

(1979) 07 OHC CK 0007

In the Orissa High Court

Case No : Original Jurisdiction Case No. 913 of 1979

Ashirbad Behera

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 20-07-1979

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Municipal Act, 1950 — Section 398, 398(1), 398(2), 69, 69(1)
Orissa Municipal Rules, 1953 — Rule 15, 16, 17, 18, 19

Citation : AIR 1980 Ori 79 : (1979) 48 CLT 333

Hon'ble Judges : R.N. Misra, J;P.K. Mohanti, J

Bench : Division Bench

Advocate : G. Rath, R.K. Rath and N.C. Panigrahi, for the Appellant; A.G., S. Misra-1, S.C. Misra, R. Mohanty, Ashok Mukherjee, S.C. Lal and A.K.J. Mahapatra, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—Petitioner is a sitting Councillor of the Cuttack Municipality. Challenge in this application under Article 226 of the Constitution is to Government order dated 23rd of June, 1979 (Annexure-4), purported to have been made in exercise of powers u/s 398 (1) of the Orissa Municipal Act of 1950, cancelling a resolution of the Municipal Council of Cuttack dated 2nd of April, 1979,

2. Election was held on 31st of January, 1979, for the 28 seats of Councillors and the Chairman of the Council. Petitioner was elected from Ward No. 2 while 27 others were elected from the different wards. Opposite Party No. 3 was elected as Chairman of the Municipality by direct franchise under the amended provisions of the Act. The Council assumed office with effect from 23rd of February, 1979. At the Meeting of the Council held on 2nd of April, 1979, one of the items in the Agenda was to authorise the Chairman to sanction expenditure up to Rs. 50,000/- at a time for the smooth working of the various works of the

Municipality. There was an official note circulated for justifying such action. From the minutes of the meeting, it appears that all the 28 Councillors were present. When consideration of item No. 4 of the agenda came, dispute arose as to the manner of voting and a protest was raised that voting by show of hands should be adopted. The Chairman ruled that voting should be by ballot. Thereafter votes were taken by ballot; all the 28 Councillors participated and the result was 14 in favour of the proposal and 14 against. The Chairman exercised his casting vote in favour of the proposal and declared that by a majority of votes, the proposal was carried.

The State Government in the Urban Development Department issued a notice on 21st of May, 1979 (Annexure-1) to the Chairman of the Council to show cause within fifteen days from the date of receipt of the notice as to why the resolution in question should not be cancelled. The Executive Officer of the Municipality and the Chairman differently showed cause vide Annexures 2 and 3 respectively. While the Executive Officer pointed out that the Act and its Rules had been strictly followed and there was no lapse justifying cancellation by the State Government, the Chairman indicated that for the meeting of 31st March, 1979, the question of delegation of financial power to the Chairman was an official item on the agenda. The meeting was adjourned to 2nd April, 1979, and the matter was put to secret vote. After the voting result was 14 in favour and 14 against, the Chairman who was President of the meeting gave his casting vote in favour of the official item. It was, therefore, pointed out that the official item had been passed in conformity with Section 69 (1) of the Municipal Act. Thereafter the impugned order was made which for convenience, we extract in its entirety:

"GOVERNMENT OF ORISSA,

URBAN DEVELOPMENT

DEPARTMENT

ORDER

Dated, Bhubaneswar the 23rd June, 79. No. CR-45/79-20671/UD. WHEREAS the Municipal Council of the Cuttack Municipality, in its Council resolution No. 4 dated the 2nd April, 1979, has delegated its financial powers of expenditure up to a sum of Rs. 50,000 (Rupees fifty thousand) only to its Chairman in contravention of the provisions of Section 69 of the Orissa Municipal Act, 1950 (Orissa Act 23 of 1950) read with Rules 23 and 24 of the Orissa Municipal Rules, 1953;

AND WHEREAS in pursuance to the provisions of Sub-section (2) of Section 398 of the said Act, the State Government had given an opportunity to the said Council to show cause within fifteen days as to why the said resolution of the said Council should not be cancelled and whereas after considering the explanation furnished by the said Council, the State Govt find it to be not satisfactory and, in their opinion the said resolution of the said Council has not been legally passed;

NOW, THEREFORE, in exercise of the powers conferred by Sub-section (1) of Section 398 of the said Act, the State Government do hereby cancel the said resolution of the said Municipal Council with effect from the date of issue of this order.

By Order of the Governor

P. C. Hota,

SECRETARY TO GOVERNMENT."

Challenge is offered to this order by contending that the Government order is based on wholly untenable footing and has been the outcome of irrelevant considerations.

3. When this application was placed for preliminary hearing, learned Advocate-General entered appearance for the State and wanted that he should be heard in case we were inclined to grant stay of operation of the order as prayed for by the petitioner. We were not inclined to grant any interim order and on the other hand considering both the urgency as also the importance of the matter and as suggested by Counsel for all parties, we agreed that the application itself may be taken up for hearing on immediate notice to the other opposite parties. On the 6th of July, 1979, an application was made on behalf of 15 Councillors for leave to intervene. That was allowed as there was no opposition. The interveners filed a counter affidavit disclosing their stand. The State has also filed its counter. The Municipal Council entered appearance through Chairman and the Chairman himself as opposite party No. 3 separately appeared through a different counsel. The matter was taken up for hearing on 7th July, 1979, when the interveners pointed out by filing an application that the Municipal Council had not been duly represented, inasmuch as it had been impleaded through the Chairman and the Chairman besides appearing for himself had also entered appearance for the Council. Learned Advocate General supported this stand of the interveners while the petitioner and opposite party No. 3 as also the Counsel appearing for the opposite party No. 2 Council took the stand that there was no bar for the Chairman to represent the Council and the Council having already been served with notice from Court had duly entered appearance through its retained counsel and no objection could be taken to it. We shall deal with this objection in due course.

