
(1980) 10 PAT CK 0002

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 3302 of 1979

Kamakhya Narain Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 14-10-1980

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 295
Bihar Municipal Corporation Act, 1978 — Section 1, 2, 4
Constitution of India, 1950 — Article 245
General Clauses Act, 1897 — Section 6
Patna Municipal Corporation Act, 1951 — Section 546

Citation : AIR 1981 Patna 236 : (1981) 29 BLJR 611 : (1981) PLJR 459

Hon'ble Judges : K.B.N. Singh, C.J;P.S. Sahay, J

Bench : Division Bench

Advocate : B.C. Ghose, S.K. Ghose and Shyam Kishore Sharma, for the Appellant; R.B. Mahto, A.A.G., C.K. Sinha, Govt. Pleader No. 4 and Ashutosh Jha, Jr. Counsel, Prabha Shanker Mishra, Alakhraj Pande and Shivesh Mishra, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Sahay, J.—This application, under Articles 226 and 227 of the Constitution of India, is for quashing the Notification No. 1406 dated 15-9-1979 constituting Ranchi Municipal Corporation and setting out its boundaries, Annexure-3, and Notification No. 1408 of the same date applying certain provisions of the Patna Municipal Corporation Act to the newly formed Ranchi Municipal Corporation, Annexure-1, and also the Notification No. 1532 dated 29th Oct., 1979 by which Hazari Ram Gupta, respondent No. 2, was appointed Administrator, Ranchi Municipal Corporation and also Executive Officer of the Joint Water Works Committee, Ranchi-Doranda, Annexure-2. Here it may be mentioned that subsequently a fresh notification was issued on 29-5-1980, after this writ application was admitted, and Guru Prasad Baidya Jyotishi, Executive Officer, was appointed as Chairman of the Joint Water Board in place of Hazari Ram Gupta.

2. In order to appreciate the points, which have been raised in this application, it will be necessary to state some facts. Under the Bihar and Orissa Municipal Act (hereinafter referred to be as the Municipal Act) two municipalities were functioning; one at Ranchi and the other at Doranda and a Joint Water Works Committee was constituted by the aforesaid municipalities under the provisions of the aforesaid Act and the petitioner was elected as Chairman. In 1975 there was an attempt to remove the petitioner from the post of Chairman and for that a resolution was passed by the Ranchi Municipality and the Executive Officer was made Chairman of the Water Works Committee. The petitioner challenged the same in C. W. J. C 920 of 1976 and the resolution of the Ranchi Municipality dated 6-11-1975 was quashed. On 24th April, 1978 the Governor of Bihar promulgated an Ordinance, Bihar Ordinance (35 of 1978) (The Bihar Municipal Corporations Ordinance, 1978) which gave power to the State Government to constitute a Corporation in any city having a population of two lacs or more. The said Ordinance was followed by an Act, Bihar Municipal Corporations Act, 1978 (Bihar Act 12 of 1978). On 15-9-1979 there was a notification u/s 2(1) read with Section 1 (2) and (3) of the Corporation Act establishing Ranchi Municipal Corporation comprising the area falling within Ranchi and Doranda Municipalities and also adding Jagannathpur area. The boundaries of the said Corporation were mentioned in the aforesaid notification, a copy of the same has been filed along with this application, marked as Annexure-3. On the same day there was another notification adopting, restricting and modifying certain provisions of Patna Municipal Corporation Act to the newly created corporation, a copy of the said notification has been filed and marked Annexure-1. Thereafter, by another notification dated 29-10-1979 in exercise of powers conferred u/s 546 of the Patna Corporation Act Hazari Ram Gupta, Administrator, was appointed as the Executive Officer of the Joint Water Board, Ranchi and Doranda, a copy of the same has been filed as Annexure-2. By another notification in place of Hazari Ram Gupta, Sri Guru Prasad Baidya Jyotshi was appointed, a copy of the same has been filed as Annexure-2A, and this was stayed. The petitioner has challenged the aforesaid notifications on various grounds.

