to the core, as it is laying down the foundation for the destruction of parliamentary Government which cannot exist except for its roots in local self Government.

48. There can be no doubt that Boards, local bodies or local Government in India was to have participation of the people. Elected representatives were to mean local Government, otherwise there would be no difference between the imperial power which would formulate a federal Government but prevent participation at the grass root level.

49. It is said that in a parliamentary democracy citizen had to file petitions in the High Court for the restoration of local self Government and reconstituting the municipalities or the local bodies with its elected representatives, as it is meant to be and it is even sadder, that on behalf of the Government the matter has been defended with much belligerence with the arguments to the effect that supersession of the local bodies removing the elected representatives is beyond judicial scrutiny.

50. Now comes the question of the credibility of the laws which arrange a State of affairs by which civic elections to the local bodies remain suspended year by year so" that the parliamentary democracy under the Constitution of India must operate in a vacuum without its grass roots in local self Government. The power to negate local self Government is not available to any State legislature or even to the federal parliament. Entry 5 in list 2, the State List, as it reads, does not lend itself to an interpretation that the law must be passed otherwise than for the purposes of local self Government. There is much" relevance in the phrase "for the purpose of local self Government." The implication; clearly, is that any law which will be passed in reference to local self Government will not have the effect of (a) retarding local self Government and (b) would be in keeping with the purposes of local self Government. Supersession of local self Government is not for the purposes of local self Government but to curtail it.

51. The exercise of a civic right and to have a say in its affairs through democratically elected representatives is keeping with a fundamental right of every citizen to have equality before laws and to form associations or unions. The Constitution as a whole guarantee citizens the rights of citizens. There is more to being a citizen than nationalism. Civic sense is the first principles which makes a citizen Act with orderliness.

51A. Thus the history of local self Government does not support the argument of the State that supersession of local bodies and making them function through

the agency of civic servants without elected representatives as a corporate soul, is appropriate. It neither blends with history nor represents progress of local self Government, nor can it be sustained under the law.

52. Care taker Governments, whether federal, State or local Government, do not come to stay. There needs to be an enquiry, by a very high powered commission to find out the cause and the effect why local self Government did not function for almost two decades in this State; in some municipalities and corporations it was more than that. Supersession of local self Government and elected representatives is virtually an indictment of democracy- that it has failed. If people lose the experience of participating in a democracy and each citizens' participation on his home ground and at his own level, is taken away the experience of sharing democracy is lost among the masses. It is an illusion that there is democracy, when there may not be the totality of it, though the Constitution expects it.

53. Let no executive, without grass root elected representation, say that the democratic method had failed. If these elected representatives are not permitted to function, then within the area of each Panchayat, Town Area Committee, Zila Parishad, Municipality and Corporation, there will be people who will represent vested interests. They will form caucuses of power who will under a camouflage declare that they function for the people and for weaker sections, but will usurp power to their personal advantage and have vested interests in the implementation of planning for which there is no answer-ability to the people. The functioning of local bodies today with elected representatives will have a lot to do with equality in economic affairs. There are rate payers in the local bodies who are entitled to project their views and have a right to participate in local planning. Then there are others who are socially, economically and by education backward and their needs and participation must not be forgotten. The failure of local self Government will find a loser in people who have no experience with the system permits participation in democracy from village panchayat till the federal parliament. Those who were not permitted to function at all levels, may succumb to dictatorship of the proletariat, without a revolution with a purpose, into an anarchy.

54. The relevant question has yet to be answered. The entire debate has taken place, before this Court on the aspect, which is the malaise which causes supersession or the destruction of local self Government, and that also over the entire State? The mischief has been caused by more than one enactment. These are: The Uttar Pradesh Mahapalika (Alpkalik Vyvastha) Adhiniyam, 1966 (U.P. Act No. IV of 1966) and the Uttar Pradesh, Municipalities, Notified areas and Town areas (Alpkalik Vyvastha) Adhiniyam, 1977, and the temporary provisions in the U.P. Municipalities Act, 1916 being S. 10AA and the U.P. Nagar Mahapalika Adhiniyam, 1959 being S. 8A. The State of U.P. was put under notice on these enactments to seize the opportunity to sustain the legislations as compatible to the scheme of the Constitution of India, failing which the Court would declare

them ultra vires to the intent of the Constitution of India, and the subversive to parliamentary democracy. The defence of the State was offered through the learned Advocate-General, U.P. Mr. Shanti Swaroop Bhatnagar, Senior Advocate.