4. The return made on behalf of the State Government is through the Secretary of the Urban Development Department. Copious extracts have been given from the minutes of the meeting of the Council. In paragraph 15 of the counter-affidavit, it has been averred:--

".....On the other hand, the impugned order of this opposite party has enforced (sic.) contravened the provisions of the Act and prevented (sic.) facilitated possible abuse of powers and misuse of funds, It is always open to the Municipal Council to sanction expenditure by passing a resolution in accordance

with the prescribed method of casting of votes by raising of hands. This opposite party states that it is not for the public interest and it is not in the interest of the citizens of the Municipality that the affairs of the Municipality should be managed in a hush-up manner in a secret voting, particularly when funds to the tune of about two and half crores raised from tax payers and otherwise available to it are at the disposal of the Municipal Council for expenditure. It is fair and democratic that the tax payers and the citizens of Cuttack know how their representatives are functioning in the discharge of their duties. Secrecy in the matter of casting of votes for management of affairs of the Municipality and more particularly, for delegating unlimited financial powers to the Chairman are a negation of democratic principle which is enshrined to the provisions of the Act and the Rules, The averments that the Chairman has been denuded of his power by the order of this opposite party are denied and are not true. Since the resolution delegating powers in favour of the Chairman was not in accordance with the provisions of the Act and the Rules and since such resolution was passed by secret voting, the resolution was a nullity in the eye of law.....

Assuming though not conceding that the question raised as to the manner of voting is debatable nothing prevents a Municipal Council and its Chairman to get appropriate Resolution passed delegating financial powers to the Chairman through the process of voting by raising of hands, This opposite party submits that on a broader point of view it is difficult to understand the reluctance of the Chairman to get proposal conferring financial powers on him put to vote through the process of casting of votes by way of raising of hands. The Municipal Council deals with public funds. Primarily for the convenience of functioning and management, the Municipal Council is to authorise expenditure from such funds and therefore, the Act authorises delegation of power in favour of the Chairman or the Executive Officer. One cannot conceive of any just and fair democratic principle which would Justify the delegation of such power by secret votes." In paragraph 18, it has been further pleaded :--".....When a proposal is moved/proposed it becomes a motion, When a motion is passed by the Municipal Council, it becomes a Resolution, A Council can act only through Resolution, Thus the proposal moved by the Chairman to delegate financial power up to Rupees 50,000/- to the Chairman was a motion in terms of Rule 43 of the Rules.The expression motion in Rule 43 is wide in connotation comprehending within itself any motion before the Council, The motion under Rule 43 may be moved by a Council or by the Chairman.Thus Rule 43 is an express negation of secret voting. It is submitted that Rule 43 is mandatory....."

Reference was made to Chapter-I of the Municipal Rules dealing with "Rules of Business" and reliance was placed on Rule 23 of the Orissa Municipal Rules, where it has been expressly provided that voting in respect of motions should be by show of hands.

5. On behalf of the Interveners, one Sri Pravat Kumar Tripathy, a Councillor, filed

the counter-affidavit. Besides adopting the stand taken by opposite party No. 1, the interveners have taken the further stand that the selection of works rested with the Council and though the Council has not selected or sanctioned any work, the Chairman by assuming authority has undertaken hundreds of new works involving huge expenditure. In fact, to the counter affidavit, a list of such works has been appended as Annexure-A/1 and it has been stated that at a press conference, the Chairman had handed out this list of works. It has been alleged that if the authorisation is worked out, the entire assets of the Council would soon be depleted without the sanction of the Councillors.

The Under-Secretary to the Government in the Urban Development Department filed a supplementary affidavit supporting the stand of the State.

6. The Chairman filed an answer to the counter-affidavit of the interveners. On behalf of the Council a brief affidavit has also been filed. Several documents have been produced by the different parties by covering affidavits.

7. Parties have been given a thorough hearing. On the basis of what has been pleaded in the writ application and the several counter-affidavits and rejoinders and what has been argued before us, the following questions emerge for consideration;--

- (i) Is the Council properly represented?
- (ii) Has the petitioner any locus standi to maintain the application?
- (iii) Was the impugned resolution duly passed?
- (iv) Even if the application lies, relief by way of certiorari being discretionary, should the same be granted in the facts and circumstances of the case?
- (v) Is the action of the State Government in accordance with law?
- (vi) Is the Government order under Annexure-4 liable to be quashed?

8. We proceed to examine the preliminary questions. u/s 8 of the Act, the Chairman and the Councillors together constitute the Council and Section 9 makes provision for incorporation of the Municipal Council into a body corporate and authorises that it may sue and be sued in its corporate name. There is, however, no provision as found in several statutes, either in the Act or the Rules made thereunder as to who would be competent to represent the Municipality. A close look at the Act gives a clear impression that the Chairman is the chief executive. The Act contemplates of an Executive Officer who is a paid employee. Sections 87 and 88 make provision for his powers. In the absence of a provision that the Executive Officer is to represent the Municipality, we are not in a position to concur with the contention of the interveners as supported by the learned Advocate General that the Municipality should be represented only by the Executive Officer.

9. Petitioner has impleaded the Municipality in this writ application as opposite

party No. 2 through its Chairman. As we find, the State Government had also issued the notice under Annexures 1 and 4 to the Municipal Council through the Chairman. Section 398 (2) requires that the authority or person concerned has to be provided an opportunity of explanation before power under subsection (1) of that section can be exercised. The notice intended for the Municipal Council was served on the Chairman. Petitioner has followed the same procedure. In our opinion, therefore, im-pleading the Municipality through its Chairman is not open to challenge. The Municipal Council has from before two retained counsel and one of them being Mr. Srinivas Misra-I has entered appearance for the Municipal Council. We are, therefore, of the view that the Municipality has been duly represented by the Chairman and representation in Court through Mr. Misra is not open to challenge.