3. Counter-affidavits have been filed on behalf of the State and respondent No. 2 and also reply thereto denying the assertions made in the petition and justifying the action of the State Government in establishing a Corporation at Ranchi comprising of Ranchi and Doranda Municipalities and also including Jagannathpur area in its fold. In the counter-affidavit of the State it has been asserted that according to the census reports of the year 1971 the population of the area included in Ranchi Corporation is as follows :

Ranchi Municipality 1,75,934

Doranda Municipality 23,954

Jagannathpur Area 55,663

Total 2,55,551

It has also been stated that Jagannathpur area is actually the area of Heavy Engineering Corporation and this area has been included in the Corporation for administrative convenience. Further it has been stated that prior to the establishment of Ranchi Municipal Corporation, as contained in Annex.-3, Notification No. 1106 was issued on 27th February, 1979 inviting objections within six weeks regarding formation of Ranchi Municipal Corporation and copy of the same was sent to all concerned. A copy of the aforesaid notification has been filed as Annex.-M. It has further been stated that no objection was received and, thereafter, the Corporation was established.

4. Mr. B. C. Ghose, learned counsel appearing for the petitioner, has raised a number of contentions which I propose to discuss in detail along with the submissions of the learned Additional Advocate General, appearing on behalf of the State, and Sri Prabha Shanker Mishra, appearing on behalf of respondent No. 2. Firstly, it has been contended by Mr. Ghose that by the Corporation Act 1978 (Act 12 of 1978) the Legislature intended to create a Corporation of such municipal area having a population of two lacs but this could not have been done by combining two municipalities and such amalgamation was not permissible except by express resolution of the two municipalities as provided for u/s 4 (1) (d) of the Municipal Act. He has urged that inclusion of Jagannathpur which was not a municipality, is also illegal. Learned Addl. Advocate General, on the other hand, has submitted that Section 1 of Corporation Act does not limit the power of the State Government to constitute corporation in the area where there is a municipality existing from before nor it envisages that the area sought to be covered must be a part of the municipal town. Thus, according to him, any urban population having an area of two lacs can be converted into corporation and this is the only requirement and the three areas combined together fully satisfy that condition. Here it will be relevant to refer to the relevant provisions of the Act and Sections 1 and 2 of the Act are as follows :

"1. Short Title: extent and commencement :

(1) This Ordinance may be called the Bihar Municipal Corporation Ordinance, 1978.

(2) It shall extend to the whole of the State of Bihar.

(3) It shall come into force in any city having a population of two lacs or more on such date as the State Government may appoint by notification and different dates may be appointed for different cities.

2. Constitution of Corporation and specification of the area thereof:

(1) The State Government may, by notification in the Official Gazette, declare any area including the area of any municipality or notified area constituted under the Bihar and Orissa Municipal Act, 1922 (B. & O. Act 7 of 1922) with such other areas as may be specified therein to be a Municipal Corporation, which shall be known by the name assigned to it by the State Government.

(2) The State Government may from time to time by notification in the Official Gazette alter the limits of such Municipal Corporation so as to include therein or exclude therefrom such area or areas as may be specified in the notification." The word "City" as mentioned in Section 1 (3) has not been defined under the Act. City, according to Chambers' Dictionary, means a large town, a town with a Corporation or a Cathedral, the business centre or original area of a large town. "Town" according to Strouds' 4th Edition, Vol. 5, Item No. 3 is as follows :

" "Town" is not restricted by its legal meaning but is expanded popularly and means the space which, for the time being, is covered by, or occupied as accessory to, houses collected together in a mass, and in sufficient number to be ordinarily designated as a Town; and includes unbuilt lands that may lie within the ambit of such collected mass of houses but no lands outside such ambit though within a borough,"

Learned Additional Advocate General has drawn our attention to a Bench decision of the Calcutta High Court in the case of Belait Sheikh and Others Vs. State of West Bengal and Another, where the word "Town" was interpreted by their Lordships in absence of any definition in the Bengal Municipal Act and held as follows (at p. 755):

"The word "Town", in absence of any definition in the Act has to be understood in the sense in which ordinary people having the main attributes of the existence of houses in clear proximity, concentration of a large number of people in a comparatively small area and engagement of the bulk of the population in non-agricultural pursuits."