55. The learned Advocate General, U. P. propounded his arguments, innovative as they were, with much case laws to submit that there are two types of corporations. Corporations were explained as synonymous to corporate personalities by legal fiction, whether companies, Joint Stock Companies or species of municipal bodies. The latter are under discussion. Learned Advocate General, U. P. explained that the law permits the existence of corporations with elected representatives as opposed to "corporations --sole". He explained "corporation-sole" to mean the continuation of the corporate personality of corporations, and carrying out its functions with all its intents and purposes. Legally, he submitted, the existence of corporations was not in jeopardy and they would continue to exist. The internal working or the pattern of the local bodies as constituted and functioning under the administrators in the absence of elected representatives. It was contended, were beyond judicial scrutiny. The power of the State Government in removing the corporators or municipal councillors, without disturbing the corporate existence of municipal corporations, is discretion with which this Court ought not to interfere.

56. There is a difference between a State government and the State. A power which the State may not have cannot be cloaked upon a State government. The State shall function within the framework of the Constitution of India. Local self Government is the arches upon which parliamentary democracy in this nation rests and upon it a dome with State legislatures and the federal parliament. The structure will collapse without the arches. Even the legislature ought not to and cannot legislate to kill local self government, that it may is another matter. It may provide for interim arrangements but within the enactment which creates local self governments, and this period cannot and may not be any longer than the duration within which the legislatures adjourn either for another session or convene afresh with the electoral mandate of the people. The pattern of local bodies without elected members cannot be any different.

57. The argument on behalf of the State to justify a situation that the law permits the existence of corporate body, known as "corporate sole" as well as an elected body to justify the supersession does not answer the question on the concept of democracy. Justifying a state of affairs in one aspect of the matter, that it could be successfully explained under the Constitution of India is another aspect. The argument of existence of a corporate sole is technical concept of local government not local self government.

58. The State, the declaration in the Constitution of India, says will encourage local self government. A Government cannot curtail the continuity of these working institutions. A law to this effect will be repugnant to the intent of the Constitution. But in the State of Uttar Pradesh there was a rule by Ordinance which safely locked up the self government in local bodies year by year and

decade upon decade, until a generation grew up without experience of local self government, otherwise democracy outside one's door. This was rule by decree. The vacuum was polluted with vested interest, power brokers and political petty touts, who declared that they ran administrations in villages, town areas, municipalities and city corporations. Two decades of experience in local self government was denied and lost. And, when the elections did come after this lost experience, it reveals that the elected representatives to such local bodies have yet to realise their sense of purpose and find their bearing to do what they are expected to, but are not. The bureaucracy which ran these bodies without the elected personnel to constitute them, is slow to let go the reins as if there has yet to be a transfer of power after the Transfer of Power. The touts and the power brokers who roamed the offices of the local bodies still flex their muscles in hand with the bureaucracy which means these local bodies, And there is yet another feature which is so noticeable after the elections to the local bodies. Those who have been returned as elected members of the Town Area Committees, Municipal Councillors or Corporators are also under an illusion of a misplaced power which according to them is democracy. Anything such a majority says, according to them, must be democracy. Thus, they resolve not to pay local taxes, encourage rate payers not to pay rates, violate planning and zoning laws, all in the name of democracy and rule by majority. This is anarchy by majority. Even a majority has to function in its local area context according to local laws and regulations.

59. When the concept of local self government, is eroded, even the municipal councillors elected after the last local bodies election have misplaced priorities in politics, their interests are elsewhere than invested to improvement of city and civic life. They need to be reminded on what the functions of a municipal councillor are. Mahatma Gandhi was active and totally involved with municipal junctions, as even otherwise the Gujarat of his times contributed to the development of municipal administration with local self government. Peoples' participation begins with elections to local bodies. Local self government will signify nothing if municipal councillors will not discharge their obligations. What are their obligations? Mahatma Gandhi reflected on this aspect in his writings as thus:

"I consider myself a lover of municipal life. I think that it is a rare privilege for a person to find himself in the position of a municipal councillor but let me note down for you as a man with some experience in public life that one indispensable condition of that privilege is that the municipal councillors dare not approach their office from interested or selfish motives. They must approach their sacred task in a spirit of service. They should pride themselves upon calling themselves scavengers. There is a significant expression for municipal corporation in my other tongue -- Kachrapatti, which means literally scavenging department, and a municipality is nothing if it is not a premier scavenging department embracing all spheres of public and social life of a city and if it is not saturated with the spirit of scavenging, scavenging not merely by way of looking after the physical sanitation of a city, but also the internal sanitation of its citizens.