10. The next question for consideration is as to whether the petitioner has locus standi to make this application. The learned Advocate General who raised this objection placed reliance on two Bench decisions of this Court in support of his stand. In the case of Kasinath Tripathy and Another Vs. State of Orissa and Others, a preliminary objection was raised on the ground of petitioner's locus standi. It is necessary to briefly state the facts in order to appreciate in what background the preliminary objection came to be raised. Petitioners before this Court in that case were two rate-payers residing within the Rambha Notified Area Council. Opposite party No. 3 had been appointed as Head Clerk of the Council. In a disciplinary proceeding, he was discharged from service. An appeal was carried by the discharged employee u/s 77 of the Municipal Act to the State Govt. and Govt. allowed the appeal and directed reinstatement. During the pendency of the appeal, the post of Head Clerk had been abolished and subsequent to the appellate order, the Executive Officer having asked for clarification in the light of the abolition, Government directed that the appellate order must be worked out. The petitioners thereupon filed the writ application asking for quashing of the Government order. The Court found that the two petitioners were Councillors at the time the Head Clerk had been discharged from service but by the time they filed the writ application they were not in office. The Division Bench referred to several cases of the Supreme Court and of some High Courts and observed :--

"..... The observations made above would clearly show that even in case of issue of writ of mandamus there should be legal or personal right of the petitioner which is infringed and thereby prejudicially affects him. In the present case the petitioners are in no way concerned with the decision of the Government allowing the appeal of opposite party No. 3. The post of Head Clerk was in existence when opposite party No. 3 was discharged from that post by the N. A. C. After the appeal of opposite party No. 3 has been allowed it is for the N. A. C. to see that he is adjusted in a suitable post. This matter is internal between the N. A. C. and opposite party No. 3. The petitioners have no fiduciary relationship with the matter nor they are challenging any action of the municipality as tax-payers. It is not a case where the municipality started a new

adventure not in existence beforehand and such an adventure affects the finance of the N. A. C. and the petitioners are affected thereby. Therefore, the decisions relied on by the petitioners are not applicable to the case, On the other hand, the petitioners have no legal or personal right which they can enforce in Courts of law. They have no locus standi to put forth the grievances made in the writ petition....."

The other Division Bench case of this Court is that of Sri Gunanidhi Mohapatra v. The Chairman, N. A. C., Bhubaneswar (1976) 42 CLT 507 The writ application before the Court in that case was by a sitting Councillor. He challenged the Government direction restoring opposite party No. 3 as a Second Medical Officer of the Notified Area Council. On this occasion, several decisions of the Supreme Court and of other High Courts were also considered and the Court came to the conclusion;

"In view of the authorities cited, was can take it as well established proposition that if the writ asked for is a quo warranto in respect of a public office the petitioner need have no personal interest. But if the writ asked for is a writ of mandamus or certiorari the petitioner has to establish that he has some personal interest in the matter which the law recognises as sufficient."

On the facts of the case, the Court came to the conclusion that petitioner's interest was not sufficient to entitle him to invoke the jurisdiction of the Court under Article 226 of the Constitution.

Both these cases referred to the decision of the Supreme Court in the case of G. Venkateswara Rao v. Govt. of Andhra Pradesh, AIR 1966 SC 828 while deciding with reference to facts of each of the cases on the question of locus standi. According to learned Advocate-General, since there are two Bench decisions of this Court interpreting the Supreme Court decision in question, it is not open to us -- a Bench of co-ordinate jurisdiction -- to take a different view of the Supreme Court decision. In fact, learned Advocate General has furnished a detailed written note on this aspect of the matter. In both the cases of this Court, undoubtedly reference had been made to the Supreme Court decision in Venkateswara Rao's case. We have, however, not been shown any positive view of this Court as to what exactly was the limit indicated in the Venkateswara Rao's case by the Supreme Court. In such circumstances, the question of taking a different view about the ratio in Venkateswara Rao's case does not arise.

In the Supreme Court case, the dispute was as to the place of location of a primary health centre. In paragraph 8 of the judgment, Subba Rao, J., as the learned Judge then was, extracted an observation of the Court in Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, to the following effect--

"Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part-III or for any other purpose. It is, therefore, clear, that persons

other than those claiming fundamental right can also approach the Court seeking a relief thereunder. The Article in terms does not describe the classes of persons entitled to apply thereunder but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal rightThe right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified."

The Court thereafter held:--

"Has the appellant a right to file the petition out of which the present appeal has arisen? The appellant is the President of the Panchayat Samithi of Dharmajigudem. The villagers of Dharmajigudem formed a committee with the appellant as President for the purpose of collecting contributions from the villagers for setting up the Primary Health Centre. The said committee collected Rs. 10,000/- and deposited the same with the Block Development Officer. The appellant represented the village in all its dealings with the Block Development Committee and the Panchayat Samithi in the matter of the location of the Primary Health Centre at Dharmajigudem. His conduct, the acquiescence on the part of the other members of the committee, and the treatment meted out to him by the authorities concerned support the inference that he was authorised to act on behalf of the committee. The appellant was, therefore, a representative of the committee which was in law the trustees of the amounts collected by it from the villagers for a public purpose. We have, therefore, no hesitation to hold that the appellant had the right to maintain the application under Article 226 of the Constitution. This Court held in the decision cited supra that ordinarily the petitioner who seeks to file an application under Article 226 of the Constitution should be one who has a personal or individual right in the subject-matter of the petition, A personal right need not be in respect of a proprietary interest: it can also relate to an interest of trustee. That apart, in exceptional cases as the expression ordinarily indicates, a person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or even fiduciary interest in the subject-matter thereof. The appellant has certainly been prejudiced by the said order. The petition under Article 226 of the Constitution at his instance is, therefore, maintainable."