The word "Town" has, however, a fairly defined connotation to the ordinary man--the main attributes of a Town being the existence of house in clear proximity concentration of a large number of people in a comparatively small area, engagement of the bulk of population in non-agricultural pursuits. This decision gives us some light on the subject. Mr. Ghose has, however, relied on the definition of Section 4 (gg) of the Patna Municipal Corporation Act which reads as follows:

" "Town" means the local areas comprised within the limits of Patna City Municipality and within Patna is defined in Section 2 of the Patna Administration Act, 1915, immediately before the commencement of this Act and includes any other area specified in a notification u/s 514."

Reading the provisions of Act 12 of 1978 and after going through the relevant provisions it is difficult to accept the submission of Mr. Ghose that only those towns which have a population of two lacs can only be converted into Corporation. Section 2 of the Act clearly says that any area including the area of any Municipality or Notified Area constituted under the Municipal Act with such other areas (underlined by me) as may be specified therein to be a Municipal Corporation. The submission of Mr. Ghose is, therefore, contrary to the provisions of the Act which have to be read together and not in isolation in order to give

harmonious construction. The provisions of Patna Municipal Corporation (Act) are not at all relevant for consideration and it confines to Patna and its adjoining area only. In my opinion, therefore, Legislature has given power to the State Government to include any area in order to constitute a Corporation; may be Municipality, Notified Area Committee joining the area with such area as the State Government may think fit and proper. The only basic requirement is that it must have an urban population of two lacs or more. From the affidavit filed on behalf of the State, as I have stated earlier, it is clear that objections were invited from those living in area, sought to be included, and after the expiry of the period notification was issued and no objection was filed. Therefore, the first contention of Mr. Ghosej fails.

5. Mr. Ghose has then contended that Annexure-1 suffers from excessive delegation because certain sections of the Patna Corporation Act were picked up at random and applied which, according to him, changes the basic features of the Act and this could have been done only by the Legislature and not by the State Government. The Legislature did not lay down the manner in which a Corporation could be established or the manner it would function after establishment. He has, further, argued that Municipal Act has not been repealed or withdrawn from the area sought to be included in the Corporation and certain sections of the Corporation Act have been adopted, modified or restricted u/s 4 of the Act, thus, changing the essential and basic character of the Corporation. Section 6 of the Corporation Act -- continues the argument -- suffers from the vice of excessive delegation of legislative powers. Stress has also been laid on Section 8 of the Patna Municipal Corporation Act which speaks of the distribution of Wards and the qualification of the voters which was omitted. It was, however, adopted by subsequent notification on 11-12-1979. It has farther been contended that certain provisions have been picked up at random which is not permissible. Learned Additional Advocate General has submitted that power has been conferred upon the State to extend, adopt and apply certain provisions of Patna Corporation Act as it may be deemed necessary and this was in consonance with the accepted legislative practice and procedure and, therefore, not unconstitutional. This argument has also been adopted by Mr. Mishra, appearing for respondent No. 2. This requires a detailed examination of the submissions made at the Bar. In exercise of powers conferred u/s 4 of the Corporation Act certain provisions of the Patna Municipal Corporation have been made applicable to the Ranchi Municipal Corporation by notification, Annexure-1. Section 4 reads as follows :

"4. Application of the provisions of the Patna Municipal Corporation Act-- The State Government may, by notification in the Official Gazette, extend to the Corporation established u/s 2 all or any provisions of the Patna Municipal Corporation Act, 1951 (Bihar Act 13 of 1952) and the rules framed thereunder subject to such adaptations, restrictions and modifications as they may think appropriate."

Thereafter Annexure-3 was issued applying certain provisions of the aforesaid Act. The law relating to "Delegated Legislation" has now been decided by a number of decisions of the Supreme Court. Fazal Ali, J. in the case of Delhi Laws Act (AIR 1951 SC 332) made the following observations (at p. 361):

"I wish to make a few general observations here on the subject of "delegated legislation" and its limits, using the expression once again in the popular sense. This form of legislation has become a present-day necessity, and it has come to stay -- it is both inevitable and indispensable. The Legislature has now to make so many laws that it has no time to devote to all the legislative details, and sometimes the subject on which it has to legislate is of such a technical nature that all it can do is to state the broad principles and leave the details to be worked out by those who are more familiar with the subject. Again, when complex schemes of reform are to be the subject of legislation, it is difficult to bring out a self-contained and complete Act straightway, since it is not possible to foresee all the contingencies and envisage all the local requirements for which provision is to be made. Thus, some degree of flexibility becomes necessary so as to permit constant adaptation to unknown future conditions without the necessity of having to amend the law again and again. The advantage of such a course is that it enables the delegate authority to consult interests likely to be affected by a particular law, make actual experiments when necessary, and utilize the results of its investigations and experiments in the best way possible. There may also arise emergencies and urgent situations requiring prompt action and the entrustment of large powers to authorities who have to deal with the various situations as they arise."