"If I were a taxpayer within the jurisdiction of a local board or a municipality, I would refuse to pay a single pic by way of additional taxation and advise others to do likewise unless the money we pay is returned fourfold. These who enter local boards and municipalities as representatives go there not to seek honour or to indulge in mutual rivalries, but to render a service of love and that does not depend upon money. Ours is a pauper country. If our municipal councillors are imbued with a real spirit of service, they will convert themselves into unpaid sweepers, bhangis and road-makers, and take pride in doing so. They will invite their fellow councillors, who may not have come on the Congress ticket, to join them and if they have faith in themselves and their mission, their example will not fail to evoke response. This means that a municipal councillor has to be a wholetimer. He should have no axe of his own to grind. The next step would be to map out the entire adult population within the jurisdiction of the municipality or the local board. All should be asked to make their contribution to municipal activities. A regular register should be maintained. Those who are too poor to make any money contribution but are able-bodied and physically fit can be asked to give their free labour.

60. Logically this leads, to another aspect conveniently suppressed by vested interests in those who speak against municipal elections and others returned to constitute a Board as councillors after elections. This is the right of question ultra vires act of a Municipal Board. The issue is of locus standi. Any citizen, whether a rate payer or not, has the inherent right in a democracy to question the ultra vires action whether of a Municipality or its" Councillors. To gag this right to speak is fascism.

61. In India the laws which regulate or govern local self government have the odour of colonialism and as long as this continues there will be dents in permitting local government to function only with people's participation. There will be excesses both ways. There will be interference by the State Government in the name of the State in local affairs. Likewise, elected representatives not having had the experience of obligations of working within the constraints of democracy within the framework and rule of law, will flex their muscles to project an image that what they say is local law. Recently, world opinion in journals has shown concern over a "functional anarchy" in India despite freedom of the press.

62. Legislation to project grass root democracy into functional, responsible local self government, oriented to the local conditions, without inhibitions of colonial rule, is either to be brought uptodate or overhauled with more emphasis on the obligations of citizens in the local area as well as obligations of elected Municipal Councillors so that they are answerable to the people. Too many rights are being claimed to violate laws in functioning of local bodies and there seems to be purposeless representation of elected representatives on local bodies, discharging no obligation in the sphere of their representation except projecting their image into every sphere of politics outside their local areas and using and abusing their positions in State and Central Politics.

63. This phenomena are the price which the people of India are paying for losing the experience of having local self government for a long duration as a consequence of a centripetal force in State politics manoeuvring to put a shroud on peoples' right to involvement and participation in local government.

64. When freedom is being lost, it is rarely noticed when it is arranged to be lost. Politicians cry freedom in the name of the people. Simultaneously they arrange to erode freedom at the very ground level where it is supposed to operate first. What happened in Uttar Pradesh is living example of a freedom, negating freedom. While it was being done no one noticed it, only to realise almost a decade later that local self government has disappeared. They only venue to voice this obligation was the freedom to say so before the High Court by these writ petitions. Why could not this debate take place on the floor of the legislature?

65. The Constitution of India constantly gives confidence to the citizens of our republic that the State will not be permitted to use its powers perpetuating government rule by ordinances. In our republic millions are illiterate and yet there are millions of others who will not be able to place faith in the guarantees and obligations spelled out in the Constitution. Platitudinous debates on the goodness of democracy are worthless unless there is a will and an institutional and collective effort to preserve it at it's lowest level, not at New Delhi and Lucknow, alone. Otherwise, in such a pattern of democracy, such democracy has its ills. It is the anarchy of the politics. But this shatters one's illusion that these whose job it is to see that people's civic right, basic to permitting democracy to function at the very base level, arranged to erode at that level. Local self government was blasted by ordinances and other legislation enacted and perpetuated by people in politics, with the bureaucracy enjoining this game and having the last laugh. For every municipality or corporation which was superseded bureaucrats ran it, not the people. Hitlers, Mussol-linis, Francos and Yahya Khans are always waiting behind the curtain to make their appearances, if they get a chance to rule by ordinance. This court cautions that parliamentary democracy will be endangered if it is to continue only with the Lok Sabha and Raj Sabha in New Delhi and Vidhan.Sabha and Vidhan Parishad in the State capitals. Such apprehensions of converting a parliamentary democracy into government by decree have been the subject matter of serious discussion by academics, concerned in preservation of that simple but misunderstood expression, the rule of law. One discussion on this very aspect on how liberty in democracy can be lost without one experiencing it while it is happening has engaged the attention of Professor C. K. Allen in the foreword to a book, Government by decree.