In a later case of the Supreme Court *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, the question of locus standi to maintain an application under Article 226 of the Constitution came to be considered by a Bench of four Judges. Dealing with the point, the Court stated:--

"As explained by this Court in *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur* and *Another*, ; *Unikat Sankunni Menon Vs. The State of Rajasthan*, the founding fathers of the Constitution have designedly couched the Article in comprehensive phraseology to enable the High Court to reach injustice wherever it is found. In a sense, the scope and nature of the power conferred by

the Article is wider than that exercised by the writ courts in England, However, the adoption of the nomenclature of English writs, with the prefix nature of superadded, indicates that the general principles grown over the years in the English Courts, can, short of technical procedural restrictions and adapted to the special conditions of this vast country, in so far as they do not conflict with any provision of the Constitution, or the law declared by this Court, be usefully considered in directing the exercise of this discretionary Jurisdiction in accordance with well recognised rules of practice.

According to most English decisions, in order to have the locus standi to invoke certiorari jurisdiction, the petitioner should be an aggrieved person and in a case of defect of jurisdiction, such a petitioner will be entitled to a writ of certiorari as a matter of course, but if he does not fulfil that character, and is a stranger, the Court will, in its discretion, deny him this extraordinary remedy, save in very special circumstances. This takes us to the further question : Who is an aggrieved person And what are the qualifications requisite for such a status? The expression aggrieved person denotes an elastic, and, to an extent, an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him. English Courts have sometimes put a restricted and sometimes a wide construction on the expression aggrieved person. However, some general tests have been devised to ascertain whether an applicant is eligible for this category so as to have the necessary locus standi or standing to invoke certiorari jurisdiction."

The Court then proceeded to refer to some of its earlier decisions and English and American cases. In paragraph 34 of the Judgment, it has been stated:--

"The expression ordinarily indicates that this is not a cast-iron rule. It is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority, even though he has no proprietary or even a fiduciary interest in the subject-matter. That apart, in exceptional cases even a stranger or a person who was not a party to the proceedings before the authority, but has a substantial and genuine interest in the subject-matter of the proceedings will be covered by the rule....."

It has again been stated:--

"It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) person aggrieved; (ii) stranger; (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They

masquerade as crusaders for justice. They pretend to act in the name of Pro Bono Public, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.

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

To distinguish such applicants from strangers, among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are: Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something? Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? (underlining is ours). Is the statute, in the context of which the scope of the words person aggrieved is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute dealing with private rights of particular individuals?"

In *Kasinath Tripathy and Another Vs. State of Orissa and Others*, the application was by two rate payers and the dispute was in relation to appointment of the Head Clerk, By none of the tests indicated above, Kasinath and his associate could be treated as persons aggrieved. In *Gunanidhi Mahapatra's* case (1976) 42 CLT 507 this Court actually "observed that Gunanidhi was not a contender for the post and in the appointment or continuity of service of the doctor, he had no

interest in any form at all. The ultimate conclusion in those two cases turned on the special facts of each of them. In our opinion, the question has been thoroughly examined by the Supreme Court in Desai's case AIR 1976 SC 578 and the tests which have been laid down offer an appropriate guideline for determining the question as to whether the petitioner can be taken to be a "person aggrieved". Learned Advocate General is not correct in his submission emphatically canvassed before us that in Desai's case nothing new had been said and no new guideline was indicated.

The petitioner is a sitting Councillor, He maintains that he participated in the proceedings leading to the relevant resolution and in his view the decision of the Council was correct and the interference by the State Government is an untenable act. u/s 398 (2) of the Act, he is a person entitled to be afforded an opportunity of offering explanation against the proposed action. On the facts, we have absolutely no doubt that the petitioner is a person aggrieved by the governmental action and has locus standi to maintain the application under Article 226 of the Constitution for the relief of certiorari This objection too must be overruled.

Now that the preliminary objections have been rejected, we proceed to deal with the merit of the matter.

11. The principal question for consideration is whether the resolution was duly passed. In the meeting for the 31st March, 1979, item no. 4 in the agenda was in regard to giving authority to the Chairman to spend up to Rs. 50,000/- at a time. That meeting was adjourned to 2nd of April, 1979, where the question was discussed. Item No. 4 was an official business. As the minutes of the meeting produced as Annexure-B/1 by the interveners along with their counter affidavit show, the Chairman had referred to the office note on the 31st of March, 1979, in support of the justification for such delegation. The meeting had thereafter been adjourned to 2nd of April, 1979. At the adjourned meeting a dispute arose as to the manner of voting and the Chairman ruled that vote should be by ballot.

Section 69 of the Act provides:-

" (1) All questions which may come before the Council or a Committee shall be decided by a majority of votes, save as is otherwise provided in this Act,
(2)"

In respect of certain matters, vote by ballot has been prescribed by statute (See for instance, Section 54 (2) (e)). There is, however, no prescription as to the manner of voting in respect of all other matters for which vote by ballot has not been statutorily prescribed except for motions by Rule 23. Thus, the manner of ascertaining whether there is majority of votes in respect of a question has not been statutorily provided in respect of non-specified items.

The State Government has framed the Orissa Municipal Rules, 1953, in purported exercise of powers vested under Clauses (i) and (ii) of Sub-section (2) of Section