The earliest pronouncement on the subject is to be found in the case of *Queen v. Burah* 1878 5 I.A 178 (PC) and the judicial Committee held as follows:

"The proper legislature has exercised its judgment as to place, persons, laws, powers, and the result of the judgment has been to legislate conditionally as to those things. The conditions being fulfilled the legislation is now absolute."

To what extent that power can be exercised and what are the limitations will be clear from the decisions which I propose to discuss hereinafter.

6. Mr. Ghose has relied on the decision in the case of *Rajnarin Singh Vs. The Chairman, Patna Administration Committee, Patna and Another*, wherein exercise of powers conferred u/s 6 of the Patna Administration Act certain parts of Patna Village was brought under the municipal control of Patna Administrative Committee by notification dated 11-4-1951. After five days Bihar and Orissa Municipal Act was extended to that extended area which was challenged on the ground that it was ultra vires as the said Patna village was included without observing the formalities as mentioned in Sections 4, 5 and 6 of the Bihar and Orissa Municipal Act which required ascertainment of the opinion of the persons living in that locality. The writ was dismissed by the High Court and the Supreme Court held that statutory duty was imposed under the Act in mandatory terms to

listen to the objections and take them into consideration before reaching a decision. It was also held that an Executive Authority has the power to modify either existing or future laws but not to change any essential feature of the Act or in any manner alter its policy and in that situation it was held that the notification was bad. In the case of *Queen v. Burah* (supra), it has been held that section or sections of certain Act can be picked up and applied and for the same reason whole or part of an Act can be modified. The only limitation being that it should not change the essential character of the Act. Learned counsel has been placed reliance in the case of AIR 1949 175 (Federal Court) where a notification, was issued by the Chief Secretary under the Bihar Maintenance of Public Order extending it to Santhal Parganas and Chota-nagpur for a period of one year. Thereafter, there was another notification that the Act will always be deemed to have been in force and this was challenged and it was held that the power to modify an Act of a legislature, without any limitation on the extent of the power of modification, is undoubtedly a legislative power. It is not a power confined subject to any restriction, limitation or proviso (which is the same as an exception) only and even if the proviso read along with the Act it could not be held that the Government of Bihar, in performance of the legislative functions, had not prescribed the life of the Act beyond one year and, therefore, it was held to be bad. This decision, in my opinion, is extreme case where action by a delegated authority was held to be ultra vires for the reasons mentioned above. The fact is clearly distinguishable from the facts of the instant case and does not support the petitioner.

7. I may also mention that the case of *Raj Narain* has been quoted with approval in subsequent decisions of the Supreme Court and I will refer to the case of *Lachmi Narain and Others Vs. Union of India (UOI) and Others*, on which reliance has been placed by the parties. In that case a notification issued on 7-12-1957 u/s 2 of the Union Territories Act purporting to amend Section 6 of the Bengal Finance (Sales Tax) Act, 1941 and the words "such previous notice as it considers reasonable" for the words "not less than three months notice" was sought to be challenged as it was an excess of the power of modification conferred on the Central Government by Section 2 of the Act. Their Lordships, on a consideration of number of authorities including *Rajnarin Singh Vs. The Chairman, Patna Administration Committee, Patna and Another*, held that the alteration sought to be introduced by the notification goes beyond the scope of the "restrictions and modifications" permissible u/s 2 of the Act, which purports to change the essential features of that sub-section and the legislative policy inherent therein and, therefore, the notification was held to be bad. But reading Section 4 of the Corporation Act, quoted above, it is not an alteration or modification of the provisions of the Corporation Act and no section of the said Act has been modified. In *Laxmi Narain's* case the position was, however, different because there was a variation in the contents of law and in that context it was held that it amounted to the change of the essential legislative functions. Therefore, *Laxmi Narain's* case also do not help the petitioner.