"Government by Decree had reached its logical conclusion. Here, surely, is a lesson which no country, however confident of its traditions of liberty, can afford to ignore. Our own rulers today have taken powers which at any moment could be turned into naked. Government by Decree. We are constantly assured that there is no danger, because the Government has no intention of using its powers to the full, nor, indeed has it done so. But no man can guarantee what his

successors may do..... Let us assume, as surely we may assume, that in England the terms justice and liberty have not yet lost their savour. Let us even assume, if we can persuade ourselves to do, that the vast extension of executive powers which we witness today is justifiable and unavoidable. The immediate question is, what is to be done to prevent their degenerating into forms of absolutism which the great majority of Englishmen still reject and detest? There is to my mind, no escaping the alternatives which Mrs. Sicghart presents, of Government by Decree on the one hand, and, on the other, an immediate restoration of some reasonable balance of powers. The first and most imperative safeguard which she urges is the re-establishment of judicial control over administrative action. In saying that "no liberty is secure without a court to uphold it", Mrs. Sicghart utters a simple truth which is confirmed by a thousand years of English history. If we let slip that principle as we seem rapidly to be doing, then something very strange has happened to our national character and the alternative which confronts us should be plain to every reader of this volume.

Rodes House C. K. Alien Oxford. May, 1949.

66. The Court also cannot help but notice that the trend of the times seems to be more and more towards people's direct involvement in governments in all part of the world. The recent failure of an attempted coup in the U.S.S.R. only goes to show that even in that State the swing towards dramatic involvement is so great that citizens will not tolerate any abridgement of their right to elect their own governments (local self government not excluded) even on the excuse of order and economic efficiency or purportedly to cope with a crisis situation or cope with anarchy.

67. The court is constrained to make these observations to highlight the harm occasioned by these laws which superseded local self government. So much so that even when elections to local bodies have been held, the experience lost in the past has not sided the functioning of parliamentary democracy. This loss of experience has affected the quality of civic life, civic culture and civic obligations. This loss of experience in two decades will take half a century to rectify. It must never happen again. "Democracy ap-pears in its best Sunday suit when there is complete freedom of expression by the voting citizens at the local level. Municipal elections, therefore, arc of paramount importance in the proper functioning of the democratic process."

68. What caused all this are the legislations which threw local self government out, As referred to above, these are :

(a) U.P. Municipalities, Notified area and Town areas (Alpkalik Vyvastha) Adhiniyam 1977 (U.P. Act No. 13 of 1977)

(b) U.P. Nagar Mahapalika (Alpkalik Vyvastha) Adhiniyam 1966 (U.P. Act (No. IV of 1966)

69. These enactments were amended from time to time by ordinances when the

legislature in U.P. was not in session. These two legislations played havoc, one for 24 years and the other 13 years to achieve the object for which they were enacted, in short, to arrange for the elected representatives to vacate their respective offices.

70. This court would have consigned all the writ petitions to the record once the elections had been held in the year 1990 by passing a simple order that the writ petitions have become infructuous, But, the court would have failed in its duty if it did not notice the experience and the danger which has set in in losing the experience of democracy in local self government. All that was steadily being gained with local self government functioning after the enactment of U.P. Municipalities Act in 1916, was lost by these two inimagina-tive legislations which go against the grain of the Constitution. Whereas today this state would have been richer by the experience of self government in local bodies, the experiment has to start all over again as if the beginning has again to be made in it by putting the clock back almost to the turn of the century. Both these legislations are particularly offensive to the spirit of the democracy and this court declares them as ultra vires to the Constitution.

71. This Court would have noticed the legislative onslaught in detail by reproducing it. But this exercise of issue of ordinances lias been noticed in detail by a Bench of the Allahabad High Court in the matter of Sita Ram Dwivedi v. State of Uttar Pradesh 1988 UPLBEC 371. This was a writ petition which was seeking a mandamus against the State of Uttar Pradesh for holding elections to local bodies. The writ petition was decided on 14 May, 1987. A mandamus was issued, in effect, directing the State of Uttar Pradesh to hold election to constitute the Mahapalikas. It took the State Government two years to comply with the mandamus. The habitual exercise of issuing ordinances to keep self government by local bodies at bay lias been commented upon by the Bench, which was deciding the matter of Sita Ram Dwivedi v. State of Uttar Pradesh (supra). Thus, this aspect is not being repealed by this Court. The ordinances were rolled off virtually year by year by promulgation attributing to them state action to repeatedly and continue to supersede local self government.