387 of the Act. Chapter-I thereof makes provision for "Rules of Business". Rule 4 requires that a Councillor desirous of moving a motion has to give notice in writing to the Chairman not later than ten days before the date fixed for the next meeting and has to send a copy of the motion which he desires to move. Rule 5 authorises to Chairman to decide if the motion is in order and in case it is, every such motion received in time for the next meeting has to be included in the list of business for the next meeting and such of the motions which had not been received within time are to be deferred till the following meeting. Rule 6 deals with the situation when the motion is not in order. Rule 7 directs a list of motions to be maintained. Rule 12 deals with the order of business and places motions as the last item in order of priorities. Rules 15 to 25 deal with motions and amendments. In terms of Rule 15, the motion has to be moved by the councillor who gave notice and has to be seconded by another councillor. After that stage is reached, amendment may be moved in course of the debate that follows. Rules 16 and 17 deal with amendments. Rule 18 makes provision that a motion or amendment duly moved and seconded would not be withdrawn without the consent of the majority of the councillors present at the meeting. Rule 19 authorises the President for reasons to be recorded in writing and entered in the minutes of the proceedings to rule that the motion is not in order or to make alteration as would in his opinion render it to be in order. The President has power to refuse to put an amendment to the meeting until and unless the proposer and seconder accept and sign the alteration. Rule 20 makes the decision of the President of the meeting final. Under Rule 21, a motion or an amendment thereto ultimately is put from the chair and once the President declares the same to have been duly carried, no further motion for amendment is entertainable. As per Rule 22 when the discussion is concluded, in the event of several amendments having been proposed, the President is to put the amendments to vote and Rule 23 provides that this voting shall be by raising of hands. Rule 24 makes provision that every motion or amendment thereto duly moved and seconded and pressed to a division shall be recorded in full in the proceedings together with the number and names of voters for and against the same. Rule 25 prescribes that every motion or amendment thereto duly moved shall be seconded and if the motion remains un-seconded after being moved the same shall be taken to have been rejected and no entry would be made in the minutes, As already pointed out, Rules 15 to 25 appear under the heading described as "Motions and Amendments",

The next sub-head in the Chapter-I of the Rules is the "Right to Speak". Rule 29 provides that no councillor shall speak more than once on any motion or amendment except with permission of the President. Rule 30 authorises a councillor who has spoken upon a motion to speak again upon an amendment thereto when moved afterwards and Rule 31 provides that the mover of a motion or amendment shall have in all cases a right of reply.

The word "motion" occurs again in Rules 36 and 37 making provision for a motion of adjournment. The last subhead in Chapter-I of the Rules is styled as

"Miscellaneous". Rule 42 occurring thereunder provides:--

"For the purpose of taking into consideration business involving many details, the meeting may on the motion of any Councillor present at the meeting resolve itself into a committee of the whole body. When such motion has been carried the rule prohibiting any person from speaking more than once on the same question shall not apply to the discussion of the aforesaid business in committee."

Rule 43 provides :--

"When motion or amendment is put to the vote the President of the meeting shall record against it first the names of members voting for it and then the names of those voting against it."

12. The State Government has taken the view that Rule 23 applied to the passing of the disputed resolution and since the voting was by ballot, it ran contrary to Rule 23. On the other hand, counsel for the petitioner and opposite parties 2 and 3 have taken the stand that in regard to item No. 4 of the business which was an official matter, provision made in respect of "motions" had no application and in the absence of any clear mandate as to how voting has to be done, the Chairman was free to decide that it would be by ballot.

As already pointed out, Rules 15 to 25 occur under one common head namely "Motions and Amendments". In Rule 4, as already noticed, the manner in which a motion originates has been provided. Such of the motions which are admitted by the Chairman come before the Council for discussion and there is an end of the matter in case of rejection, Original motions are subject to amendment. Rules 15 to 25 deal with the discussion of the motions and their amendments and prescribe the manner in which motions have to be ultimately put to vote for being passed. It is a well-settled rule of interpretation that the same word carries the same meaning unless repugnant to the context. In the case of *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, the Court observed:--

".....Words are generally used in the same sense throughout in a statute unless there is something repugnant in the context."

To the same effect is the decision of the Supreme Court in the case of *Raghubans Narain Singh v. Uttar Pradesh Govt.* AIR 1967 SC 465, where it was observed:--

".....It is a well settled rule of construction that where the legislature uses the same expression in the same statute at two places or more, then the same interpretation should be given to that expression unless the context requires otherwise....."

The word "motion" has not been defined either by the Act or the Rules and accordingly must bear the common parlance meaning. In *Ramanatha Aiyer's "The Law Lexicon of British India"*, it has been indicated that "motion" in parliamentary law means a "proposition made to the house by a member, which

if adopted, becomes the resolution, vote or order of the house". In "Words and Phrases (Volume 27-A), one of the meanings attributed to the word "Motion" is "proposal or suggestion looking to action in a deliberative assembly". Learned Advocate General has contended that the common parlance meaning of the word "Motion" would legitimately include a matter as in item No. 4 of the Agenda and there is thus no justification to treat the same to be out of the ambit of "motions" covered by Rules 15 to 25 of the Rules, referred to above. He also placed reliance on Rule 21 in support of his contention that the Chairman is also entitled to put a motion from the chair and, therefore, according to him, and Mr. Mukherjee for the interveners, even the official business moved by the Chairman was covered by these Rules.

13. Reading the Rules and analysing the scheme behind these Rules, we have no doubt at all that Rules 15 to 25 deal with those motions for which provision has been made in Rules 4 to 7. The controversial item in the agenda did not have its origin in terms of Rule 4. No notice thereof had ever been given. Motions are by Councillors and not by the Chairman. In fact, notice has been prescribed to be given by the councillor desiring to move a motion and such notice has to be given to the Chairman. Since the Chairman after the amendment of the Act is no longer a Councillor and as he cannot give notice to himself and decide that his motion is in order, it must be concluded that official business to be transacted at the instance of the Chairman at a meeting of the Council is not a "motion" contemplated by Rule 4. Motions and amendments dealt with under Rules 15 to 25 are with reference to motions contained in the notice book in terms of Rule 7. Rule 21 was wrongly relied upon by learned Advocate General and Mr. Mukherjee in support of their contention that even the Chairman was entitled to initiate a motion. Rule 21 deals with motions of councillors and amendments thereto. After the discussions when the chair puts the motion or the amendments to vote and declares the same to have been duly carried, the Rule bars further discussion on it. This is a method well-known to deliberative assemblies. Therefore, the motions which have originated upon notice and are contained in the notice book kept under Rule 7 are covered by Rules, 15 to 22, Rule 23 prescribes the manner of voting in respect of these motions and Rule 24 prescribes the manner in which the proceedings of such motions should be kept.