8. I would also like to discuss other cases relied upon Mr. Ghose in the case of B. Shama Rao Vs. The Union Territory of Pondicherry, and in that case the Pondicherry Sales Tax Act was void, ab initio and the amending Act which sought to revive it was held to be bad, which is not the position in the instant case.

9. In the case of Khambalia Municipality and Another Vs. State of Gujarat, , Section 9 (2) of the Gujarat Panchayat Act, 1961 was challenged on the ground of excessive delegation of the legislative power on the State Government without giving guidelines and thus a naked and arbitrary discretion had been given to the State Government to declare which of the area or areas will be included in the Gram Panchayat. Their Lordships repelled the argument and relying on Rajnarain Singh Vs. The Chairman, Patna Administration Committee, Patna and Another, and Delhi Laws Act, 1951 Supreme Court, held that an essential executive function consists in determination of a legislative policy and its formulation as a binding rule of conduct. Having laid down the legislative policy, the Legislature may confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the frame work of the policy. This decision instead of supporting the petitioner supports the respondents. From the ratio decided in the aforesaid cases it is difficult to accept the contention of the petitioner that essential features of the Act have been altered and what has been done is permissible under the law.

10. Here I will also dispose of another submission of Mr. Ghose that notification could have been issued only once and Section 8 of the Patna Corporation Act has been notified subsequently on 11-12-1979 and it must be held to be bad and reliance in this connection has been placed on para 59 in the judgment of Lachmi Narain and Others Vs. Union of India (UOI) and Others, where it has been held that the powers given u/s 2 exhausts itself on extension of the enactment, it cannot be exercised repeatedly or subsequently to such extension. It can be exercised only once simultaneously with the extension of enactment, [n my opinion, the question raised has been answered in para 58 of the judgment and their Lordships held that u/s 2 of the Union Territories Act primary power bestowed by the section on the Central Government was one of extension, that is bringing into operation and effect, in a Union Territory, an enactment already in force in the State, and in that situation it was held that the notification adopting the law in 1951 could be applied only once and not repeatedly or subsequently and that also not after a lapse of six and half years. It was further held that the span of notice was the essence of legislative mandate, which could be diluted, changed or amended by the Legislature in exercise of its essential legislative functions. Learned counsel appearing for the respondents have contended that such extreme arguments cannot be accepted. The authorities after the issue of the notification, as contained in Annexure-1, may have to face difficulty and for better administration notification has to be issued in order to implement the object of the Act to make it workable. Mr. Mishra has relied on Section 24 of the Bihar and Orissa General Clauses Act and has submitted that the powers to issue a notification includes a power exercisable in the like manner to add, amend,

vary and rescind notifications. He has relied in the case of Sampat Prakash Vs. The State of Jammu and Kashmir and Another, where their Lordships after considering the scope and ambit of Article 370 of the Constitution read with Section 21 of the General Clauses Act held as follows (at p. 1124):

"There was clearly the possibility that, when applying the particular provision, the situation might demand an expansion or modification of provisions applied; on subsequent changes in the situation might justify the rescinding of those modifications or expansion."

In the case of Puranlal Lakhanpal Vs. The President of India and Others, the President by a notification introduced indirect election in place of direct election to the seats of House of People from Jammu and Kashmir and it was held that it was not unconstitutional and there was no radical alteration in Article 81 of the Constitution.

11. In the case of Harishankar Bagla and Another Vs. The State of Madhya Pradesh, their Lordships, while dealing with the provisions of Essential Supplies (Temporary Powers) Act held that aim and character of the Act was such, that details could be worked out by delegating them to a subordinate authority within the framework of that policy and was, thus, within permissible limits. Thus, OB a careful consideration of the case laws, I find that there is no case of excessive delegation and the argument advanced on behalf of the petitioner has to be rejected.