72. Unfortunately the ordinances so promulgated became acts of the State Legislature to attain finality by legislative intent to massacre self government and local bodies. When two ordinances were being promulgated repeatedly and in continuity to gag local self government the situation was bad as the power to promulgate an ordinance is to be utilised rarely to meet emergencies, when the legislature is not in session. The repeated use of such a power in the same sphere and subject, has semblance of raj by ordinance. This rule by ordinance has been criticised by the Supreme Court in the matter of Dr D.C. Wadhwa and Others Vs. State of Bihar and Others, .

73. When the same ordinance gets a seal to become an Act of legislature and, if such legislative power, by ordinance or Act, becomes a subject matter of controversy whether it is in harmony with the Constitution of India or not, it is

the business of the High Court to inquire into the parameters of the legislative powers in a particular sphere.

74. The equality clause under the Constitution will test acts of legislature also on the anvil of reasonableness so that the laws are consistent with the spirit of the Constitution. Equality may not be understood in isolation to mean discrimination between two individuals. Equality is a phenomena which implies keeping at bay arbitrariness to retain a balance for working institutions under the Constitution to survive. Equality will have to be seen as an opportunity, within the constraints of the constitution to retain the freedom to democratic institutions. In the matters before this court closing the doors on local self government would amount to arbitrariness resulting in inequality, as the Supreme Court has observed, "Both according to political logic and constitutional law and is therefore violative of Art. 14." How arbitrariness breeds inequality by violating the concept of equality under the constitution has been noticed by the Supreme Court in the matter of *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, . The Supreme Court was reiterating its views in the matter of *E.P. Royappa Vs. State of Tamil Nadu and Another*, . The Supreme Court observed (at p. 498 of AIR):

"The basic principle which therefore un-forms both Arts. 14 and 16 is equality and inhibition against discrimination. Now what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose, J. "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art. 14, and if it affects any matter relating to public employment, it is also violative of Art. 16. Arts. 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment."

75. Legislation must be reasonable. The Supreme Court expressed, in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, . It further observed, ".....Art. 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non arbitrariness pervades Art. 14 like a brooding omnipresence."

76. Then in this context, the Supreme Court was also reflecting on a situation when what may be a legislation as a temporary measure in a given situation may become discriminatory and arbitrary if the temporary phase begins to assume a pattern of permanency without justification. In the matter of *Motor General*

Traders v. State of Andhra Pradesh AIR 1984 SC 121 the Supreme Court said, "What may be unobjectionable as a transitional or temporary measure at an initial stage can still become discriminatory and hence violative of Art. 14 of the Constitution if it is persisted in over a long period without any justification."

77. These principles will apply squarely in the context of present set of cases. The legislation which played the mischief to virtually put a lid on local self government was for a temporary purpose, but used and abused too long. The name of the enactment itself suggests temporariness "Alpkalik Vyavastha". Between the two legislative enactments under consideration and Section 10AA and 8A, the vicious circle to erode local self government was complete.

78. The powers under legislation to supersede local self government temporarily was used repeatedly and too frequently, with the result that what was supposed to be interim was becoming virtually permanent and an arbitrary exercise of power by succeeding State governments. This gave rise to one startling emptiness and blank in the 9 representation in local self government in the constitution of the legislative council by Art. 171 of the Constitution of India. Art. 171 provides the manner in which the legislative council of a State shall be constituted. There are five sources. The relevant text of Art. 171 of the Constitution is as follows:

Composition of Legislative Councils, "171. (1) The total number of members in the Legislative Council of a State having such a Council shall not exceed (one third) of the total number of members in the Legislative Assembly of that State :

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3).

(3) Of the total number of members of the Legislative Council of a State -

(a) as nearly as may be, onethird shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;

(b) to (e).....

(4) & (5):.....

79. What has happened in Uttar Pradesh is logical. In the absence of local self government the void in the legislative council in the legislature has continued all these years. Such members of the legislative council who were to represent the local self government never took their seats for the simple reason that there was no local self government as it was eradicated by a legislative process. The Constitution of India does not permit this.