We are cognisant of the fact that in Rules 36 and 37 the same word "motion" has been used under the sub-heading "Adjournments". In Rules 42 and 43 under the sub-heading "Miscellaneous" the word occurs again. Here, as the context would show, the word has been used in a different sense. For a motion for adjournment, Rule 4 would have no application because the question of adjournment would arise in course of the deliberations in a meeting. Rule 43 must be read along with Rule 42, because Rule 24 had already made provision on the same line as Rule 43 in respect of other motions and there could have been no occasion for making redundant provision in Rule 43, once provision to the same effect had been made in Rule 24. This, on the other hand, goes a long way to indicate the scheme in the Rules. The rule-making authority has required

the names of voters for and against every motion to be kept under Rule 24 and in respect of matters discussed by the house as a committee in terms of Rule 42, provision has been made in Rule 43 for maintaining the minutes.

14. Learned Advocate General has canvassed before us that the common law rule obtaining in England that all votings in deliberative assemblies should be by show of hands unless there be a prescription to the contrary, obtains in India and, therefore, whether Rule 23 applied or not, the voting had to be done by show of hands. He has placed reliance on a Chancery decision in the case of *In re Horbury Bridge Coal, Iron and Wagon Co.* (1879) 11 CD 109 and a passage from Halsbury's Laws of England, Vol. 9 (4th Edition), Note No. 1308 at page 768, stating:--

"At common law votes at all meetings are taken by a show of hands followed, if necessary, by a poll; and, in the absence of any special provision to the contrary in the constitution of a particular corporation, the common law method must prevail. Voting by show of hands means counting the persons present who are entitled to vote and who choose to vote by holding up their hands".

In the Municipal Act and the Rules as we have already indicated, in respect of voting relating to certain items, the statutory prescription is by ballot, As we have just seen in terms of Rule 23, in respect of motions voting is by show of hands. Apart from such prescriptions adopting the two methods, all questions have been left to be decided by majority of votes, the manner of voting having not been prescribed. We do not agree with the learned Advocate General that, the common law method of voting is applicable to India. The very question arose for consideration before the Allahabad High Court in the case of *Lakshmi Narain Shukla v. State of Uttar Pradesh* 1959 ALJ 853 Before Oak, J., reliance was placed on the text from Halsbury's Laws of England, referred to above, and an observation of Duraiswami in his *Law of Municipal Corporations in British India*. The learned Judge ultimately observed:--

"Mr. S.C. Khare did not draw my attention to any decision of an Indian High Court laying down that, the right to demand a poll has become the common law in India as regards the law of meetings, The matter may, therefore, be decided on broad principles. It appears that there is some scope for committing a mistake in counting votes from a show of hands. Counting votes after a poll is likely to be more accurate. So, in cases where there is apprehension of a possible mistake in counting votes from a show of hands, the Presiding Officer would be well advised to take a poll. But it is not necessary to insist upon a poll in every case. The matter may well be left to the discretion of the Presiding Officer."

The same question again came up before the same Court in the case of *Laxmi Shanker Khare v. State of U. P.* 1967 ALJ 416 Mathur, J., quoted with approval the observations of Bhargava, J., as the learned Judge then was, in the case of *Abdul Wajid v. State of U. P.* 1955 ALJ 593 to the following effect:--

"This rule of common law prevails in England for dealing with corporate vote and

is not necessarily applicable to the proceedings of special meetings of Municipal Board held under the provisions of Section 87-A of the Uttar Pradesh Municipalities Act."

Mathur, J., added his own view by saying:--

"In my opinion, the common law of England regarding voting at meetings cannot be said to have become part of Sub-section (9) of Section 87-A making it obligatory upon the Presiding Officer to take the vote by show of hands and by no other method."

Sub-section (9) of Section 87-A of the Uttar Pradesh Municipalities Act of 1916, did not provide any particular method of voting and required

"...Upon the conclusion of the debate or upon the expiry of the said period of three hours, as the case may be, the motion shall be put to the vote of the Board".

The view of the several decisions of the Allahabad High Court, therefore, is uniform that the English common law rule has no application in India. Support for the argument of learned Advocate General is available from a Bench decision of the Madhya Pradesh High Court in the case of *Sojarmal v. Mun. Council, Kharsia*, 1964 J.L.J. 139 where it has been stated that the settled rule in regard to the mode of voting is that where a statute prescribes the mode in which the vote of a body is to be taken, then that method must be followed and failure to comply with the same is fatal to any action taken and that if the mode of voting is not prescribed, then the method of voting by show of hands followed, if necessary, by poll, must prevail. For this view, reliance has been placed on the common law without any indication as to whether the common law on this aspect applies in India. Special mention was made of Section 62 of the Madhya Pradesh Municipalities Act of 1961, where there is a requirement in Sub-section (3) to the following effect :--

"The minutes of the proceedings recorded under Sub-section (1) shall include--

- (i) the names of the Councillors present;
- (ii) the decision of a meeting on every question considered; and
- (iii) When such decision is not unanimous, the number of votes and the names of Councillors voting for and against such question and the names of those who have remained neutral, whether votes have been taken by division or otherwise."

The Madhya Pradesh High Court has taken the view that if votes are taken by ballot then compliance of Sub-section (3) would be difficult and, therefore, they found an additional reason for supporting the voting procedure of show of hands. We have already noticed that Rules 24 and 43 have adopted the requirement of Section 62 (3) (iii) of the Madhya Pradesh Act. These Rules of ours deal with particular items and there is no reason to extend the application of the rules to matters not covered by them. We are, therefore, inclined to follow the Allahabad

view that in India, there is no application of the common law rule that voting unless required by a prescribed manner has to be by show of hands.

15. For our aforesaid conclusion, we are impressed by another argument advanced by the petitioner and opposite parties 2 and 3. Section 66 of the Act provides:--

"(1) The President of a meeting, (hereinafter referred to as the President) shall preserve order and shall decide all points of order arising at or in connection with meetings. The decision of the President on any point of order shall, save as is otherwise expressly provided in this Act, be final". The phrase "point of order" has no definition and must be taken to have been used to convey the accepted meaning of the term. Reliance has been placed on the Rules of Procedure and Conduct of Business of the Lok Sabha framed under the Constitution. Rule 376 deals with "points of order" and provides:--

"(1) A point of order shall relate to the interpretation or enforcement of these rules or such Articles of the Constitution as regulate the business of the House and shall raise a question which is within the cognizance of the Speaker.