12. Next it has been contended by Mr. Ghose that the Bihar and Orissa Municipal Act applies to the whole of State and it cannot be withdrawn from one area and allowed to remain in other. He has, further, submitted that it could only be done by notification and not by implication by the proper authorities. Learned Additional Advocate General has submitted that the aforesaid Act is a pre-Constitution Act which was in force under Article 372 of the Constitution of India and it stood repealed and was withdrawn and became inoperative where a corporation was established under the Act of 1978. Mr. Mishra has argued that nowhere it has been pleaded on behalf of the petitioner that the Municipal Act has not been repealed and operates even after the application of the Corporation Act. No doubt the Municipal Act was a pre-constitution Act and was in force when the Corporation Act 1978 was enacted. What will be the position after the Corporation Act covers the field and the Municipal Act is not repealed in express terms, is the mod question for consideration.

13. Repeal, according to Law Lexicon, means a revocation or abrogation repeal of one Act of Parliament by another is either expressed or implied, the rule being that a latter Act repeals a former one if contradictory thereto. Repeal, according to Straud's Judicial Dictionary, Vol. 3, Page 2553 :

""Repealed¹ as not to be taken in a absolute, if it appears upon the whole Act to be used in a limited sense. But the general rule is that "that when an Act of Parliament is "repealed" it must be considered as if it had never existed".

According to Maxwell's Interpretation of Statutes, 12th Edition. Page 191 a later statute may repeal an earlier one either expressly or by implication. But repeal by implication is not favoured by Courts. Both Mr. Ghose and the learned Additional Advocate General has relied upon Craies on Statute Law, 7th Edition. The first part reads as follows:

"Where two Acts are inconsistent or repugnant, the later will be read as having impliedly repealed the earlier. The Court leans against implying a repeal, "unless two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal will not be implied. Special Acts are not repealed by general Acts unless there is some express reference to the previous legislation or unless there is a necessary inconsistency in the two Acts standing together."

Learnetimed Additional Advocate General has relied on the above quotation whereas Mr. Ghose has relied upon the next line which reads as follows :

"The latest expression of the Will of the Parliament must always prevail."

Therefore, it" one statute repeals a former one in clear terms then it will be a clear case of repeal and that will be according to the Will of Parliament or the Legislature as the case may be. But that does not answer the problem posed in this case regarding repeal by implication and for that purpose I will refer to the decisions referred to in this regard. In the case of AIR 1941 16 (Federal Court) the provisions of Section 292 of the Government of India Act, repealed or amended the existing law with retrospective effect and it was observed as follows ;

"But it is not absolutely necessary that a statute must be repealed by express language, e. g. shown as repealed in an attached schedule. Repeal, and certainly alteration or amendment, can be effected by necessary implication also. When two Acts are clearly inconsistent with or repugnant to each other the former will be deemed to have been impliedly repealed or amended as the last expression of the Will of the Legislature must always prevail. But they must really be irreconcilable with each other."

In the case of Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, speaking for the Bench Shelat. J. observed (at p. 1584):

"The rule of construction is that where a statute provides in express terms that its enactment will repeal an earlier Act by reason of its inconsistency with such earlier Act, the latter may be treated as repealed. Even where the later Act does not contain such express words, if the co-existence of the two sets of provisions is destructive of the object with which the later Act was passed, the Court would treat the earlier provision as impliedly repealed. A later Act which confers a new right would repeal aa earlier right if the fact of the two rights co-existing together produces inconvenience, for, in such a ease it is legitimate to infer that the Legislature did not intend such a consequence. If the two Acts are general enactments and its later of the two is coached in negative terms, the inference

would be that the earlier one is impliedly repealed."