80. These two enactments in question blended along with additional powers

provided the State Government an excuse to Administrator local Bodies without elected representative. This void had a disastrous effect in preventing the maturing of local self government in the State of Uttar Pradesh. This Court has already observed that the period within which a local body may be without elected representatives ought not to be more than when the State legislatures and the Parliament are without their elected representatives. It is not for the court to spell out the formula if healthy conventions were not permitted to bloom local self government into a workable, sophisticated perfection. This is the result of prolonged suppression and denial of self government to the people. The restraint should be to prevent a methodology which erodes local self government and makes its disappearance difficult; the like of which happened in Uttar Pradesh. U.P. Municipalities Act 1916 and the Uttar Pradesh Nagar Mahapalika Adhiniyam 1959 by S. 10AA and S. 8A, respectively is not an aid in step for the purposes of local self government. Local government means self government through elected representatives, an aspect already dealt by this court in detail. Between the two enactments, aforesaid, and the subsequent legislations which brought about amendment to the two Acts by which local bodies, in context, may function as a contradiction to local self government, democracy is in danger in the hands of a vocational politician and a political bureaucrat. The Constitution of India does not encourage an antithesis to local self government and the legislative list lends itself to an interpretation that local self government should move forward in becoming articulate with functional utility and continue to move forward by experience to function in decentralisation.

81. In these circumstances the two legislations, namely, Uttar Pradesh, Nagar Mahapalika (Alpkaik Vyavastha) Adhiniyam. 1966, U.P. Act No. 14 of 1966 and the Uttar Pradesh Municipalities, Notified Area and Town Area (Alpkaik Vyavastha) Adhiniyam 1977, S. 10AA of the U.P. Municipalities Act 1916 and S. 8A of the Uttar Pradesh Nagar Mahapalika Adhiniyam 1959 are retrograde legislations which permit the local self government to function under fear with attributes of arbitrariness and not compatible with the fabric of the Constitution of India to perpetuate local self government in continuity and not in tune with a parliamentary democracy from top to bottom.

82. There were several writ petitions upon which arguments were addressed. On these writ petitions, the theme of submissions was the denial of local self government and the cause of the illness which made it happen. This court has heard only this aspect and given its judgment on it. The reliefs sought in the various writ petitions are varied. While certain petitions confine themselves to the ultra vires aspects of the legislation which thwart local self government, there are writ petitions seeking mandamus to the State of Uttar Pradesh for elections to local bodies. In the first set are writ petitions Nos. 18676 of 1986, 19252 of 1986, 18472 of 1986, 3300 of 1987 and 1040 of 1988. In the second set are the Writ Petitions Nos. 1075 of 1986, 18414 of 1986, 19101 of 1986, 513 of 1987, 1979 of 1987, 4357 of 1987, 506 of 1988 and 1557 of 1988. The elections have been held and on the experience of self government in local government lost,

this court was reflecting on the situation. These writ petitions stand decided by this judgment and succeed.

83. Then there are writ petitions which challenge the action of local bodies to impose fresh taxes or enhance taxes and rates, on the ground that taxation can only be justified by representation of peoples' representatives on local bodies; These are Writ Petitions Nos. 897 of 1986 and 1384 of 1987. The principle is correct. So was the occasion to complain when local bodies continued without representation. But, local bodies must also survive on their revenues also in keeping with the theme of decentralisation of power. That citizens shall not pay rates or taxes at all to local bodies is an extreme argument, in generality. The principle under the Constitution of India is to the effect that no tax shall be levied or collected except by authority of law. This aspect of local taxation will have to be an indepth examination of a specific case and in the circumstances that now that elections to local bodies have been held, the context of the writ petitions will change. The grievance of an alleged unjust tax inconsistent with Art. 265 of the Constitution of India, will, this court is afraid, have to be considered in the changed and new context of local self government today, after the elections, by a fresh cause of action. But, let it not be misunderstood that like an ordinance must be sent to the legislature if it is to survive its content, likewise taxation without mandate may give an occasion to be questioned.

84. The writ petitions succeed in receiving a declaration that the Uttar Pradesh Municipalities, Notified Area and Town Areas (Alpkaiik Vyavastha) Adhiniyam 1977, U.P. Act No. 13 of 1977, the Uttar Pradesh Mahapalika (Alpkaiik Vyvastha), Adhiniyam 1966, U.P. Act No. 4 of 1966, S. 10AA of the Municipalities Act 1916, U.P. Act No. 2 of 1916 and S. 8A of U.P. Nagar Mahapalika Adhiniyam 1959, U.P. Act No. 2 of 1959 are declared as ultra vires the Constitution of India and repugnant to the spirit of local self government.

85. Costs to be borne by parties.

86. Petition allowed.