(2) A point of order may be raised in relation to the business before the House at the moment; Provided.....

(3) Subject to conditions referred to in Sub-rules (1) and (2), a member may formulate a point of order and the Speaker shall decide whether the point raised is a point of order and if so give his decision thereon, which shall be final. Reliance is also placed on Practice and Procedure of Parliament, by M.N. Kaul and S.L. Shakdher, Volume-II, where it has been stated at page 798,

"...A point of order should therefore, relate to the interpretation or enforcement of the rules of procedure and conduct of business in the House or conventions or such articles of the Constitution as regulate the business of the House and must raise a question which is within the cognizance of the Speaker. The test of whether a point raised is a point of order or not is not whether the Chair can give any relief but whether it involves such interpretation or enforcement of the rules, etc., and whether it raises a point which the Speaker alone can decide."

In the instant case, seventeen members gave in writing that they wanted the voting to be by show of hands. A question as to what procedure should be adopted when the item was to be put to vote was verily before the House. Since a dispute arose, the Chairman gave a ruling as would appear from the minutes, holding that the vote should be by ballot. We are inclined to agree that this was within the ambit of "point of order" and in terms of Section 66 of the Act, the decision of the Chairman was binding for all practical purposes on all concerned. The State Government was as much bound as others by the decision.

16. There is another aspect which should also be taken note of at this place. Admittedly, in the voting by ballot, all the 28 councillors participated and the result of voting shows that 14 supported the proposal and 14 opposed. In terms

of Section 69 (2) of the Act, the Chairman gave his casting vote in favour of the proposal and it was thus adopted by a majority of votes. When all the 28 Councillors had participated in the voting, so far as they are concerned, they can have no grievance. In fact, having acquiesced to the manner of voting, they should not now be permitted to raise any objection to it. No prejudice also appears to have been caused to them inasmuch as the voting by ballot gives a better opportunity of expressing one's own view independently. The fact that at the time of voting by ballot 14 had supported the resolution, but 15 councillors have now intervened to oppose the writ application goes to show that vote by ballot had been rightly resorted to for obtaining independent view of the councillors on the question.

It was also canvassed before us that even if Rule 23 was applicable, the requirement was directory and not imperative. Therefore, non-compliance with Rule 23 when the Chairman had decided to resort to vote by ballot on a point of order being raised, did not vitiate the proceeding. Reliance has been placed on the observations of the Privy Council in the case of *Montreal Street Rly. v. Normandin* AIR 1917 PC 142 At p. 144 of the Report, the Board indicated:--

"...The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statutes must be looked at.".

In the case of *Dattatraya Moreshwar v. State of Bombay* AIR 1952 SC 181 S.R. Das, J., as the learned Judge then was, spoke for the Court thus:--

"It is well settled that generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice of the Courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done.

Maxwell on Interpretation of Statutes, 10th, edition, at page 374 has observed:--

"When a statute requires that something shall be done, or done in a particular manner or form, without expressly declaring what shall be the consequence of non-compliance the question often arises: What intention is to be attributed by inference to the legislature? Where, indeed, the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other, no doubt can be entertained as to the intention." Lord Penzance in the case of *Dattatraya Moreshwar Pangarkar Vs. The State of Bombay and Others*, stated:

"I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject-matter, consider the importance of the provision that has been disregarded and the relation of that provision to the general object intended to be secured by the Act, and upon a review of the case in that aspect decided whether the matter is what is called imperative or only directory".

Keeping these tests in view, we are inclined to agree with Mr. Misra for the Municipal Council that the provision of Rule 23 is directory and non-compliance with the procedure laid down therein, even if Rule 23 was applicable in the instant case, did not vitiate the proceeding so as to justify the action of the State.

Our conclusion in the matter, therefore, is that the impugned resolution had been duly passed. The action of the State Government in view of our finding must be held to be not in accordance with law. Consequently, the Government order under Annexure-4 becomes liable to be quashed.

17. Section 96 (1) of the Act provides:--

"With the exception of power, duty or function to be prescribed or reserved or assigned to a Chairman under this Act, a municipal council may delegate to the Chairman or Executive Officer any of the powers, duties or functions conferred or imposed or assigned to a municipal council under this Act:--

Provided that powers to frame regulations or by-laws shall not be delegated by the municipal council under any circumstances whatsoever." It has been contended by learned Advocate General that in terms of Section 72, regulations are necessary for the purpose of delegation. Section 72 of the Act, as far as relevant, provides:--

"Every municipal council, subject to the control and approval of the State Government, shall make regulations as to --

(e) delegation of powers, duties or functions of the municipal council and the powers to be exercised by the Chairman or Vice-Chairman or councillors or officers or servants of the municipal council or Government servants or by committees or its President or any one or more of their members:"

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Detailed procedure has been laid down for making of regulations. According to learned Advocate General, regulations having not been framed, delegation of power contemplated u/s 96 (1) of the Act could not be made. It is next contended that in terms of Rule 332, the selection of works rests with the Council. Therefore, in terms of the delegation by the impugned resolution, it was not open to the Chairman to select items of work. The interveners in their affidavit alleged that on the basis of the impugned resolution, the Chairman has sanctioned several items of work and they have appended a list of items of such work said to have been circulated by the Chairman at a Press Conference, It is

the plea of Mr. Mukherjee for the interveners and learned Advocate General for the State that on the authority of the delegation, the municipal funds are being depleted without the appropriate sanction of the councillors, Section 117-A of the Act provides:--"Unless provision has been made in that behalf in the municipal budget as approved by the State Government no expenditure shall be incurred by the council without prior approval of the Director".