A similar point arose for consideration in the case of A.K. Jain and Others Vs. Union of India (UOI) and Others, regarding the constitutional validity of Bihar Act (7 of 1937) and the rules framed thereunder was challenged and this Court held them to be unconstitutional and invalid. The matter went to the Supreme Court and it was held that if there was anything contrary in the aforesaid Act to Rule 3, Sub-clause (3) of the Sugar Control Order, 1955 issued under the Central Act, it must be held to have been altered in view of Article 372 of the Constitution. In the case of *Thaivalappil Kunjuvaru Vared Vs. The State of Travancore-Cochin*, certain provisions of the Travancore and Cochin Acts were considered, whether they were inconsistent with the provisions of the Constitution which came into force in 1950. It was held that after coming into force of the Constitution those provisions were inconsistent and therefore ceased to exist. This Court in the case of *Darshan Sao v. State of Bihar* (1977 BBCJ (HC) 530): (1978 Cri LJ NOC 56) while construing provisions of Essential Articles (Display of Price and Stock) Order, 1967 held that the aforesaid order is impliedly repealed or rendered inoperative by Clause (3) of another order of 1975. On a careful consideration of the case, laws, referred to above, I am of the opinion that the contention raised on behalf of the respondents has to be accepted. The provisions, of the two Acts, namely, the Municipal Act and the Corporation Act, 1978 having the same purpose and object cannot work in the same field and it may lead to anomalies and absurdities. From the trend of the decisions it must be held that the former Act must give way to the subsequent Act, meaning thereby that the Bihar and Grissa Municipal Act shall be deemed to have been repealed by the Corporation Act, 1978 in the area where it has been enforced. Whether the scheme of things in case of such implied repeal will be workable or not, is, wholly irrelevant for consideration and the detailed argument on this point by Mr. Ghose with reference to the various provisions of the Act needs no consideration. Even if his argument is accepted for a moment then it is for the legislature or the authorities, concerned to avoid such situations, by taking actions in accordance with law, either by further amendments, notifications or any other method which may be suitable or appropriate. This contention of Mr. Ghose is also devoid of any substance and is rejected.

14. The last contention of Mr. Ghose that the appointment of the Administrator of Ranchi Municipal Corporation as Executive Officer of the Joint Water Works Committee is illegal and fit to be quashed. By the first notification Hazari Ram Gupta was appointed to this post and later it was superseded by the appointment of Sri Jyotshi. The aforesaid appointment has been made u/s 546 (1) of the Patna Municipal Corporation Act which reads as follows :

"546. Appointment of Officer to take charge of Patna-Bankipur Joint Water Works Committee --

(1) On and from the date when this Act comes into force and until such date as the corporation may, with the approval of the State Government, appoint u/s 71

for taking over the functions of the Patna Bankipur Joint Water Works Committee, the State Government shall appoint an officer to take charge of the said Committee and thereafter the officer concerned so appointed, shall exercise all powers and duties conferred and imposed on the Water Board and the Chief Executive Officer by or under this Act."

It has been submitted by Mr. Ghose that the petitioner was appointed u/s 51 of the Bihar and Orissa Municipal Act by a joint committee consisting of members of Ranchi and Doranda Municipalities and that Committee having not been superseded the appointment was bad. Learned Additional Advocate General, on the other hand, has contended that till a permanent arrangement is made and the elections of the Corporation are completed, such appointment can be made as a temporary measure and this has been done in this case. It will not be out of place to mention that for the words "Patna-Banikpur Joint Water Works Committee" appearing in Section 546 (I) of the Patna Municipal Corporation Act has been substituted by words "Ranchi-Doranda Joint Water Works Committee" by notification. It has also been contended by the learned Addl. Advocate General that the Municipal Act having been repealed and having become inoperative the petitioners term of office has come to an end and he has no legal right to challenge the notifications. In my opinion the contention raised on behalf of the respondents again has to be accepted. I have held earlier that by virtue of the Corporation Act the Municipal Act became inoperative and, therefore, after the appointment of the Executive Officer the petitioner, who was a creature of the Municipal Act, ceases to exist. He has no legal right to challenge the appointment of Administrator and whether the Water Board will function properly or not in the absence of some of the provisions of the Patna Municipal Corporation Act is not his concern. I may also add here that when the State Government had invited objection regarding the formation of the Ranchi Municipal Corporation no objection was filed on his behalf. Thus, it is apparent that when he is sought to be replaced by the Executive Officer he came running to this Court and obtained order of stay.

15. On a careful consideration of the points raised in this application and after hearing the learned counsel for the parties and on a perusal of the case laws cited at the Bar, I am satisfied that the impugned Annexures 1, 2 and 3 are valid and cannot be assailed. Thus, there is no merit in this application and it is, accordingly, dismissed but in the circumstances of the case there will be no order as to costs.

K.B.N. Singh, C.J.

16. I agree.