We have been shown the budget for the year which has been duly prepared by Council and the same has already been sent to the State Government for approval. It is not the case of the State nor of the interveners that Chairman's actions are beyond the budgetary provisions and that, therefore, there is violation of Section 117-A of the Act, Section 117 provides the purposes to which the municipal fund is applicable. It is also not the case of Mr. Mukherjee nor of learned Advocate General that the works undertaken are beyond the ambit of Section 117 of the Act. The dispute is as to whether the Municipal Council should sanction the particular works to be undertaken or the delegation would also confer authority on the Chairman to sanction the works not involving expenditure of more than Rs. 50,000/- as also to sanction the expenditure.

There is no dispute that the power to sanction work is delegatable. Section 96 authorises delegation. Since the guide-line is laid down in Section 117 of the Act, the power to sanction work can be delegated in exercise of powers u/s 96 by the Council. Section 72 authorises regulation-making for specified purposes. But the question is, can power u/s 96 be not exercised unless regulations are made? Section 96 does not prescribe that delegation should only be through regulations and until regulations are made the power cannot be exercised. A Special Bench of the Calcutta High Court in the case of Surajmull Nagarmull and Others Vs. The Commissioner of Income Tax, dealt with a question of this type and after referring to authorities concluded by saying that the power conferred u/s 37 of the Income Tax Act did not remain suspended until rules were made and was to become operative only when such rules were current. There are several authorities of the Supreme Court taking the view that once power has been conferred and its exercise has not been made subject to rules to be prescribed, even in the absence of the rules, the power conferred by the statute is exercisable, It has been said in the case of The Adoni Cotton Mills Ltd. and Others Vs. The Andhra Pradesh State Electricity Board and Others, with reference to section 49 of the Electricity (Supply) Act of 1948:

"The language of Section 49 of the 1948 Act shows that the power can be exercised without making any regulation."

We are, therefore, inclined to agree with counsel for the petitioner and Mr. Mohanty for the Chairman that the delegation u/s 96 of the Act could work out in the absence of regulations u/s 72 of the Act. Once" the power is delegatable and has been delegated, Rule 332 of the Rules requiring the selection of the work to be done by the Council must also be taken to have been the subject-matter of delegation.

Delegation of the impugned type is not a device adopted for the first time in the Cuttack Municipality. In fact, the Executive Officer in his note which has been placed before us had clearly indicated that delegation of this type was the prevailing practice. On 27-8-1973, the Municipal Council had made a similar delegation in favour of the previous Chairman, There, the following power had been delegated:--

"Incurring expenditure up to Rupees 10,000/- at a time for any of the purposes u/s 117 and also for incurring expenditure (recurring) on the whole establishment, conservancy and day to day expenditure provided in the Budget"

(Annexure-I to Rejoinder of O.P. No. 3) There is also no dispute that the Executive Officer has a delegation of the similar type up to a limit of Rs. 1,000/-, From a document produced as Annexure-/CI along with an affidavit of the Under Secretary of the State Government in the relevant department, we find that there are several items of work which have been sanctioned by the Executive Officer on the basis of the delegation in his favour. There is no opposition to such delegation of power to sanction work and make expenditure subject to the limit of Rs. 1,000/-. From the same document it appears that where the work has involved more than Rs. 50,000/-, sanction has been by the Council and within the limit of Rs. 50,000/- sanction has been by the Chairman. We do not find any justification to take the view that the impugned resolution would lead to chaos, permit arbitrary expenditure and would be prejudicial to the interests of the Municipal Council or the Fund. The only difference on this occasion is that the financial limit has been raised from Rs. 10,000/- to Rs. 50,000/- We have been told that previously the Municipal Fund used to be less than a crore of rupees and now with the enhanced income of two and half crores of rupees, several works are being undertaken. Money has lost its value and cost of work has increased. Keeping these aspects in view, the financial limit has been raised. At any rate, we are not considering the propriety of the raising of the limit.

18. We shall now proceed to examine the last contention namely the relief of certiorari being discretionary, should the same be granted in the facts and circumstances of the case. Learned Advocate General had raised this question mainly on the footing that if the delegation was allowed to work out the Municipal Fund would be depleted, Councillors would be deprived of their statutory power and it would amount to total abdication of power on the part of the Councillors and arbitrary exercise of the same by the Chairman. We have already examined these aspects and have come to the conclusion that the delegation in the instant case was not a new device and after referring to the various provisions of the Act and the Rules we have also come to hold that there is no statutory violation in the matter of delegation.

Over almost a century, local bodies have been developed in this country and gradually democracy has been introduced into Local Self-Government. About a hundred years back, the Bengal Municipal Act came into existence.

So far as Orissa is concerned, in due course, it was governed by the Bihar & Orissa Municipal Act until Orissa had its own legislation. Subject to the control of the State Government, powers have been conferred on different authorities created by statute to be exercised within prescribed limits. The power of the State Government can be exercised only when there is a statutory excess and Government do not have power at all to exercise when the statutory bodies act within their jurisdiction except appellate powers. To allow Government to exercise their controlling powers under the statute as in the present case, would amount to undue interference and in fact would frustrate the purpose of the statute. The jurisdiction vested in the Government u/s 398 of the Act is confined to instances of action in excess of powers. If Government exercise such jurisdiction where they do not have any, it would indeed be contrary to the legislative intention and purpose. Since we have come to the conclusion that there was no statutory lapse, Government had no jurisdiction to exercise u/s 398 (1) of the Act. The four contingencies existence of one or all of which confers jurisdiction have been statutorily specified. Our conclusion being that none of them existed, the exercise of power by the State cannot be countenanced. We would accordingly hold that there is no force in this submission of learned Advocate General.

19. The net result, therefore, is that the writ application has to be allowed. We accordingly quash the Government order dated 23rd of June, 1979, in Annexure-4. There would be no direction for costs.

P.K. Mohanti, J.

20. I agree.